

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 call in at: [1-877-309-2073](tel:1-877-309-2073), Access Code: 244-269-765

Or, join on-line at the following link: <https://meet.goto.com/244269765>

## **AGENDA**

### ***Port of Kennewick***

### ***Regular Commission Business Meeting***

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

May 10, 2022

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 for the public record)*

#### **VI. CONSENT AGENDA**

- A. Approval of Direct Deposit and ePayments Dated May 3, 2022
- B. Approval of Warrant Register Dated May 10, 2022
- C. Approval of Regular Commission Meeting Minutes April 26, 2022

#### **VII. PRESENTATION**

- A. State Auditor's Office Report, Jennifer Robertson (**NICK/LUCINDA**)

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

- A. Kennewick Waterfront
  - 1. Columbia Gardens Covenants, Conditions & Restrictions (CC&Rs); Resolution 2022-14 (**AMBER**)
  - 2. Muret-Gaston Winery (**AMBER**)
  - 3. 1135 Project Update (**TANA**)
- B. Vista Field Hangar Update (**TIM**)
- C. Washington Public Ports Association (WPPA) Leadership Change (**SKIP**)
- D. TRIDEC Partnership – ICSC (**TIM**)
- E. Commission meetings (formal and informal meetings with groups or individuals)
- F. Non-Scheduled Items  
(**LISA/BRIDGETTE/TANA/NICK/LARRY/AMBER/LUCINDA/TIM/KEN/TOM/SKIP**)

#### **IX. PUBLIC COMMENT** *(Please state your name for the public record)*

#### **X. ADJOURNMENT**

***PLEASE SILENCE ALL NOISE MAKING DEVICES***





# PORT OF KENNEWICK REGULAR COMMISSION MEETING

**DRAFT**

**APRIL 26, 2022 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 Skip Novakovich called the Regular Commission Meeting to order at 2:00 p.m. via GoToMeeting Teleconference.

## **ANNOUNCEMENTS AND ROLL CALL**

Mr. Arntzen introduced attorney Carolyn A. Lake of the Goodstein Law Group. Ms. Lake has a vast amount of experience in public policy and represents several ports. Ms. Lake will be filling in while Ms. Luke is on vacation.

### **The following were present:**

**Board Members:** Skip Novakovich, President (via telephone)  
Kenneth Hohenberg, 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)  
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)

## **PLEDGE OF ALLEGIANCE**

Commissioner Hohenberg led the Pledge of Allegiance.

## **APPROVAL OF THE AGENDA**

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

## **PUBLIC COMMENT**

No comments were made.

## **CONSENT AGENDA**

- A. Approval of Direct Deposit and E-Payments Dated April 15, 2022**  
Direct Deposit and E-Payments totaling \$81,470.25
- B. Approval of Warrant Register Dated April 26, 2022**  
Expense Fund Voucher Number 103704 through 103728 for a grand total of \$82,824.64
- C. Approval of Regular Commission Meeting Minutes April 12, 2022**

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

APRIL 26, 2022 MINUTES

**DRAFT**

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

## PRESENTATIONS

### A. *Benton Franklin Council of Governments*

Commissioner Novakovich introduced Michelle Holt, executive director of Benton Franklin Council of Governments.

Ms. Holt presented the mission and an overview of the Benton Franklin Council of Governments (*Exhibit A*).

## REPORTS, COMMENTS AND DISCUSSION ITEMS

### A. *Kennewick Waterfront*

#### 1. *Clover Island Inn Proposal Update*

Mr. Arntzen introduced attorney Taud Hume, who has been working with the Port on the Fortify Holdings/Clover Island Inn Proposal.

Mr. Hume stated Fortify Holding's proposal for purchase of Clover Island Inn was slated to close on March 31, 2022; however, it did not come to fruition. Both parties decided on a settlement agreement and not move forward with the sale, therefore a lease assignment will be unlikely. Mr. Hume requested a letter from Fortify Holding's legal counsel outlining this information.

#### 2. *Columbia Gardens Covenants, Conditions & Restrictions (CC&R's) Mechanism Update*

Mr. Arntzen stated before the Commission is a Resolution which updates the Columbia Gardens Covenants, Conditions & Restrictions (CC&R's) calculation mechanism. In September 2021, the Commission passed Resolution 2021-16 which approved the assessment mechanism; however, it was determined the calculation needed to be simplified. Therefore, the calculation will be based on the gross building square footage for each parcel.

Mr. Arntzen introduced Ben Floyd of White Bluffs Consulting. Mr. Floyd has been working on the Columbia Gardens CC&R's with Ms. Hanchette and Mr. Peterson.

Mr. Floyd stated the assessment will begin on the 61<sup>st</sup> month after the date of recording of the CC&R's document.

Commissioner Novakovich asked for clarification of when the assessment begins. Mr. Floyd confirmed it is five (5) years after the CCR's are recorded.

Mr. Floyd stated staff anticipates bringing the final Columbia Gardens CC&R's to the Commission on May 10, 2022 for final approval. We are in the process of fine tuning them, including voting rights, which parcels are foundational in common area, giving the Port the option to exit the association, and the potential issue of gifting of funds if it were



# PORT OF KENNEWICK REGULAR COMMISSION MEETING

APRIL 26, 2022 MINUTES

**DRAFT**

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to go on long-term, and excluded uses.

Commissioner Moak inquired about the revenues the Port will receive due to the simplification.

Mr. Floyd stated the revenues will stay the same, essentially it will be a wash.

***MOTION:*** *Commissioner Hohenberg moved for approval of Resolution 2022-13, streamlining the Columbia Gardens Property Owner's Assessment calculation based on gross building square footage only; and ratify and approve all action by port officers and employees in furtherance hereof; and authorize the port Chief Executive Officer to take all action necessary in furtherance hereof. Commissioner Moak seconded.*

## **PUBLIC COMMENTS**

No comments were made.

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

### ***B. Vista Field***

#### ***1. Implementation of Owner's Association***

Mr. Arntzen stated the Port is working on the owner's associations for Vista Field and Columbia Gardens. There has been a tremendous amount of work invested in creating the legal documents for these associations; however, we have not discussed the accounting implementation and framework of the associations. Mr. Arntzen stated there will need to be significant funding for the associations and would like to fold in the administration of the associations into the 2023-2024 budget and work plan.

Mr. Kooiker has raised some questions with the state auditor's office to ensure compliance and how to implement the day-to-day operations of the associations.

Mr. Arntzen stated Mr. Hume has a great deal of experience in this area and will be assisting the Port.

Commissioner Hohenberg stated it is imperative to do it right and we need to support the budget because ultimately it will benefit everyone.

Commission Novakovich stated it sounds like a big project and inquired how much will this affect our work plan going forward.

Mr. Arntzen stated staff will need funding and time to properly implement the associations and indicated this may impact future capital projects for the 2023-2024 Work Plan.

Commissioner Novakovich stated the Port has limited resources and the Commission needs to be cognizant about how they are applied. In this instance, because Vista Field is a huge project and will have a tremendous impact on the community, we should be very mindful

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

APRIL 26, 2022 MINUTES

**DRAFT**

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of how we apply our resources, both staff and financial, to ensure that Vista Field moves forward as we want to see it. This means the Commission will need to review other projects and possibly put them on hold.

## **C. Vista Field Development Facility**

### **1. Bruker Lease Amendment #5**

Mr. Arntzen provided a brief history of the Bruker lease termination discussions and presented Resolution 2022-12 for Commission consideration.

Commission and staff discussion commenced.

***MOTION:*** Commissioner Hohenberg moved for approval of Resolution 2022-12, approving the Lease Amendment #5 between the Port of Kennewick and Bruker Handheld LLC, and hereby ratifies and approves all action by port officers and employees in furtherance hereof; and authorize the port Chief Executive Officer to take all action necessary in furtherance hereof; Commissioner Moak seconded.

## **PUBLIC COMMENTS**

No comments were made.

### ***Discussion:***

*Commissioner Novakovich expressed his trust in Ms. Hanchette and stated she did an excellent job negotiating the final lease terms.*

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

## **D. CEO Direction Topics**

Mr. Arntzen recommended placing more routine items on the Consent Agenda to keep the meeting flowing and on track which allows the team to focus on more important topics. The benefit of a Consent Agenda is for items that do not require further discussion.

Commissioner Hohenberg is fully supportive of utilizing the Consent Agenda and stated the Commission can pull an item for further discussion if necessary. Additionally, the Commission receives the agenda packet in advance and if there is a concern, there is an opportunity to clarify or question the item with staff before the Commission Meeting.

Commissioner Moak cannot comment on an item until he sees it, and does not believe the Port has been inefficient in using the Consent Agenda.

Commissioner Novakovich agrees with Commissioner Hohenberg's comments and stated items that the Commission has already discussed and requires final approval could be placed on the Consent Agenda to save time.

Mr. Arntzen stated in the past, the Commission utilized the committee process for the CEO evaluation process which included an appointed Commissioner for two years, the Port Counsel and the Port Human Resources representative; however, in 2019, the Commission reverted to the

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

APRIL 26, 2022 MINUTES

**DRAFT**

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previous process which included a separate review by each Commissioner (three evaluations). Mr. Arntzen stated the previous process required a lot of paperwork from the CEO and the Commission and it was not as efficient. Mr. Arntzen believes the committee review process is more efficient and thorough.

Commissioner Hohenberg likes the idea of the committee and stated most of the Boards he has served on use some sort of committee to evaluate the CEO in conjunction with an attorney and Human Resources. The evaluation is then brought back to the governing body for approval. Commissioner Hohenberg believes it eliminates individual writing; however, people can submit individual comments to the committee for consideration. A committee evaluation is more professional and a defensible product and fair to the employee and entity.

Commissioner Moak stated Commissioners Hohenberg and Novakovich have already identified that they did not value his comments on the last performance appraisal, and he does not expect to participate in an evaluation where two Commissioners can override one.

Commissioner Novakovich agrees with Commissioner Hohenberg and stated he has done both methods of evaluation and believes that a committee method is far superior. Commissioner Novakovich stated he has served on other boards that use a committee and it is more efficient, and the Port would be better served by using a committee to evaluate the CEO. Commissioner Novakovich inquired what the next steps would be.

Mr. Arntzen would like to review the policy to see what revisions need to be made and then present to Commission at a later date, with suggestions.

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

Commissioners reported on their respective committee meetings.

***F. Non-Scheduled Items***

Ms. Bader Inglima stated the Port has received a lot of excellent media coverage over the past two weeks for the following projects: 1135 Clover Island Shoreline project; Travel Bloggers Exchange at Columbia Gardens; new lease with Murat-Gaston at Columbia Gardens; and Vista Field Grand Opening Event.

Ms. Bader Inglima stated the Economic Impact Report has received a tremendous amount of coverage, including the *Tri-Cities Area Journal of Business*, *Tri-City Journal*, *Washington Public Ports Association*, *Walla Walla Union Bulletin* and the *Seattle Times*. She thanked the Commission for their early leadership and strategic thinking in commissioning the report.

Mr. Arntzen presented pictures of the recent bamboo plantings at Columbia Gardens.

Mr. Arntzen thanked Commissioner Novakovich for attending the memorial of Maureen Minthorn and appreciates Commissioner Novakovich's relationship with the Confederated Tribes of the Umatilla Indian Reservation.

# PORT OF KENNEWICK REGULAR COMMISSION MEETING

APRIL 26, 2022 MINUTES

**DRAFT**

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Mr. Arntzen and Commissioner Hohenberg toured Clover Island yesterday and reported about 80% of the 1135 project is complete. Mr. Arntzen stated the work is spectacular and it exceeded his expectations. Mr. Arntzen invited Commissioner Hohenberg to tour Seabrook, a DPZ community and stated it is a good example of new urbanism.

Commissioner Hohenberg has run on Clover Island for many years and stated the recent changes have been dramatic and it will open up the waterfront even more to our community and visitors.

Commissioner Hohenberg thanked Ms. Bader Inglima for her work promoting the grand opening of Vista Field and believes the community will be thoroughly impressed by what the Port has accomplished at Vista Field over the past few years.

Commissioner Novakovich stated Mr. Arntzen will be giving Don Britain, former Mayor of Kennewick, a tour of Vista Field later this week.

Commissioner Novakovich outlined several revisions to the Open Public Meetings Act on House Bill 1329.

## **PUBLIC COMMENTS**

No comments were made.

## **COMMISSION COMMENTS**

No comments were made.

## **ADJOURNMENT**

With no further business to bring before the Board; the meeting was adjourned 3:40 p.m.

**APPROVED:**

**PORT of KENNEWICK  
BOARD of COMMISSIONERS**

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*Skip Novakovich, President*

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*Kenneth Hohenberg, Vice President*

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*Thomas Moak, Secretary*

***PORT OF KENNEWICK***

**RESOLUTION 2022-12**

***A RESOLUTION OF THE BOARD OF COMMISSIONERS  
OF THE PORT OF KENNEWICK AUTHORIZING  
REVISED EARLY LEASE TERMINATION  
FOR BRUKER AXS HANDHELD INC.***

**WHEREAS**, the Board of Commissioners received written notice from Bruker AXS Handheld Inc. to vacate 21,000 square feet of light industrial space at 415 N. Roosevelt Street, Kennewick and terminate their lease early due to corporate restructuring; and

**WHEREAS**, Bruker AXS proposed to the Commission a lease buyout plan and early termination terms found in Lease Amendment #4;

**WHEREAS**, Bruker AXS requested revised language to the lease buyout plan and early termination terms found in Lease Amendment #5 (Exhibit A);

**NOW, THEREFORE BE IT RESOLVED**, that the Board of Commissioners of the Port of Kennewick hereby approves and adopts Lease Amendment #5 between the Port of Kennewick and Bruker Handheld LLC.

**BE IT FURTHER RESOLVED** that the Port of Kennewick Board of Commissioners hereby ratifies and approves all action by port officers and employees in furtherance hereof; and authorizes the port Chief Executive Officer to take all action necessary in furtherance hereof.

**ADOPTED** by the Board of Commissioners of the Port of Kennewick this 26th day of April 2022.

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

By: DocuSigned by:  
*Skip Novakovich*  
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SKIP NOVAKOVICH, President

By: DocuSigned by:  
*Kenneth Hohenberg*  
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KEN HOHENBERG, Vice President

By: DocuSigned by:  
**Thomas Moak**  
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THOMAS MOAK, Secretary

**AMENDMENT #5 TO COMMERCIAL LEASE AGREEMENT**

THIS AMENDMENT, entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the Port of Kennewick, a Washington municipal corporation (hereinafter referred to as "Port"), and Bruker Handheld LLC, a Delaware limited liability company formerly named Bruker AXS Handheld, Inc. (hereinafter referred to as "Tenant").

**WITNESSETH**

WHEREAS, on June 1, 2018, Port and Tenant entered into a Commercial Lease for the lease of the premises located at Vista Field Development Building A, Suite No. 1 located at 415 N. Roosevelt Street (formerly known as Quay Street), Kennewick, Washington (hereinafter referred to as the "Premises"). The Commercial Lease, Exhibits (including full legal description), and Amendment Nos. 1—3 (hereinafter collectively referred to as the "Lease") are attached hereto and incorporated herein by reference as Exhibit "A".

AND, WHEREAS, the Port and Tenant wish to amend the Lease to address Tenant's request to modify the terms of Amendment No. 4 terminating the Lease before the end of the Lease term.

NOW, THEREFORE, it is agreed by and between the parties that they adopt the following amendments to the Lease:

1. Tenant shall vacate the Premises on or before May 31, 2022. Tenant shall continue to make ordinary rental payments through such date.
2. On or before May 31, 2022, Tenant shall pay Port a lump sum of \$156,625.32, such sum being approximately equivalent to the monthly rent (\$12,054.20 per month, plus leasehold tax) for the period June 1, 2022 through December 31, 2022, plus additional cleaning and security services taken over by Port.
3. The "Expiration Date" of the Lease shall be amended to be May 31, 2022, and the Lease shall terminate upon such date.
4. Tenant shall be relieved of monthly rent for the period January 1, 2023 through the end of the current Lease term (May 31, 2023).
5. Tenant shall waive any and all interest to, and Port shall retain as its separate property, the Lease deposit (\$24,115.00) as of May 31, 2022.
6. Port may begin efforts to market the Premises effective with the signing of this Amendment. Tenant shall cooperate with Port's efforts to market the Premises.
7. Port hereby consents to the transfer of Tenant's remaining rights and obligations under the Lease to Tenant's affiliate, Bruker AXS LLC, subject to receipt of such additional reasonable information and documentation as Port may request and execution of a commercially reasonable acknowledgement agreement.

All remaining terms and conditions of the Lease remain unchanged. This Amendment may be executed in one or more counterparts, all of which together constitute one and the same instrument.

Resolution 2022-12  
Exhibit A


PORT OF KENNEWICK

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

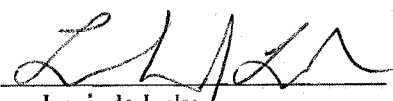
Reviewed:

By: \_\_\_\_\_  
Name: Nick Kooiker  
Title: Port CFO

BRUKER HANDHELD LLC

By: \_\_\_\_\_  
Name: Thomas Schuelein  
Title: Manager

Approved as to form:

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

***PORT OF KENNEWICK***

**RESOLUTION No. 2022-13**

***A RESOLUTION OF THE BOARD OF COMMISSIONERS  
OF THE PORT OF KENNEWICK STREAMLINING THE COLUMBIA GARDENS  
PROPERTY OWNERS' ASSOCIATION ASSESSMENT CALCULATION***

**WHEREAS**, the Port intends to establish a property owners' association to share responsibility for some of the operational costs associated with the perpetual maintenance of common area improvements in the Columbia Gardens Wine & Artisan Village; and

**WHEREAS**, the Board of Commissioners has approved an owner's association assessment mechanism through Resolution 2021-16;

**WHEREAS**, any such assessments be fair and equitable to both the existing and future property owners within the Columbia Gardens Wine & Artisan Village.


**NOW, THEREFORE, BE IT RESOLVED** that the Port of Kennewick Board of Commissioners hereby approves a streamlined calculation for the Columbia Gardens Wine & Artisan Village property owners' association assessment as identified in Exhibit A attached hereto.

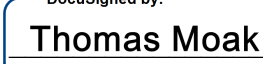
**BE IT FURTHER RESOLVED** that the Port of Kennewick Board of Commissioners hereby ratify and approve all action by port officers and employees in furtherance hereof; and authorize the port Chief Executive Officer to take all action necessary in furtherance hereof.

**ADOPTED** by the Board of Commissioners of Port of Kennewick on the 26th day of April, 2022.

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

By:   
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SKIP NOVAKOVICH, President

By:   
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KENNETH HOHENBERG, Vice President

By:   
A35176A2D2CD413...  
THOMAS MOAK, Secretary



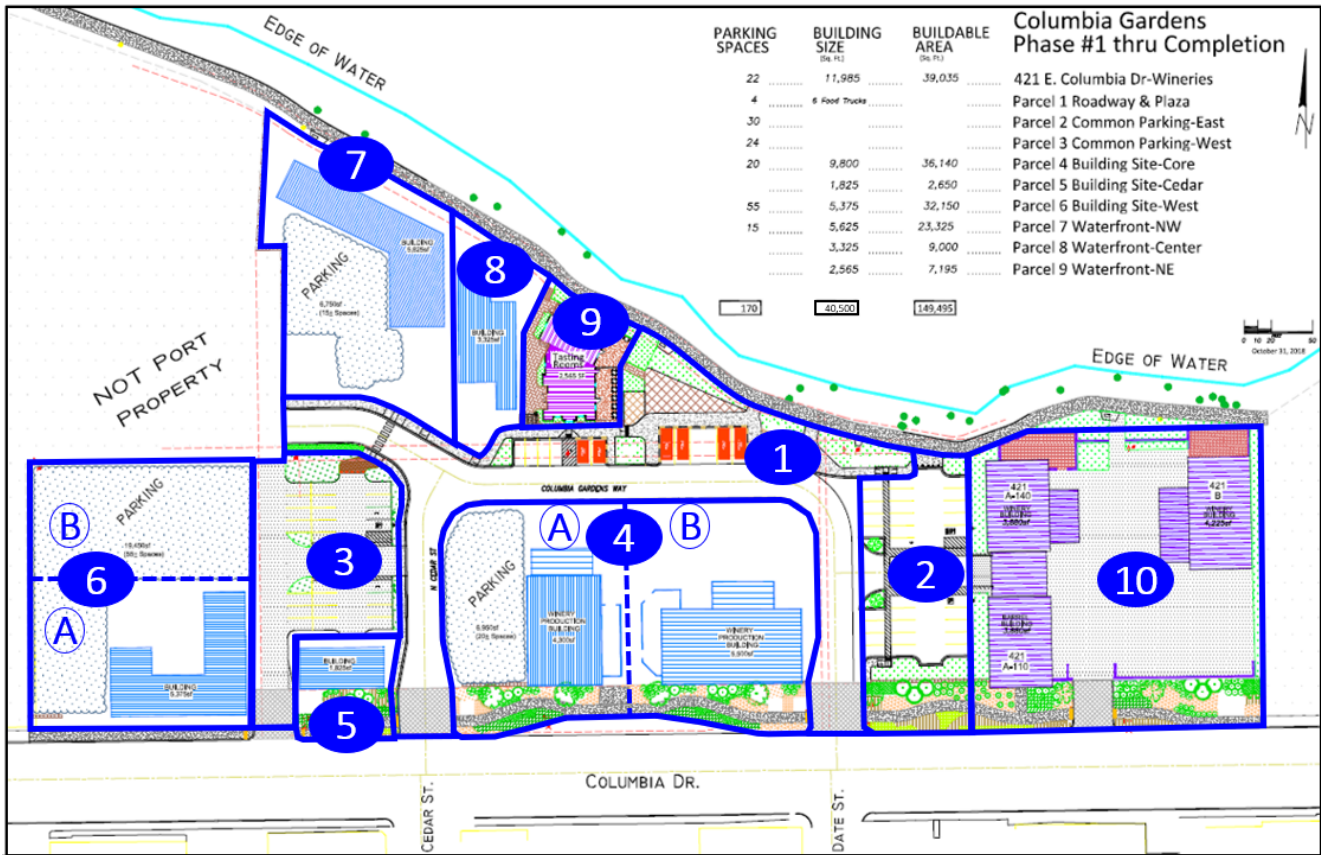
RESOLUTION No. 2022-13  
Exhibit A

The Columbia Gardens Wine & Artisan Village, referred to below as the Neighborhood shall be responsible for 65% of the annual operational costs associated of the Shared Foundational items which include: internal roadways located north of Columbia Drive (Columbia Gardens Way, Date Street & Cedar Street); the existing 30-space Date Street and 24-space Cedar Street parking lots as well as joint use parking lots that may be developed in the future; sidewalks, illumination and landscaping associated with these internal streets and parking lots; Columbia Drive streetscape improvements and insurance & security expenses. The Port will not attempt to recapture the initial capital outlay to construct these improvements.

Assessments will be based upon each property share of the overall neighborhood expense and shall be assessed against the property owners of record.

Shares will be based upon the gross building square footage.

The Port would directly pay for all shares for all properties for a period of five (5) years from the date of recording of the covenants.





**BENTON-FRANKLIN**  
COUNCIL OF GOVERNMENTS

Michelle Holt,  
Executive Director

# Benton-Franklin Council of Governments

**Benton-Franklin Council of Governments (BFCOG)** was established by voluntary association of the local units of government in 1966 with the vision of providing a forum for improved communication, multi-jurisdictional decision making, regional planning, and lead agency capacity for provision of multi-jurisdictional programs. The services currently provided to the member jurisdictions are outlined by Interlocal Agreement and can evolve with the needs of the region. BFCOG currently fulfills the following designations on behalf of the Benton-Franklin region:

- **Regional Planning Commission** (RCW 36.70.60)
- **Conference/Council of Governments** (RCW 36.64.80)
- **Regional Transportation Planning Organization** (RCW 47.80.20) (WSDOT)
- **Metropolitan Planning Organization/Transportation Management Area** (Federal Highway Administration, Federal Transit Administration)
- **Economic Development District** (US Department of Commerce, Economic Development Administration)

# What is a Council of Governments?

**Council of Governments** –We exist to study regional and governmental problems of mutual interest and concern, to formulate recommendations for review and action by member jurisdictions legislative bodies. *(RCW 36.54.080)*

**Councils of Governments** are unique, reflecting the needs of their respective regional needs.





# Solutions for Shared Regional Problems

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Benton-Franklin Council of Governments convenes local governments to collaboratively plan, fund, and administer solutions to shared community needs.







# Regional Planning

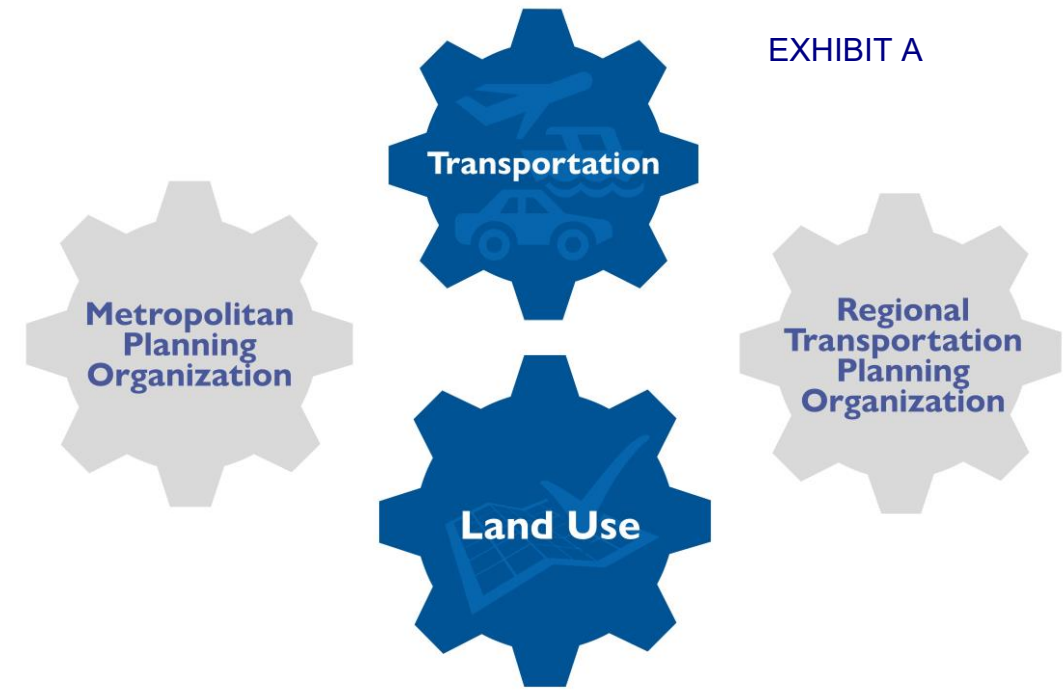
**Call for Projects** Funding Allocation makes available roughly \$5M annually to local jurisdictions for local multi-modal projects through a competitive process in cooperation with WSDOT. This funding is only available to jurisdictions through the local MPO.

**Metropolitan Transportation Plan (MTP)** is a long range, multi-modal planning document that identifies the mobility needs of the region for 20+ years. It provides a policy framework for the investment of anticipated federal, state, and local funds based on the anticipated needs and regional goals and objective. Transportation projects that are not part of the MTP are not eligible for state and federal transportation funding.

**Transportation Improvement Program (TIP) Assistance** is provided to local jurisdictions to ensure projects are entered into the WSDOT project software. Projects not entered are not eligible for state or federal/state pass through funds.

**Regional Transportation Priorities** is an annually compiled list of collaborative transportation projects for the Tri-Cities region highlighting the highest priority projects as adopted by the BFCOG. This listing is useful to local, state, and federal agencies in accomplishing planning tasks and provides information to support pursuit of projects and funding including grant applications.

EXHIBIT A



## **Comprehensive Plan Growth Management Act Certification:**

Review of the transportation element of local jurisdiction comp plans to ensure consistency with GMA requirements, then issue required GMA certification.

**Travel Demand Modeling Data and Land Use Scenarios** for developments and comprehensive planning is provided to local jurisdictions and regularly updated on behalf of the region. This service would have to be procured by each individual jurisdiction if not provided by BFCOG.

Additional services available upon request by local jurisdictions include **Land Use Planning, Land Suitability Analysis, Mapping Services,** and **Equity Data Support.**



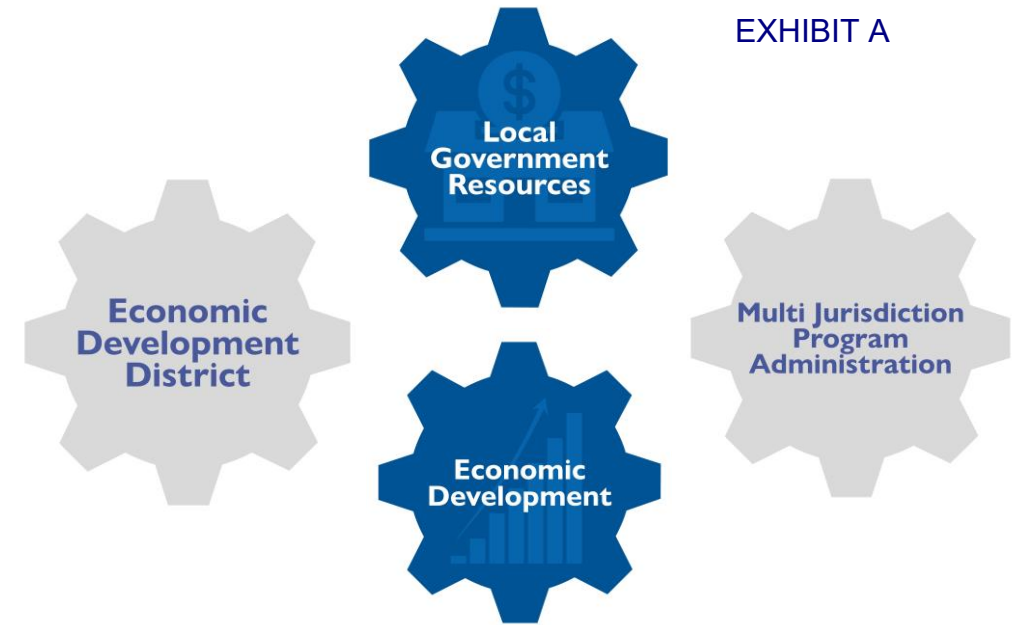
## Local Government Resources

**Comprehensive Economic Development Strategy (CEDS)** is produced by BFCOG on behalf of the region. The CEDS, which showcases projects and regional economic areas of emphasis, is a requirement of the Economic Development Administration (EDA) to support investment of EDA grant funding in the region. Since 2009 more than \$12.5M has been invested by the EDA for projects in this region.

**Regional Revolving Loan Funds** are administered by BFOCG, with over \$500K currently available for loan to spur economic growth. Since inception, these loan funds have funded \$16.4M loans through 177 small businesses loans throughout the region.

**Funding Technical Assistance** is provided to local jurisdictions to facility the flow of state and federal funding into the region through grants and ongoing programs. We do this by providing educational and networking with program administrators like EDA – which has over \$3.5B available nationally for community building programs. The IJA is filled with funding opportunities. BFCOG is the Notice of Record resource for Sen. Murray and Cantwell's offices for dissemination of federal Notice of Funding Opportunities (NOFO) to regional jurisdictions.

EXHIBIT A



**Lead Agency Capability** is available for BFCOG to by the applicant and administrator for state or federal programs that allow collaboration and impact to more than one jurisdiction in the region.

**Regional Brownfields Program** is a new initiative to identify and prioritize brownfield sites to facilitate potential redevelopment or reuse through environmental assessment, remediation, and site-specific planning. An environmental consulting firm has been contracted to support these activities and identification of other funding support for related activities.





# Funding Sources



**BFCOG receives operating revenues through 4 funding sources.**

- **Renewing Program Funding** (Grants/Federal & State Allocations)
- **Single Opportunity Grants** (Direct/Lead Agency)
- **Contracted Services**
- **Local Funds** (Jurisdictional Member Assessments)

## Renewing Program Funding – Per Biennium

### **Federal Transportation Funding – 13.5% Local Match Required**

Federal Highway Administration Planning Program (FHAPL) - \$384,000\*

Federal Transit Administration 5303 Program (FTA5303) - \$134,400\*

Surface Transportation Block Grant (STBG) - \$279,800\*

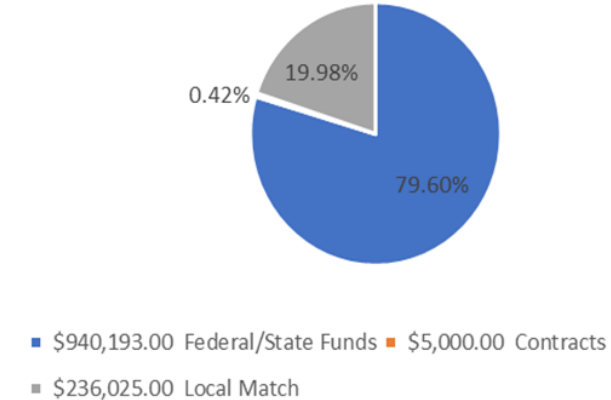
*\*This process allocates roughly \$5M annually to local transportation projects in the region through competitive call for projects.*

WSDOT RTPO Funding (No Local Match Required) - \$247,500\*

*(\*Annual amounts can vary due to funder allocation changes and carry-over funds)*

EXHIBIT A

BFCOG 2021 Funding Breakdown  
\$1,287,412 Total Revenue



## **Economic Development Administration Funding – 100% Local Match Required**

Comprehensive Economic Development Strategy Planning Grant (CEDS) Renewable 3-Year \$225K grant (\$75K per year) to produce and update the CEDS, which EDA uses to determine potential economic impact related to EDA grant making within the region.

Since 2009 **\$12.5M in EDA grants** have been awarded in our region to the benefit of the cities of West Richland, Pasco & Connell, and all three of the Ports for infrastructure projects.



# Funding Sources

## Single Opportunity Grants

- Awarded directly to BFCOG for a program that is part of the BFCOG mission or awarded to BFCOG as “Lead Agency” on behalf of one or more local jurisdictions.

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### **Direct Grant Award Example – EDA Covid Relief Grant 2020**

BFCOG received \$400,000 to provide economic and environmental resiliency support and to add economic resiliency planning into the CEDS. These funds were used to hire our Economic Recovery Coordinator Position. *This funding expires in June 2022.*

### **Lead Agency Grant Award Example – EPA Brownfields Coalition Assessment Grant**

BFCOG received a 3-Year, \$600,000 grant to work with a local coalition made up of cities of Kennewick, Pasco & Richland to identify, rank by potential economic impact, and assess multiple Brownfield properties within the Benton-Franklin region. A ranking and selection criteria will determine sites to be assessed and is open to properties within Benton or Franklin counties.

## Contracted Services

- RCW 39.34.010, BFCOG can enter into a cooperative contracting agreement with any other local government entity for the purpose of mutual advantage to provide services and facilities that accord with factors influencing the needs and development of local communities.

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### **Benton County PFD & Tri-City Regional PFD Administration**

BFCOG provides administrative support for two Public Facilities Districts. This provides only a nominal source of revenue as these two districts require a minimal time on behalf of BFCOG staff.

*Annually this is less than \$2,500 total and minimal net revenue.*



# Funding Sources

## Local Funds

- As part of the BFCOG Interlocal Agreement, member jurisdictions agree to fund the operations of BFCOG. Local funds are required to balance the organizational budget after all other forms of funding have been applied.

**FY2022 Local Funding Total - \$260,774**

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## Federal Transportation Programs – 13.5% Local Match

### WSDOT RTPO Program – No Required Local Match

### CEDS Planning Grant – 100% Local Match (\$75K per year\*)

No other current program funding requires a local match. BFCOG board must approve any grant application that would require local matching dollars on behalf of the jurisdiction members.

## Important Note About Local Funds

BFCOG has limited its annual dues to only those funds required for required program matching for many years.

BFCOG has operated with limited operational staff, subsidizing overhead expenses, when necessary, from its reserve funds, which have been nearly depleted.

The only source of operational funds beyond what is recouped through indirect rates on our federal programs are local funds.





# Support Summary

Summary of Support Provided to: **Port of Kennewick**

## Transportation Planning & Funding:

- Eligible for Transportation Call for Projects competitive funding in late summer/early fall 2021.

## Economic Development:

- Access to Brownfields Coalition Assessment Grant funding for eligible Phase I, Phase II, Site/Area Wide Planning nominated brownfield sites.
- Technical Assistance available for EDA Funding and other NOFO
- Clover Island Revitalization, Vista Field Redevelopment, The Willows Infrastructure Project (Columbia Drive Revitalization Phase 3) Projects inclusion in the *2021 Comprehensive Economic Development Strategy (CEDS)* document to support the acquisition of future project funding.

Fiscal Impact to: **Port of Kennewick**

**2022 Dues Assessment: \$10,457** (Federal Matching Only – 4.01% of Assessment Budget)

- Total Assessment Investment since 1997: \$278,112






# Questions?



**MEMORANDUM**

DATE: May 3, 2022

TO: Board of Commissioners  
Port of Kennewick

FROM: Jennifer S. Robertson, Inslee Best Doezie & Ryder, P.S. 

RE: Legal Opinion regarding Port Commission's actions in reimbursing attorneys' fees to Commissioner Barnes for defense of misconduct claims and sanctions

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**1. Introduction.**

The Port of Kennewick (hereinafter "Port") received a Management Letter from the State Auditor's Office on January 19, 2022, which took issue with the Port's reimbursement payment of Commissioner Barnes' attorneys' fees in the amount of \$49,282.75, stating that:

State law and the Port's Rules of Policy and Procedure allow the Port to provide legal representation to defend a claim or lawsuit filed against Port officials unless they elect to provide their own representation. Because the Commissioner obtained his own representation rather than use a Port-appointed legal counsel, reimbursing the Commissioner's legal fees was not an allowable expense.

The Auditor's office also stated that the procedure used by the Commission to approve the reimbursement was contrary to Port policies and state law:

In April 2021, two of three Commissioners voted to approve the reimbursement of the Commissioner's legal fees totaling \$49,282.75. One of the two votes approving the reimbursement came from the Commissioner seeking reimbursement. State law does not allow an officer to benefit directly from a contract made through or under the supervisions of the officer. The Commissioner seeking reimbursement should not have voted on the matter that directly benefitted him. Instead, the Commissioner should have recused himself from the vote.

We recommend the Port follow its own policy and state law. Further, we recommend the Port conduct additional legal review to determine if any further actions, such as repayment, are necessary or required by law.

You have asked this office to provide the Port with an independent legal review of these two issues raised by the State Auditor's Office Management Letter and to provide recommendations on next steps.

## **2. Brief Overview of Facts.**

On March 25, 2019, complaints were filed by Commission Novakovich against Commissioner Barnes and Commissioner Moak, claiming that both violated the Port Commission's Rules Policy and Procedure (hereinafter "Rules"). The Port hired an independent investigator to determine if the complaints were substantiated. The investigator issued her report on August 6, 2019, upholding some, but not all, of the allegations. Sanctions were recommended against both Commissioners. Commissioner Moak accepted the sanctions. Commissioner Moak either never hired legal counsel or did not seek reimbursement for legal fees. In contrast, Commissioner Barnes did not accept the sanctions and instead appealed to a Neutral Decision Maker. On December 31, 2020, the Neutral Decision Maker issued a decision holding that there was not substantial evidence in the record to overcome the presumption of ethical conduct or to conclude that Commissioner Barnes committed sanctionable misconduct.

Commissioner Barnes then requested reimbursement for his legal fees that were expended in his defense against the misconduct allegations. The request for fees was vetted by outside legal counsel who advised that most of the fees were appropriately reimbursable to Commissioner Barnes. On April 13, 2021, the Board of Commissioners took up the issue of whether to reimburse Commissioner Barnes for his legal fees. The motion was made by Commissioner Moak and seconded by Commissioner Barnes to "reimburse Commissioner Barnes in the amount of \$50,729.35 for his legal work associated with his defense."<sup>1</sup> The motion passed with Barnes and Moak voting in favor and Commissioner Novakovich abstaining.

Commissioner Barnes left office on December 31, 2021, and no longer serves as a Port Commissioner.

On January 19, 2022, the Port received the Management Letter described in Section 1 above.

## **3. Summary of Findings.**

- A. Was the reimbursement of attorneys' fees to Commissioner Barnes contrary to Washington law or Port policy? No.
- B. Was Commissioner Barnes' participation in the vote to reimburse his legal fees contrary to Port Policy? Yes.

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<sup>1</sup> Minutes, p. 9, Regular Commission Meeting of April 13, 2021. Note, the amount was later reduced to \$49,292.75. (See, Minutes, page 10.), *see also* Resolution No. 2021-08 authorizing the payment.



- C. Can the reimbursement of Commissioner Barnes' attorneys' fees be ratified by the current Board of Commissioners? Yes.

#### 4. Legal Analysis.

##### ***A. Chapter 42.23 RCW does not prohibit reimbursing legal fees incurred by an elected official in defending against a claim that arose out of his acts that occurred within the scope of his official duties.***

Chapter 42.23 RCW is entitled the "Code of Ethics for Municipal Officers—Contract Interests." This chapter is considered the minimum standards to be enforced by municipalities for municipal officials.<sup>2</sup> The chapter contains strict guidance on when an officer's interest in a contract is prohibited, when that interest is considered "remote", and what actions by officers are classified as "prohibited acts." The chapter is applicable to all Washington municipalities, which includes Port Districts.<sup>3</sup> A "municipal officer" is defined as including "all elected and appointed officers of a municipality, together with all deputies and assistants of such officer, and all persons exercising or undertaking to exercise any of the powers or functions of a municipal officer".<sup>4</sup> A "contract" includes "any contract, sale, lease or purchase".<sup>5</sup> A "contracting party" includes "any person, partnership, association, cooperative, corporation, or other business entity which is a party to a contract with a municipality."<sup>6</sup>

##### **1. RCW 42.23.030 does not apply because there was no contract.**

Section 42.23.030 RCW sets forth when an officer's interest in a contract is prohibited, and the exceptions to those prohibitions. This is the section that the State Auditor's Office referenced in the Management Letter when it said, "State law does not allow an officer to benefit directly from a contract made through or under the supervisions of the officer." If the Port were to have entered into a contract which benefited Commissioner Barnes in the amount of the reimbursement, then RCW 42.23.030 would likely bar that contract, or would void the contract if it were executed contrary to the law.<sup>7</sup> However, in this circumstance, there was no contract between the Port and Commissioner Barnes nor was there a contract between the Port and either of the law firms that Commissioner Barnes retained to defend him from the misconduct allegations. The funds were reimbursed directly to Commissioner Barnes under the Rules, not

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<sup>2</sup> RCW 42.23.060.

<sup>3</sup> RCW 42.23.020(1).

<sup>4</sup> RCW 42.23.020(2).

<sup>5</sup> RCW 42.23.020(3).

<sup>6</sup> RCW 42.23.020(4).

<sup>7</sup> See City of Raymond v. Runyon, 93 Wn.App. 127, 134 (1998).

under a contract. Therefore, since there is no contract, RCW 42.23.030 is not applicable.<sup>8</sup> Since there is no contract interest, RCW 42.23.040 “remote interests” also does not apply.

2. RCW 42.23.070 “Prohibited Acts” not applicable.

In addition to prohibiting officers from having certain interests in contracts, the Code of Ethics also contains certain “prohibited acts”:

**RCW 42.23.070 Prohibited acts.**

(1) No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself, or others.

(2) No municipal officer may, directly or indirectly, give or receive or agree to receive any compensation, gift, reward, or gratuity from a source except the employing municipality, for a matter connected with or related to the officer's services as such an officer unless otherwise provided for by law.

(3) No municipal officer may accept employment or engage in business or professional activity that the officer might reasonably expect would require or induce him or her by reason of his or her official position to disclose confidential information acquired by reason of his or her official position.

(4) No municipal officer may disclose confidential information gained by reason of the officer's position, nor may the officer otherwise use such information for his or her personal gain or benefit.

The first item is the only one that is potentially applicable here. However, if Commissioner Barnes is entitled to receive reimbursement of his legal fees under either Washington law or the Rules, then the Port making the reimbursement is not a “special privilege.” Therefore, this section is also inapplicable.

***B. Local Port Rules of Policy and Procedure apply.***

RCW 42.23.060 provides that the local rules adopted by a municipality will control, provided they are stricter than the requirements of Chapter 42.23 RCW:

**RCW 42.23.060 Local charter controls chapter.**

If any provision of this chapter conflicts with any provision of a city or county charter, or with any provision of a city-county charter, the charter shall control if it contains stricter requirements than this chapter. The provisions of this chapter shall be considered as minimum standards to be enforced by municipalities.

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<sup>8</sup> See Citizens for Des Moines, Inc., v. Peterson, 125 Wn.App. 760, 768 (2005), (holding that where no contract existed, there was no violation).

Since the Port Commission's Rules of Policy and Procedure both incorporate Chapter 42.23 RCW and go beyond that chapter in a more prescriptive manner, the issues addressed in this memo are appropriately analyzed under the Rules.

***C. Under both the Rules and State Law, the reimbursement of Commissioner Barnes' attorneys' fees was permissible.***

The reimbursement of legal fees was both authorized by state law and under the Rules. Title 53 RCW regulates Port Districts with Chapter 53.08 RCW establishing the powers of such Districts. RCW 53.08.208 specifically provides that a District may pay the legal fees for its officers, employees or agents:

**RCW 53.08.208 Actions against officer, employee, or agent—Defense and costs provided by port district—Exception.**

Whenever any action, claim, or proceeding is instituted against any person who is or was an officer, employee, or agent of a port district established under this title arising out of the performance or failure of performance of duties for, or employment with any such district, the commission of the district may grant a request by such person that the attorney of the district's choosing be authorized to defend said claim, suit or proceeding, and the costs of defense, attorney's fees, and any obligation for payment arising from such action may be paid from the district's funds: PROVIDED, That costs of defense and/or judgment or settlement against such person shall not be paid in any case where the court has found that such person was not acting in good faith or within the scope of his or her employment with or duties for the district.

In the In re Recall of Olsen<sup>9</sup> case two of three commissioners were named in a lawsuit for violating the Open Public Meetings Act. That case addressed indemnity under RCW 53.08.208. The Court stated, "As Olsen notes, RCW 53.08.208 contains an express grant of authority for a port district to retain an attorney to defend against claims, suits, or proceedings against current officers and to indemnify them for legal costs."<sup>10</sup>

The Rules are consistent with this. Rule 18.3 sets the standards for when the Port will provide legal representation:

**18.3 Legal Representation.**

**18.3.1 The Port shall provide to an official** or employee, subject to the conditions and requirements of this chapter, and notwithstanding the fact that

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<sup>9</sup> In re Recall of Olsen, 154 Wn.2d 606 (2005).

<sup>10</sup> Id., at 611.

such official or employee may have concluded service or employment with the Port, such legal representation as may be reasonably necessary to defend a claim or lawsuit filed against such official or employee resulting from any conduct, act or omission of such official or employee performed or omitted on behalf of the Port in his/her capacity as a Port official or employee, which act or omission is within the scope of his/her service or employment with the Port. The provisions of this chapter shall not operate to provide legal representation to defend a claim or lawsuit for any conduct, act, or omission resulting in the termination for cause of any official or employee.

Rule 18.3 is wholly consistent with RCW 53.08.208 and includes defense for any “claim” arising from “any conduct” of a Port official if such act was done in his or her official capacity.

Here, there has been no allegation or evidence supporting the premise that the acts of Commissioner Barnes were *not* done in his official capacity as a Port Commissioner. These acts led to a “claim” against him for misconduct. Under 18.3, unless an exclusion applies, he would be entitled to defense by the Port under the Rules.

There two potentially applicable exclusions under Rule 18.4: (1) if Commissioner Barnes was not acting within the scope of his duties (18.4.2 and 18.4.3), or (2) for acts which are contrary to Port Policies (18.4.5). Rule 18.4 provides:

18.4 Exclusions. Except as otherwise determined pursuant to Section 18.3, in no event shall protection be offered under this chapter by the Port to:

18.4.1 Any dishonest, fraudulent, criminal, willful, intentional or malicious act or course of conduct of an official or an employee;

18.4.2 Any act or course of conduct of an official or employee which is not performed on behalf of the Port;

18.4.3 Any act or course of conduct which is outside the scope of an official's or employee's service or employment with the Port; and/or, [sic]

18.4.4 Any lawsuit brought against an official or employee by or on behalf of the Port;

18.4.5 Any action or omission contrary to or not in furtherance of any adopted Port policy.

Rule 18.3.4 sets forth the process for determining whether the official was acting within the scope of his duties and acting in good faith:

18.3.4 The determination whether the official or employee was acting in good faith within the scope of his or her official duties shall be made by the Executive Director in consultation with the Port legal counsel and/or outside legal

counsel. This determination shall be based on an investigation of the facts and circumstances surrounding the incident and shall be made as early in the proceedings as is reasonably possible. Once the determination is made, the official or employee involved shall be notified by the Executive Director in writing. If the employee or official involved is the Executive Director, the determination shall be made by the Commission in consultation with the Port legal counsel and/or outside legal counsel based on an investigation of the facts and circumstances surrounding the incident and shall be made as early in the proceedings as is reasonably possible. Once the determination is made, the Executive Director shall be notified by the Port legal counsel, in writing. In any claim involving an allegation of criminal conduct, no investigation by the Port will occur prior to a determination of guilt, or prior to a dismissal of the criminal charge with prejudice, so as not to compromise the official's or employee's Fifth Amendment right against self-incrimination. Any determination made under this Section shall not be subject to appeal.

In this case, the Port Executive Director would have been the person to make this determination. However, here there was no determination made the Commissioner Barnes was *not* acting in good faith or within the scope of his employment. Nor did the Port ever determine that Commissioner Barnes should not be afforded a defense under Rule 18.7 procedures. Because the initial claims were for violation of the Rules, exclusion 18.4.5 was likely presumed to apply, however, given that the Neutral Decision Maker found no violation, that exclusion ultimately was not applicable. Therefore, absent a finding that Commissioner Barnes was not acting in good faith or within the scope of his official duties (under 18.4.2, 18.4.3, or 18.7), the Rules allow him to recover his defense costs.

Generally, the Agency would provide that attorney for the defense and would either use its own legal counsel or contract directly with outside counsel. This is the way that the Rules structure defense for eligible employees and officials:

18.3.2 The legal representation shall be provided by the office of the Port legal counsel and may include the Executive Director engaging the services of outside legal counsel. If any provision of an applicable policy of insurance provides legal counsel for the employee or official, the Port legal counsel will work with the policy holder for purposes of obtaining legal representation under the existing insurance policy.

18.3.3 In the event that outside counsel is retained under Section 18.3.2, the Port shall indemnify the employee or official from the reasonable costs of defense; provided, that in no event shall the official or employee be indemnified for legal counsel's fees in excess of the hourly rates established by the Port's contract with legal counsel selected by the Port. The official or employee shall be liable for all hourly rates charged in excess of said rate.

Here, because of the uncertainty as to whether Rule 18.3.4 excluded the Port from covering Commissioner Barnes' defense costs, the Port did not provide legal counsel. Instead, Commissioner Barnes hired his own legal counsel. Although the right to reimbursement is not explicitly stated in 18.3.3 (as opposed to the Port hiring the outside counsel directly), when read in conjunction with Rule 18.11.1, it is clear that reimbursement of Commissioner Barnes' attorneys' fees is allowed under the Rules:

**18.11 Reimbursement of Incurred Expenses.**

**18.11.1 If the Port's investigation under Section 18.3 determines that an official or employee does not come within the provisions of this chapter and a court of competent jurisdiction later determines that such claim does come within the provisions of this chapter, then the Port shall pay any judgment, excepting punitive damages, rendered against the official or employee and reasonable legal counsel's fees incurred in defending against the claim if said judgment is not covered by the Port's insurance provisions or by the official's or employee's insurance. The Port shall pay any costs and reasonable legal counsel's fees incurred by the employee or official in obtaining the determination that such claim is covered by the provisions of this chapter; provided, that if a court of competent jurisdiction determines that such claim does not come within the provisions of this chapter, then the official or employee shall pay the Port's costs and reasonable legal counsel's fees incurred in obtaining the determination that such claim is not covered under the provisions of this chapter.**

It appears that the reason the Port did not provide Commissioner Barnes with a defense at the start of the misconduct proceedings was based on the application of the defense exclusion under Rule 18.3.4. However, when the Neutral Decision Maker held that there was no violation of the Rules, that decision resulted there no longer being any applicable exclusion to providing Commissioner Barnes' defense costs. Under 18.11.1 the Port is required to provide the reimbursement ("the Port shall pay . . . reasonable legal counsel's fees incurred in defending against the claim"). As stated above, that reimbursement is also permissible and consistent with RCW 53.08.208.<sup>11</sup> Here, there was a "claim or proceeding" instituted against a Port officer "arising out of the performance or failure of performance of duties for . . . such district". Therefore, the Commission is permitted to fund the costs of defense, provided that no "court has found that such person was not acting in good faith or within the scope of his or her employment with or duties for the district." As stated above, there has been no such finding, therefore the reimbursement of Commissioner Barnes' attorney's fees was allowed.

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<sup>11</sup> Although Rule 18.1 cites to RCW 4.96.041 regarding defense and indemnification of claim, that statute's mandatory provision of defense to public officers is limited to defense of claims involving liability and money damages. See Grant Co. Prosecuting Attorney v. Jasman, 183 Wn.2d 633, 647 (2015). The proceedings here were not for damages, which is why this opinion relies on RCW 53.08.208 and the Port Commission Rules of Policy and Procedure.

Although not involving the same statute as is applicable to Ports, the Sanders v. State<sup>12</sup> case is instructive in how an official who may not be entitled to defense at the start of an action may be entitled to reimbursement after a decision has been rendered. In Sanders, judicial disciplinary proceedings were commenced against Judge Richard B. Sanders. Justice Sanders requested defense for such proceedings from the Attorney General's office under Chapter 42.52 RCW, the "Ethics in Public Service" Act. The court held that the Attorney General's office had the discretion to decline representation, but that such declination was subject to a duty to reimburse the judge for defense costs in the event the Commission on Judicial Misconduct later dismissed the charges or exonerated the judge of all violations of Canons of Judicial Ethics.<sup>13</sup> This case relied on an earlier judicial proceeding against Justice Sanders where he was ultimately exonerated by the Washington Supreme Court and the trial court then awarded him attorneys' fees and costs in a recovery action.<sup>14</sup> That recovery action is similar to the recovery action contemplated in Rule 18.11.1.

Since Commissioner Barnes was ultimately found not to have violated the Rules, there was no longer an applicable exclusion to bar the Port from covering his defense costs. Indeed, had the Port refused to reimburse these fees, Commissioner Barnes may have brought an action under Rule 18.11.1. Had he prevailed in such action, the Port would likely be responsible for reimbursement of the legal fees to obtain such a determination ("The Port shall pay any costs and reasonable legal counsel's fees incurred by the employee or official in obtaining the determination that such claim is covered by the provisions of this chapter.")<sup>15</sup>

***D. Commissioner's Barnes' participating in the vote to reimburse his own legal fees violated the Rules.***

Although the Port was entitled to provide reimbursement to Commissioner Barnes for his reasonable attorneys' fees under the Rules, Commissioner Barnes' participation in the vote to reimburse was itself a violation of the Rules. Rule 3.2 provides:

**3.2 Conflict Avoidance.** Commissioners are strictly prohibited by law from entering into or engaging in any activity identified in chapter 42.23 RCW as a conflict of interest with their official duties as a Port of Kennewick Commissioner and shall further avoid conduct that may present an appearance of a conflict of interest.

Voting to reimburse one's own expenses creates, at a minimum, the "appearance of a conflict of interest." This is particularly so given the large amount of this reimbursement. Rule 18.7, is more explicit in prohibiting a commissioner from voting on whether he is entitled to a defense:

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<sup>12</sup> Sanders v. State, 139 Wn.App. 200 (2007).

<sup>13</sup> Id., at 201; 212-13.

<sup>14</sup> Id. at 201, *citing In re Disciplinary Proceedings Against Sanders*, 135 Wn.2d 175 (1998).

<sup>15</sup> Rule 18.11.1.

18.7 Determination of Exclusion. The determination whether an official or employee shall be afforded a defense by the Port under the terms of this chapter shall be made after a determination pursuant to Section 18.3 as to whether the official or employee was acting within the scope of his or her duties. The Executive Director and Port legal counsel shall prepare a recommendation to the Commission. The decision of the Commission shall be final as a legislative determination and shall be based upon a finding that an official or employee meets or does not meet the criteria of this chapter. Nothing herein shall preclude the Port from undertaking an official's or employee's defense under a reservation of rights. The determination as to whether a defense is to be furnished as provided under this chapter to a member or to members of the Commission shall be made without the vote of the Commissioners named in the claim or lawsuit unless the inclusion of such member or members is required for a quorum; provided, that if a claim or lawsuit affects a quorum or greater number of the members of the Commission, all such affected members shall retain their voting privileges under this Section.

Here, Commissioner Barnes voted to reimburse his own legal expenses. This is contrary to the language of Rule 18.7 which provides that the "determination as to whether a defense is to be furnished as provided under this chapter to a member or to members of the Commission shall be made without the vote of the Commissioners named in the claim". The exception to voting on one's own defense only applies if the Board of Commissioners would lose its quorum if every member so affected were barred from voting. That is not the case here because only one commissioner was seeking reimbursement of attorneys' fees. Although complaints alleging violations of the Rules were initially lodged against two commissioners (Barnes and Moak), only Commissioner Barnes obtained a ruling from the Neutral Decision Maker that no violation occurred and thus only Commissioner Barnes was eligible to recover his legal fees under the Rules. By refusing to recuse himself or abstain, Commissioner Barnes violated Rule 18.7 in casting the deciding vote on the reimbursement. Without Commissioner Barnes' vote, the motion to reimburse his legal fees would not have passed since Commissioner Novakovich abstained.

This situation is not analogous to the In re Recall of Olsen case whereby Commissioner Olsen and another commissioner both were named in the lawsuit, and both voted to indemnify themselves by having the Port hire outside legal counsel.<sup>16</sup> There, the Commission would have lost its quorum had both defendant-commissioners been barred from voting. In addition, the Court made a distinction in In re Recall of Olsen as the vote was to indemnify, and not a vote on a contract in which either commissioner had a beneficial interest.<sup>17</sup> Although there is also no contract at issue here, the motion at issue was also not a motion to indemnify, rather it was for "the Port of Kennewick [to] reimburse Commissioner Barnes in the amount of \$50,729.35 for his legal work

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<sup>16</sup> In re Recall of Olsen at 608.

<sup>17</sup> Id. at 612.



associated with his defense.”<sup>18</sup> Thus, there is no applicable exception allowing Commissioner Barnes to have voted on this matter under the Rules.

***E. Ratification of the reimbursement would resolve the violation as to the payment.***

Although Commissioner Barnes violated Rule 18.7 in casting the deciding vote on the reimbursement, the Port is still permitted to reimburse Commissioner Barnes’ legal fees in defending the claims against him. Therefore, the most appropriate response is for the current Board of Commissioners to ratify the payment of legal expenses to former Commissioner Barnes. Ratification of an action after the fact when that action was previously *not* properly authorized has long been recognized as within the authority of a governing body.<sup>19</sup> This act is appropriate given the following factors: (1) former legal counsel thoroughly vetted the legal fees and advised the Commission that payment of the fees was legal and within their authority; (2) ratification would cure the improper procedure noted by the State Auditor’s Office in the Management Letter; (3) although it was a violation of the Rules for Commissioner Barnes to vote to reimburse himself, he is no longer in office and therefore, there is no internal discipline available to the Port for such violation; and (4) ratification would create finality regarding this matter.

In addition, ratification would reduce legal risk of leaving this matter open or in litigating the issue. For example, if the Port were to request repayment from former Commissioner Barnes, it would likely incur additional and substantial legal fees in bringing an action to force him to disgorge the fees, including an action to have a court invalidate the prior payment. If unsuccessful, this will also carry the risk of the Port ultimately being responsible for paying additional legal fees to Commissioner Barnes under Rule 18.11.1 if he opts to defend such action.<sup>20</sup>

***F. Options other than ratification.***

If the Commission does not desire to ratify the prior payment, then in order create finality, the Port should consider bringing a declaratory judgment action to ask the Court to determine whether the payment was authorized under the law and whether Commissioner Barnes’ participation in the vote invalidated the payment. *See* Chapter 7.24 RCW. The benefit of obtaining a declaratory judgment would be to create finality as to the issue of whether the Port Commission’s act of reimbursing the fees was valid under both the law and under the procedures used by the Commission. However, such action would not be without risk. As stated in subsection E above, in addition to paying for the cost of bringing such action, the Port could end up also

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<sup>18</sup> Minutes, p. 9, Regular Commission Meeting of April 13, 2021. Note, the amount was later reduced to \$49,292.75. (*See*, Minutes, page 10.); *see also* Resolution No. 2021-08 authorizing the payment.

<sup>19</sup> *Ettor v. City of Tacoma*, 77 Wash. 267, 274 (1914) (“That an unauthorized contract may be ratified by a city will not be denied and needs no citation of authority.”)

<sup>20</sup> *See* Letter from Commissioner Barnes’ attorney, Joel Comfort, dated February 7, 2022, indicating that if the Port seeks reimbursement of the fees, Commissioner Barnes will “vigorously defend himself, and will seek additional attorneys fees and costs incurred in doing so, which he would be entitled to under Port Policy § 18.11.”

paying additional attorneys' fees to Commissioner Barnes under Rule 18.11 to defend such action.

#### **4. Conclusion.**

The Port's reimbursement of Commissioner Barnes' attorneys' fees in defending against the claims of misconduct is allowed under both RCW 53.08.208 and the Port's Rules of Policy and Procedure. However, Commissioner Barnes' participation in the vote to reimburse his legal fees violated Rules 3.2 and 18.7. Therefore, the Commission should either ratify the decision to reimburse these fees to cure the procedural violation or should file a declaratory judgment action seeking a judicial decision on whether the reimbursement and voting procedures which led to the payment were a legal exercise of Port Commission authority.

#### **5. Additional Recommendations.**

In addition to providing a legal opinion on the validity of the payment and procedures, I was asked to provide any additional recommendation to the Port to ensure that this type of situation does not occur in the future. Therefore, I recommend the follow updates be made to the to Port Commission Rules of Policy and Procedure:

- A. Add language that clarifies when Commissioners may participate in a vote, including how recusal is done (i.e., state reason for recusal, make no attempt to influence the decision, and the leave the room during discussion and voting). This should be broader than Chapter 42.23 RCW restrictions and should include prohibiting any Commissioner from voting on any matter in which he or she has a direct personal interest. Direct personal interest should be defined as broader than just an interest in a contract, and it should include actions that will have a personal or financial benefit to the Commissioner or a member of his/her family (which should also be defined).
- B. In addition to citing to RCW 4.96.041, the Rules should also cite to RCW 53.08.208 for reimbursement, which is broader than RCW 4.96.041.
- C. The Commission should consider prohibiting abstentions except in the case a recusal. Several local government agencies in Washington have adopted local rules on abstentions including prohibiting them unless a conflict exists or automatically counting abstentions or failure to vote as "yes" (or in one case "no") votes. Had this rule been in place, the vote to reimburse Commissioner Barnes would have passed 3-0 in which case, Commissioner Barnes' vote would have been irrelevant.
- D. Amend the Rules to more clearly define when reimbursement of legal expenses is allowed, including in a defense for misconduct if the Commissioner is ultimately exonerated. This clarification should include whether and when legal counsel is provided for actions that do not involve liability of money damages (i.e., misconduct under the rules, claims of ethics violations, etc.).

Please let me know if you have any questions or concerns. Thank you.



# Legal Review of State Auditor's Letter: Payment of Legal Fees of Commissioner

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Jennifer S. Robertson | [jrobertson@insleebest.com](mailto:jrobertson@insleebest.com)



# State Auditor's Office Management Letter Issue #1

Reimbursement by the Port to Commissioner Barnes for legal fees he incurred in the amount of \$49,282.75 as a result of hiring outside legal counsel

- Port Rules of Policy and Procedure (“Rules”) allow the Port to provide legal counsel to defend a claim against a Port official
- SAO claimed that because Commissioner Barnes directly hired outside legal counsel, reimbursement was not an “allowable expense”

# State Auditor's Office Management Letter

## Issue #2

Commissioner Barnes voted to approve payment to himself to reimburse his own legal fees. The vote passed with 2 votes and 1 abstention.

- SAO claimed Commissioner Barnes' vote violated state law which "does not allow an officer to benefit directly from a contract made through or under the supervision of the officer."
- SAO stated that Commissioner Barnes should have recused himself from the vote.

# State Auditor's Office Management Letter Recommendation

State Auditor's Office recommended that the Port determine if any additional actions, such as repayment, are necessary or required by law.

Port hired outside legal counsel to perform this work.

## Legal Review

Included:

- Review of records of the prior investigations
- Review of the Port's Policies and Procedures
- Review of the Port Commission Minutes
- Review of prior legal advice
- Review of State ethics law and case law

## Summary of Findings

1. The reimbursement of attorneys' fees to Commissioner Barnes was not contrary to State law or Port Policy.
2. Commissioner Barnes' participation and vote to reimburse his legal fees was contrary to Port Policy.
3. The reimbursement of Commissioner Barnes' attorneys' fees can be ratified by the current Board of Commissioners to correct the improper voting procedure.



## Finding #1:

State law does allow Port reimbursement of legal fees incurred by an official in defending against a claim that arose out of his acts when such acts occurred within the scope of his official duties.

## **Chapter 42.23 RCW – State Code of Ethics for Municipal Officers – Contract Interests**

- Chapter is the minimum standard for local officials
- Chapter applies to “interests in contracts”
- Here, Commissioner Barnes did not vote to authorize the contract with his legal counsel, but to reimburse himself for money he had already spent
- This chapter does not apply as there was no “contract interest” that Commissioner Barnes was beneficially interested in.

## **Chapter 42.23 RCW – State Code of Ethics for Municipal Officers – Prohibited Acts**

RCW 42.23.070 establishes “Prohibited Acts”

- No securing of a special privilege for yourself or others
- No gifts or other compensation related to your services (except from the employing municipality)
- No accepting employment or other activity that would require disclosure of confidential information gained by reason of your official position
- No disclosure of confidential information or using confidential information for personal gain

**None of these provisions apply here**

## Local Port Rules of Policy and Procedure Apply

### **RCW 42.23.060 Local charter controls chapter.**

If any provision of this chapter conflicts with any provision of a city or county charter, or with any provision of a city-county charter, the charter shall control if it contains stricter requirements than this chapter. The provisions of this chapter shall be considered as minimum standards to be enforced by municipalities.

Since the Port's Rules of Policy and Procedure incorporate Chapter 42.23 RCW and expand beyond that chapter in a more prescriptive manner, the issues should be analyzed under the Port's Rules.

## **Under both the Rules and State Law, the reimbursement of Commissioner Barnes' attorneys' fees was allowed**

**RCW 53.08.208** – Specific to Port Districts. Permits the Port to defend an officer of the Port District against a claim, including covering the costs of defense under the following conditions:

- The person was acting in good faith
- The person was acting within the scope of employment with the Port District (also called “acting within official duties”)

**Rule 18.3 is consistent with RCW 53.08.208**

## Rule 18.3 allows the Port to defend its officials

### 18.3 Legal Representation.

18.3.1 The Port **shall** provide to an official or employee, subject to the conditions and requirements of this chapter, and notwithstanding the fact that such official or employee may have concluded service or employment with the Port, **such legal representation as may be reasonably necessary to defend a **claim** or lawsuit filed against such official or employee resulting from **any conduct**, act or omission of such official or employee performed or omitted on behalf of the Port in his/her capacity as a Port official or employee, which act or omission is within the scope of his/her service or employment with the Port.** The provisions of this chapter shall not operate to provide legal representation to defend a claim or lawsuit for any conduct, act, or omission resulting in the termination for cause of any official or employee.

Rule 18.3 is wholly consistent with RCW 53.08.208 and includes defense for any “claim” arising from “any conduct” of a Port official if such act was done in his or her official capacity.

## Exclusions under Rule 18.4

There are two exclusions to providing coverage of an official's attorneys fees under Rule 18.4:

1. If the official was not acting within the scope of his duties (18.4.2 and 18.4.3), or
2. For acts which are contrary to Port Policies (18.4.5).

Because the claim *was* for violation of the Port Policies, the Port did not automatically assign defense counsel for Commissioner Barnes.

Therefore, Commissioner Barnes hired his own legal counsel

**Since Commissioner Barnes was found not to have violated the Port Rules of Policies and Procedures, Rule 18.11.1 required reimbursement**

- Finding by the Neutral Decision Maker that there was no violation
- This finding removed the only potentially applicable exclusion for paying Commissioner Barnes' attorneys' fees
- Not reimbursing his fees would likely violate Rule 18.11.1 and could result in the Port paying additional fees if Commissioner Barnes brought a recovery action against the Port



## Finding #2

### **Commissioner Barnes' participation and vote to reimburse his legal fees was contrary to Port Policy.**

Although the Port was entitled to provide reimbursement to Commissioner Barnes for his reasonable attorneys' fees under the Rules, Commissioner Barnes' participation in the vote to reimburse was itself a violation of the Rules.

- Rule 3.2 – Conflict Avoidance – Port Commissioners are required to “avoid conduct that may present an appearance of a conflict of interest.”

Voting to reimburse one's own expenses creates, at a minimum, the “appearance of a conflict of interest.” This is particularly so given the large amount of this reimbursement.

## Finding #2

### **Commissioner Barnes' participation and vote to reimburse his legal fees was contrary to Port Policy.**

Rule 18.7, is more explicit in prohibiting a commissioner from voting on whether he is entitled to a defense:

18.7 Determination of Exclusion. The determination whether an official or employee shall be afforded a defense by the Port under the terms of this chapter shall be made after a determination pursuant to Section 18.3 as to whether the official or employee was acting within the scope of his or her duties. . . The determination as to whether a defense is to be furnished as provided under this chapter to a member or to members of the Commission shall be made **without the vote of the Commissioners named in the claim** or lawsuit unless the inclusion of such member or members is required for a quorum; provided, that if a claim or lawsuit affects a quorum or greater number of the members of the Commission, all such affected members shall retain their voting privileges under this Section.

## Finding #2

**Commissioner Barnes' participation and vote to reimburse his legal fees was contrary to Port Policy**

The exception to recusal under Rule 18.7 did not apply:

- Although there were originally complaints against two commissioners, the Commission was solely making a decision about one Commissioner (so there would be no loss of quorum if Commissioner Barnes recused himself)
- The other Commissioner who had complaints did not seek reimbursement of any attorneys' fees

## Finding #3

**The reimbursement of Commissioner Barnes' attorneys' fees can be ratified by the current Board of Commissioners to correct the voting error**

- The voting error does not erase the conclusion that the Port is permitted to reimburse Commissioner Barnes' legal fees in defending the claims against him.
- It just means that the procedure for such reimbursement was erroneous.
- Ratification of an action after the fact when that action was previously *not* properly authorized has long been recognized as within the authority of a governing body.

## **Finding #3: Ratification of the Reimbursement**

Ratification can be justified based on the following facts:

1. Former legal counsel thoroughly vetted the legal fees and advised the Commission that payment of the fees was legal and within their authority;
2. Ratification would cure the improper procedure noted by the State Auditor's Office in the Management Letter;
3. Although it was a violation of the Rules for Commissioner Barnes to vote to reimburse himself, he is no longer in office and therefore, there is no internal discipline available to the Port for such violation; and
4. Ratification would create finality regarding this matter.

## **Finding #3: Ratification of the Reimbursement**

Ratification would also reduce legal risk of leaving this matter open or in litigating the issue.

### **Potential Risks of Not Ratifying:**

- If the Port were to request repayment from former Commissioner Barnes, it would likely incur additional and substantial legal fees in bringing an action to force him to disgorge the fees, including an action to have a court invalidate the prior payment.
- If unsuccessful, this will also carry the risk of the Port ultimately being responsible for paying additional legal fees to Commissioner Barnes under Rule 18.11.1 if Commissioner Barnes opts to defend such action.

## Options *other than* ratification

Bringing a declaratory judgment action under Chapter 7.24 RCW to ask the Court to determine:

1. Whether payment was authorized under the law; and
2. Whether Commissioner Barnes' participation in the vote invalidated payment

This would create finality *however* the Port could end up paying for Commissioner Barnes' legal fees for this subsequent action under Rule 18.11.

## Additional Recommendations

### Update the Port Commission Rules of Policy and Procedure:

- Add language that clarifies when Commissioners may participate in a vote, including how recusal is done (i.e., state reason for recusal, make no attempt to influence the decision, and the leave the room during discussion and voting).
  - This should be broader than Chapter 42.23 RCW restrictions and should include prohibiting any Commissioner from voting on any matter in which he or she has a direct personal interest. Direct personal interest should be defined as broader than just an interest in a contract, and it should include actions that will have a personal or financial benefit to the Commissioner or a member of his/her family.
- In addition to citing to RCW 4.96.041, the Rules should also cite to RCW 53.08.208 for legal fee or defense cost reimbursement, which is broader than RCW 4.96.041 and is specific to Port Districts.



## **Additional Recommendations**

### **Update the Port Commission Rules of Policy and Procedure:**

- The Commission should consider prohibiting abstentions except in the case a recusal.
  - Several local government agencies in Washington have adopted local rules on abstentions including prohibiting them unless a conflict exists or automatically counting abstentions or failure to vote as “yes” (or in one case “no”) votes. Had this rule been in place, the vote to reimburse Commissioner Barnes would have passed 3-0 in which case, Commissioner Barnes’ vote would have been irrelevant.
- Amend the Rules to more clearly define when reimbursement of legal expenses is allowed, including in a defense for misconduct if the Commissioner is ultimately exonerated. This clarification should include whether and when legal counsel is provided for actions that do not involve liability or money damages (i.e., misconduct under the rules, claims of ethics violations, etc.).

## Summary of Recommendations

1. The current Board of Commissioners should vote to ratify the reimbursement of Commissioner Barnes' attorneys' fees to correct the improper voting procedure.
2. The Board of Commissioners should update the Policies to add clarity on:
  - voting and recusals,
  - reimbursement of legal fees, and
  - defense in the case of misconduct claims.



# Questions?



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## **AGENDA REPORT**

**TO: Port Commission**

**FROM: Amber Hanchette, Director of Real Estate and Operations**

**MEETING DATE: May 10, 2022**

**AGENDA ITEM: Columbia Gardens - Covenants, Conditions, Restrictions, and Easements**

---

**I. REFERENCE(S):** Resolution 2021-16, Resolution 2022-13

**II. BACKGROUND**

Columbia Gardens Wine and Artisan Village is a key Port of Kennewick redevelopment project along the Historic Downtown Kennewick Waterfront. The port commission has committed to fostering this revitalization effort through long-term vision, patience, and investment.

At present, Columbia Gardens consists of 10 parcels (Exhibit A Map).

- Loop road, food truck plaza, public restroom
- East end common area parking
- West end common area parking
- 421 E. Columbia Drive – Three port-owned buildings
- 313 E. Columbia Gardens Way – One port-owned building
- 215 E. Columbia Drive – one parcel currently under contract with private sector
- Four (4) parcels available for sale to the private sector.

Columbia Gardens is a special mix of port-owned buildings and private sector development with enormous potential for a community connection with the Tri-Cities waterfront. The urban mixed-use concept includes common areas enjoyed and maintained by the property owners now and into the future such as parking lots, roadways and landscape improvements that aesthetically benefit the development. Through the adoption of a Covenants, Conditions, Restrictions and Easements (CCRE) guiding document the quality expectation and port investment during the development period can be clearly communicated to future property owners.

General Highlights of CCRE:

- Port investment during development period: For the first five years (from date CCRE is recorded), the port will perform and fund all common areas maintenance. For an additional 15 years, port will offset 35% of maintenance cost for common area maintenance identified as “foundational items” in the CCRE document.
- Timelines to comply with state law prohibiting the gifting of public funds.
- Foundational items are detailed within the CCRE document.
- Assessments are based upon gross exterior building square footage plus any secondary interior floor space (i.e., a second+ story, mezzanine, attic).

- Columbia Gardens Design Standards applied.
- Excluded uses – Residential. Drive thru, auto, repair, and carwash businesses.

**III. ACTION REQUESTED OF COMMISSION:**

Motion to approve Covenants, Conditions, Restrictions and Easements for Columbia Gardens.

MOTION: I move approval of Resolution 2022-14, approving Covenants, Conditions, Restrictions and Easements for Columbia Gardens; and ratify and approve all action by port officers and employees in furtherance hereof; and authorize the port Chief Executive Officer to take all action necessary in furtherance hereof.

***PORT OF KENNEWICK***

**RESOLUTION No. 2021-16**

***A RESOLUTION OF THE BOARD OF COMMISSIONERS  
OF THE PORT OF KENNEWICK ADOPTING THE COLUMBIA GARDENS PROPERTY  
OWNERS' ASSOCIATION ASSESSMENT MECHANISM***

**WHEREAS**, the Port, City of Kennewick, Benton County and Benton Public Utility District #1 have all contributed to the redevelopment of the Columbia Gardens area resulting in numerous public improvements; and

**WHEREAS**, the Port intends to establish a property owners' association to share responsibility for some of the operational costs associated with the perpetual maintenance of common area improvements in the Columbia Gardens Wine & Artisan Village; and

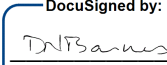
**WHEREAS**, the Board of Commissioners has expressed interest that any such assessments be fair and equitable to both the existing and future property owners and business located within the Columbia Gardens Wine & Artisan Village.

**NOW, THEREFORE, BE IT RESOLVED** that the Port of Kennewick Board of Commissioners hereby approves and adopts the Columbia Gardens Wine & Artisan Village property owners' association assessment mechanism and policies as identified in Exhibit A attached hereto.

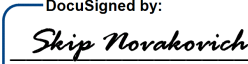
**BE IT FURTHER RESOLVED** that the Port of Kennewick Board of Commissioners hereby ratify and approve all action by port officers and employees in furtherance hereof; and authorize the port Chief Executive Officer to take all action necessary in furtherance hereof.

**ADOPTED** by the Board of Commissioners of Port of Kennewick on the 28th day of September, 2021.

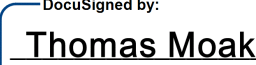
***PORT of KENNEWICK  
BOARD of COMMISSIONERS***

By:   
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DON BARNES, President

By:   
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SKIP NOVAKOVICH, Vice President

By:   
A35176A2D2CD413...

THOMAS MOAK, Secretary

RESOLUTION No. 2021-16  
Exhibit A

The Columbia Gardens Wine & Artisan Village, referred to below as the Neighborhood shall be responsible for 65% of the annual operational costs associated of the Foundational items which include: internal roadways located north of Columbia Drive (Columbia Gardens Way, Date Street & Cedar Street); the existing 30-space Date Street and 24-space Cedar Street parking lots as well as joint use parking lots that may be developed in the future; sidewalks, illumination and landscaping associated with these internal streets and parking lots; Columbia Drive streetscape improvements and insurance & security expenses. The Port will not attempt to recapture the initial capital outlay to construct these improvements.

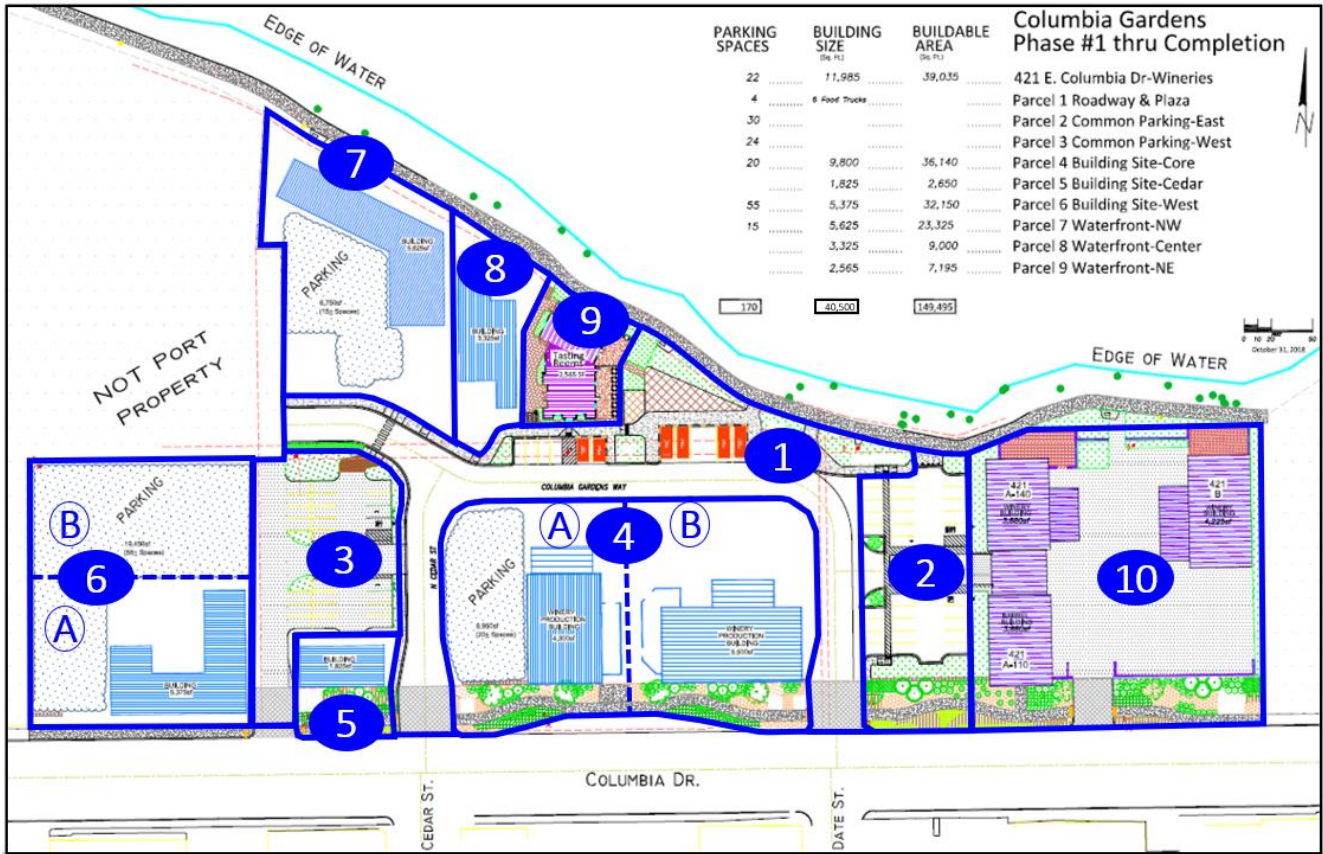
Assessments will be based upon each property share of the overall neighborhood expense and shall be assessed against the property owners of record.

Shares will be based upon the gross building size.

Patio and outdoor seating areas be will calculated at 50% of the applicable rate.

Shares for warehouse and production space will be calculated at a 50% reduction.

The Port would directly pay for all shares for all properties for a period of five (5) years from the date of recording of the covenants.





***PORT OF KENNEWICK***

**RESOLUTION No. 2022-13**

***A RESOLUTION OF THE BOARD OF COMMISSIONERS  
OF THE PORT OF KENNEWICK STREAMLINING THE COLUMBIA GARDENS  
PROPERTY OWNERS' ASSOCIATION ASSESSMENT CALCULATION***

**WHEREAS**, the Port intends to establish a property owners' association to share responsibility for some of the operational costs associated with the perpetual maintenance of common area improvements in the Columbia Gardens Wine & Artisan Village; and

**WHEREAS**, the Board of Commissioners has approved an owner's association assessment mechanism through Resolution 2021-16;

**WHEREAS**, any such assessments be fair and equitable to both the existing and future property owners within the Columbia Gardens Wine & Artisan Village.


**NOW, THEREFORE, BE IT RESOLVED** that the Port of Kennewick Board of Commissioners hereby approves a streamlined calculation for the Columbia Gardens Wine & Artisan Village property owners' association assessment as identified in Exhibit A attached hereto.

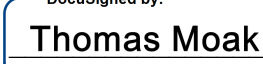
**BE IT FURTHER RESOLVED** that the Port of Kennewick Board of Commissioners hereby ratify and approve all action by port officers and employees in furtherance hereof; and authorize the port Chief Executive Officer to take all action necessary in furtherance hereof.

**ADOPTED** by the Board of Commissioners of Port of Kennewick on the 26th day of April, 2022.

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

By:   
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SKIP NOVAKOVICH, President

By:   
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KENNETH HOHENBERG, Vice President

By:   
A35176A2D2CD413...  
THOMAS MOAK, Secretary

## RESOLUTION No. 2022-13

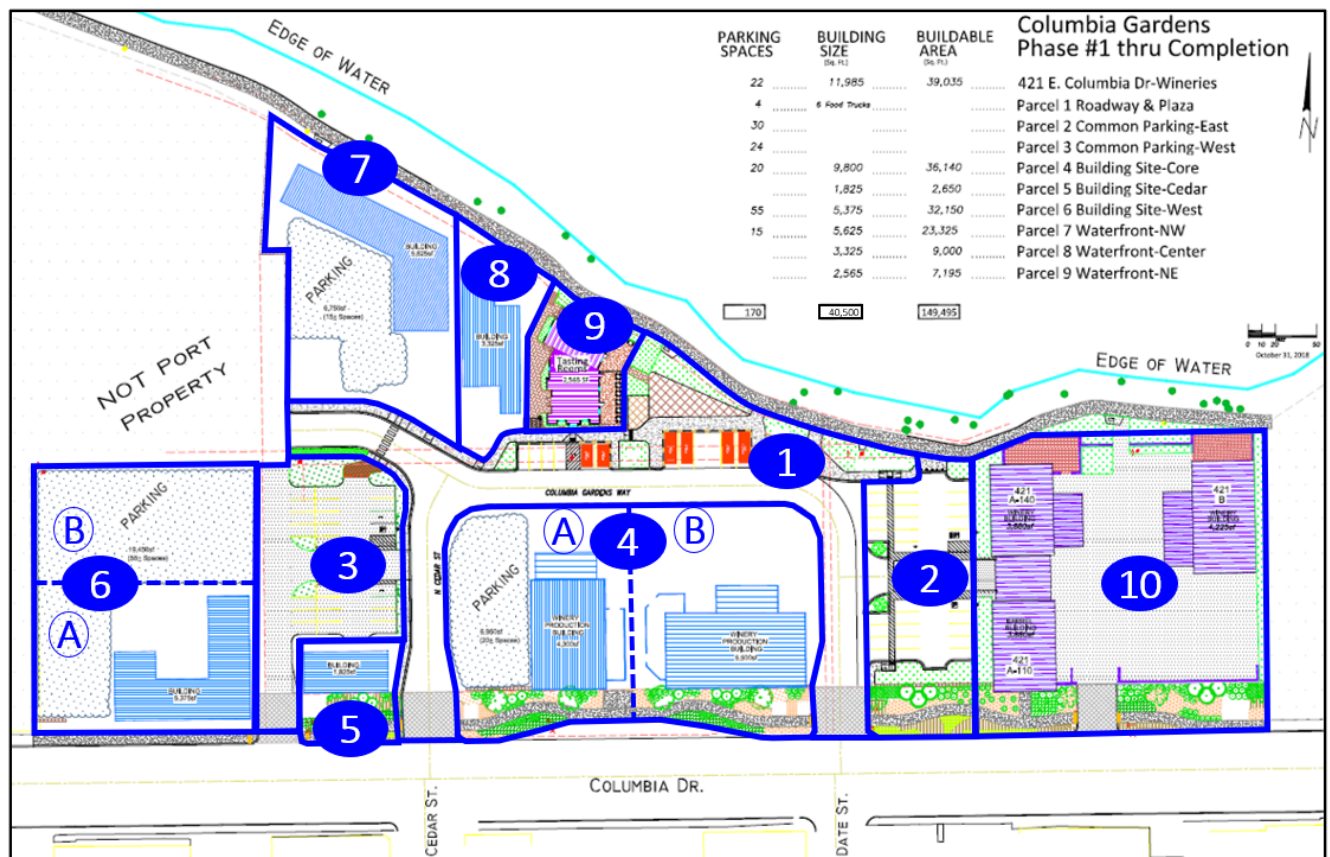
### Exhibit A

The Columbia Gardens Wine & Artisan Village, referred to below as the Neighborhood shall be responsible for 65% of the annual operational costs associated of the Shared Foundational items which include: internal roadways located north of Columbia Drive (Columbia Gardens Way, Date Street & Cedar Street); the existing 30-space Date Street and 24-space Cedar Street parking lots as well as joint use parking lots that may be developed in the future; sidewalks, illumination and landscaping associated with these internal streets and parking lots; Columbia Drive streetscape improvements and insurance & security expenses. The Port will not attempt to recapture the initial capital outlay to construct these improvements.

Assessments will be based upon each property share of the overall neighborhood expense and shall be assessed against the property owners of record.

Shares will be based upon the gross building square footage.

The Port would directly pay for all shares for all properties for a period of five (5) years from the date of recording of the covenants.



**PORT OF KENNEWICK**  
**Resolution No. 2022-14**

**A RESOLUTION OF THE PORT OF KENNEWICK  
BOARD OF COMMISSIONERS ADOPTING THE  
COLUMBIA GARDENS DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS**

**WHEREAS**, the Port of Kennewick Commission has undertaken master planning, infrastructure improvements and construction of three development buildings to create a new urbanism oriented mixed-use redevelopment along the Historic Downtown Kennewick Waterfront; and

**WHEREAS**, the completed and planned redevelopment site involves parcels with certain easements dedicated to the City of Kennewick and unique common areas that require perpetual maintenance by those investing in Columbia Gardens; and

**WHEREAS**, the Port coordinated with specialized legal counsel and development experts to craft a guiding document containing covenants, conditions, restrictions and easements for those investing in the Columbia Gardens to both assure the perpetual maintenance and funding of certain common area improvements; and

**WHEREAS**, the Commission has reviewed these documents and deemed the establishment of property owner's associations for the Columbia Gardens redevelopment project is warranted; and

**NOW, THEREFORE, BE IT HEREBY RESOLVED** the Board of Commissioners of the Port of Kennewick hereby adopts Columbia Gardens Declarations of Covenants, Conditions, Restrictions and Easements for Columbia Gardens 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 10th day of May, 2022.

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

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

By: \_\_\_\_\_  
KENNETH HOHENBERG, *Vice President*

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

**LAST REVISED: 5/6/2022**

*When Recorded, Return to:*

Foster Garvey PC  
Attn: Christopher S. Napier  
1111 Third Avenue, Suite 3000  
Seattle, WA 98112

**DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS  
FOR  
COLUMBIA GARDENS**

**Grantor:** THE PORT OF KENNEWICK

**Grantee:** THE PORT OF KENNEWICK

**Legal Description** SECTION 31, TOWNSHIP 9 NORTH, RANGE 30 EAST  
(abbreviated): WILLAMETTE MERIDIAN

☒ Additional on: Exhibit A

**Assessor's Tax Parcel ID #:** 131903030013002; 131903030015005; 131903030011004;  
131903030013003; 131903030011003; 131903030025000;  
131903030106009; 131903030106008; 131903030106007;  
131903030016002

**Reference Nos. of Documents Released or Assigned:** N/A

LAST REVISED: 5/6/2022

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**DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS  
FOR  
COLUMBIA GARDENS**

This Declaration of Covenants, Conditions, Restrictions, and Easements for Columbia Gardens (this “**Declaration**”) is dated May \_\_, 2022 (this “**Effective Date**”), and is made by THE PORT OF KENNEWICK (“**Declarant**”).

**RECITALS**

**A.** Declarant has the authority to execute and record this Declaration as the owner of all of the real property legally described on the attached **Exhibit A** (such real property, together with all existing and future Improvements (as defined below) located thereon, shall be collectively referred to herein as the “**Property**”).

**B.** The Property is intended to be developed as a commercial development known as Columbia Gardens (“**Columbia Gardens**”).

**C.** This Declaration is being recorded for the purpose of subjecting the Property to this Declaration including, without limitation, certain covenants, conditions, restrictions, and easements necessary to establish a reasonable arrangement for the maintenance and operation of certain shared areas and improvements within the Property and to enhance and protect the value, desirability and attractiveness of the Property and to provide for an equitable allocations of the costs thereof among the Owners (as defined below) of Parcels (as defined below) within the Property.

**AGREEMENT**

NOW, THEREFORE, Declarant declares that the Property shall be owned, sold, conveyed, leased, encumbered, occupied, improved, and used subject to this Declaration, which will run with the Property and shall be binding upon all parties having or acquiring any right, title or interest in such Property or any part thereof and shall inure to the benefit of each Owner thereof and their respective successors and assigns.

**ARTICLE 1  
DEFINITIONS**

As used in this Declaration, the terms set forth below shall have the following meanings:

**1.1 “Applicable Laws”** means all laws, regulations, ordinances or requirements of the federal, state or local governments or of any other governmental authorities having jurisdiction over the Property.

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**1.2 “Articles”** means the articles of incorporation of the Association. The Articles shall be initially prepared and filed by Declarant and shall contain such terms as Declarant determines necessary or appropriate; provided the terms thereof shall not conflict with the terms of this Declaration or applicable nonprofit corporation laws.

**1.3 “Assessments”** means all assessments and other charges, fines and fees imposed by the Declarant or Association on an Owner of a Parcel in accordance with this Declaration including, without limitation, General Assessments, Special Assessments, and Individual Assessments as described in Article 10.

**1.4 “Association”** means the nonprofit corporation to be formed by the Declarant as provided in this Declaration, which will, after formation, serve as the association of Owners, and its successors and assigns.

**1.5 “Board”** means the board of directors of the Association which, after the Association is formed, will be the body responsible for administration of the Association, the directors of which are selected as provided in this Declaration and the Bylaws.

**1.6 “Bylaws”** means the bylaws of the Association as adopted and amended by the Board from time to time. The Bylaws shall be initially prepared by Declarant and shall contain such terms as Declarant determines necessary or appropriate; provided the terms thereof shall not conflict with the terms of this Declaration or applicable nonprofit corporation laws.

**1.7 “City”** means The City of Kennewick.

**1.8 “Class A Member”** means all Owners with the exception of the Class B Member.

**1.9 “Class B Member”** means the Declarant.

**1.10 “Class B Termination Date”** means the Subsidy Termination Date.

**1.11 “Common Areas”** means all real and personal property, including Parcels, Improvements and easements, that the Owners of all Parcels jointly, or the Association, owns, leases or otherwise holds possessory, easement or use rights in for the common use and enjoyment of the Owners, subject to restrictions that may be described herein or in any amendment to this Declaration. Common Areas shall be designated as such in this Declaration, any amendment to this Declaration, or any conveyance of a Common Area from Declarant to the Association. The Common Areas as of the recording of this Declaration are listed on the attached **EXHIBIT C**.

**1.12 “Common Area Parcels”** means Parcels 1, 2 and 3 and any future Parcel which is predominantly used as a Common Area.

**1.13 “Common Expenses”** shall mean all of the expenses incurred (i) by or on behalf Declarant with respect to the Common Areas or Association or under Section 8.6 and (ii) by or on behalf of the Association from time to time including such reserves, if any, as the Board may deem appropriate from time to time.

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**1.14** “*County*” means Benton County, Washington.

**1.15** “*Declarant*” means the Port of Kennewick, and its successors and assigns, if a recorded instrument executed by Declarant assigns to the transferee all of the rights reserved to Declarant under this Declaration with respect to the Property.

**1.16** “*Declaration*” means this Declaration of Covenants, Conditions, Restrictions, and Easements for Columbia Gardens, as the same may be amended or supplemented from time to time in accordance with the provisions hereof.

**1.17** “*Development Period*” means the period of time between the date this Declaration is recorded with the Recorder and the earlier of (a) when, in its discretion, Declarant terminates the Development Period, as evidenced by a notice executed by Declarant to that effect and recorded with the Recorder; (b) the Transition Date (as defined below); or (c) the twentieth (20<sup>th</sup>) anniversary of the recording of this Declaration.

**1.18** “*Development-Wide Standards*” means, collectively, (a) the Columbia Gardens Urban Wine & Artisan Village Design Standards as adopted by the Port of Kennewick, as amended from time to time and (b) any written standards, adopted pursuant to this Declaration from time to time (1) establishing design criteria and aesthetic standards for the Improvements on a Parcel visible from the outside and (2) governing conduct, quality, maintenance and repair generally prevalent in Columbia Gardens, including (i) maintenance by Declarant and the Association of the Common Areas, (ii) maintenance by the Owners of the exterior areas of their respective Parcels including, without limitation, decks, window coverings, screening, siding, landscaping, irrigation, sidewalks and lighting and (iii) the performance of functions such as litter clean-up, graffiti removal, and security. The Development-Wide Standards may contain both objective and subjective elements. Although the Development-Wide Standards do not need to be recorded to be effective, the Declarant or the Association may at any time record the Development-Wide Standards, or any amendment to the Development-Wide Standards, in the public record as an additional exhibit to this Declaration.

**1.19** “*Eligible Mortgagee*” means any Mortgagee that has filed with the secretary of the Association a written request that it be given copies of notices of any action by the Association that requires the consent of Eligible Mortgagees.

**1.20** “*Equivalent Unit*” means a portion of a building as calculated pursuant to the attached **Exhibit B** for voting and assessment purposes.

**1.21** “*Foundational Items*” means (i) the portions of Parcel 1 labeled “Right of Way Area” and “Parking Area” on **Exhibit C-1** attached hereto and all streets, drives, sidewalks, hardscape, illumination, landscaping, and improvements thereon; (ii) all sidewalks located on Parcel 1; (iii) all storm drainage facilities located on or serving Parcels 1, 2 and 3; (iv) the portions of the Parcels labeled “Columbia Drive Streetscape” on **Exhibit C-1** attached hereto and all sidewalks, hardscape, illumination, landscaping, and improvements thereon installed by Declarant, the Association or the City; (v) Parcel 2 and all drives, hardscape, illumination, landscaping, and improvements thereon; (vi) Parcel 3 and all drives, hardscape, landscaping, and improvements thereon; (vii) any Parcels or portions thereof that are in the future improved for Common Area parking and all hardscape, illumination, landscaping, storm drainage facilities, and

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improvements thereon; (vi) insurance for the Common Areas and the Association; (vii) security expenses for Common Areas; and (viii) utilities for the Common Areas. Common Expenses for Foundational Items shall include all costs for the operation, maintenance, repair, and replacement thereof including all obligations under any easements or other agreements with the City or County related to the Foundational Items.

**1.22** *“General Assessments”* shall have the meaning given that term in Section 10.3.1.

**1.23** *“Governing Documents”* means this Declaration, the Articles, the Bylaws, the Rules and Regulations, and any properly adopted amendment to the foregoing documents.

**1.24** *“Governmental Authority”* means the City, the County, the State of Washington, the United States of America or other governmental entity or agency that has or acquires jurisdiction over the Property or any portion thereof.

**1.25** *“Improvement”* means any structure or improvement of any kind, including but not limited to any building, fence, wall, driveway, signage, monumentation or other item constructed on the Property.

**1.26** *“Individual Assessments”* shall have the meaning given that term in Section 10.3.4.

**1.27** *“Mortgage”* means a mortgage or deed of trust.

**1.28** *“Mortgagee”* means a mortgagee under a mortgage or a beneficiary under a deed of trust.

**1.29** *“Operations Fund”* shall have the meaning given that term in Section 10.5.

**1.30** *“Owner”* means the Person, including Declarant, owning any Parcel within the Property, but, except as otherwise provided below, does not include a tenant or holder of a leasehold interest or a Mortgagee or other Person holding only a security interest in a Parcel. If a Parcel being sold under a recorded real estate installment sale contract, then upon filing a copy of the contract with the Board, the purchaser (rather than the seller) will be considered the Owner for the purpose of exercising any rights related to such Parcel under this Declaration unless the recorded real estate contract specifically provides to the contrary. If an entire Parcel is subject to a written lease with a term in excess of one year and the lease specifically so provides, then upon filing a copy of the lease with the Board, the lessee (rather than the fee owner) will be considered the Owner during the term of the lease for the purpose of exercising any rights related to such Parcel under this Declaration. The rights, obligations and other status of being an Owner commence upon acquisition of the ownership of a Parcel and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from its obligations incurred prior to termination.

**1.31** *“Parcel”* means, individually, each of Parcel 1 through 10, inclusive, and any other portion of the Property from time to time, whether improved or unimproved, which is a separate legal lot that may be independently owned and is intended for development with improvements for use and occupancy for commercial uses (including created as the result of

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subdividing or adjusting the boundary lines of any of Parcels). The term shall refer to the land which is part of the Parcel as well as any Improvements thereon. If a Parcel is made subject to a condominium, the entire condominium, as opposed to individual condominium units, shall be deemed the Parcel hereunder and the condominium owners association, as opposed to individual condominium unit owners, shall be deemed the Owner hereunder.

**1.32** *“Parcel 1”* means the real property legally described as Parcel 1 on the attached Exhibit A.

**1.33** *“Parcel 2”* means the real property legally described as Parcel 2 on the attached Exhibit A.

**1.34** *“Parcel 3”* means the real property legally described as Parcel 3 on the attached Exhibit A.

**1.35** *“Parcel 4”* means the real property legally described as Parcel 4 on the attached Exhibit A.

**1.36** *“Parcel 5”* means the real property legally described as Parcel 5 on the attached Exhibit A.

**1.37** *“Parcel 6”* means the real property legally described as Parcel 6 on the attached Exhibit A.

**1.38** *“Parcel 7”* means the real property legally described as Parcel 7 on the attached Exhibit A.

**1.39** *“Parcel 8”* means the real property legally described as Parcel 8 on the attached Exhibit A.

**1.40** *“Parcel 9”* means the real property legally described as Parcel 9 on the attached Exhibit A.

**1.41** *“Parcel 10”* means the real property legally described as Parcel 10 on the attached Exhibit A.

**1.42** *“Parcels”* means, collectively, all of the Parcels.

**1.43** *“Parcel Conveyance”* means the date on which a deed, by which Declarant first conveys a Parcel to a buyer, is recorded with the Recorder.

**1.44** *“Person”* means a human being, a corporation, partnership, limited liability company, trustee or other legal entity.

**1.45** *“Plat”* means the Record Survey For Boundary Line Adjustment, as recorded under Recording No. 2019-008292, in Benton County, Washington, as amended or supplemented from time to time.

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1.46 ***“Property”*** shall have the meaning given that term in the Recitals.

1.47 ***“Public Areas”*** means any portion of the Common Areas, if any, made available for use on a general or conditional basis by members of the public in any conveyance thereof by the Declarant, in the Plat or in this Declaration.

1.48 ***“Recorder”*** means the Auditor of Benton County, Washington, or such successor agency charged with maintaining the real estate records for property within the County.

1.49 ***“Restricted Areas”*** means portions of the Common Areas, if any, to which the Owners have limited or no access and which are so designated in any conveyance thereof by the Declarant, in the Plat, or in this Declaration, or by the Board acting in accordance with the Governing Documents; provided that no such restriction shall (a) unreasonably interfere with the occupancy, use or enjoyment of, or access to, a Parcel by the Owner thereof or such Owner’s tenants, employees, guests or invitees and (b) are not uniformly applied to all Owners.

1.50 ***“Rules and Regulations”*** means those policies, procedures, rules and regulations adopted by Declarant or the Association pursuant to Section 5.9, as the same may be amended from time to time.

1.51 ***“Special Assessments”*** shall have the meaning given that term in Section 10.3.3.

1.52 ***“Subsidy Termination Date”*** means the earlier of (A) the twentieth (20<sup>th</sup>) anniversary of the recording of this Declaration and (B) the Parcel Conveyance Date for the last of Parcels 4, 5, 6, 7, 8, 9, or 10.

1.53 ***“Transition Date”*** means the date on which Declarant has conveyed Parcels to third parties that in the aggregate constitute eighty percent (80%) of the then total projected Equivalent Units for Columbia Garden; provided, that once the Transition Date has occurred any subsequent change in the number of Equivalent Units shall not change the Transition Date.

1.54 ***“Voting Member”*** means the Person designated by each Owner that is a Class A Member of the Association to be responsible for casting all votes attributable to Units owned by that Class A Member; provided, however, that if any Parcel is subject to a condominium declaration, the president of the condominium association for such Parcel or the president’s designee shall be the Voting Member for such condominiumized Parcel.

## ARTICLE 2

### PROPERTY SUBJECT TO THIS DECLARATION

2.1 **Property.** The Property made subject to this Declaration is legally described in the attached **Exhibit A**.

2.2 **Governmental Actions.** Declarant reserves the right with respect to any portion of the Property then owned by Declarant, from time to time, to seek amendments from any Governmental Authority to the ordinances, permits and approvals applicable to Columbia

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Gardens that Declarant may deem to be appropriate in connection with the use and development of such portion of the Property as contemplated in this Declaration.

**2.3 Dedications.** Prior to the Transition Date, Declarant reserves the right to dedicate any portions of the Property then owned by Declarant to any Governmental Authority, quasi-governmental entity or entity qualifying under Section 501(c)(3) of the Internal Revenue Code or similar provisions, from time to time, for such purposes as Declarant may deem to be appropriate, including, without limitation, for utility stations, streets and roads; sidewalks; pathways; and recreational facilities; and such other purposes as Declarant and such Governmental Authority or quasi-governmental entity shall determine to be appropriate; provided, however, that any such dedication shall not be contrary to this Declaration.

### ARTICLE 3 PARCELS; EASEMENTS

**3.1 Use and Occupancy.** Each Owner of a Parcel shall be entitled to the exclusive use and benefit of such Parcel, except as otherwise expressly provided in this Declaration, but the Parcel shall be bound by, and the Owner shall comply with, the terms, conditions, easements, and restrictions made applicable to such Parcel by this Declaration.

**3.2 Easements.** In addition to any easements granted herein or shown on the Plat, subject to provisions of this Declaration, Declarant hereby reserves, conveys and/or grants, as applicable, the following easements and rights:

**3.2.1 Common Areas.** Perpetual non-exclusive easements for the benefit of the Association on, in, to, above, and under the portions of any Parcel not owned by the Association on which any Common Areas are located from time to time for the uses for which such Common Areas are established.

**3.2.2 Declarant and Association Functions Easements.** Perpetual non-exclusive easements for the benefit of Declarant and the Association on, in, to, above, and under each Parcel and Common Area to permit the Declarant and/or the Association to enter upon the Parcel to perform installation, maintenance, repairs, and replacements of Common Areas and fulfill or perform any functions, rights or responsibilities of Declarant and/or the Association under this Declaration; provided that any such entrance on a Parcel shall not include the interior of any buildings and shall not unreasonably interfere with the use or occupancy thereof by the Owner or its tenants. Declarant and the Association shall also have the right, but not the obligation, to enter upon any Parcel for emergency, security, and safety reasons, and to inspect for the purpose of ensuring compliance with the Governing Documents. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. The entering Person shall promptly repair any damage caused by any such entry and work.

**3.2.3 Utility Easements.** Perpetual non-exclusive easements for the benefit of Declarant, the Association, each Owner, and, if granted by Declarant, the Association or an Owner, for the benefit of utility providers, for installation, maintenance, repair and replacement of communication, power, gas, drainage, sewage, water, and utility improvements and facilities serving the Common Areas or any Parcel over portions of the Parcels and Common Areas as



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shown on the recorded Plat or as otherwise granted or shown in any recorded document now or hereafter recorded from time to time with the Recorder; provided, after the Parcel Conveyance of a Parcel, no new easements may be granted under this Section 3.2.3 with respect to such Parcel (a) without the prior written consent of the then-Owner and any then-Mortgagee of such Parcel as to the location of any such easement, such consent not to be unreasonably withheld, delayed or conditioned and (b) that materially and adversely affect the value or usage of or access to such Parcel. The Plat and any such recorded document may contain additional rights, obligations and restrictions.

**3.2.4 Utility Inspection and Repairs Rights.** Upon the request of Declarant, the Association or any Owner, utility service providers and their agents or employees shall have authority to access all Parcels, but not the interior of any buildings constructed thereon, and the Common Areas, on which communication, power, gas, drainage, sewage, water, and utility improvements and facilities are permitted to be located for the purpose of installing, operating, maintaining, improving or constructing such facilities, reading meters, inspecting the condition of pipes and facilities, and completing maintenance, repairs and replacements. Unless the easement granting such utility service provider access to a Parcel provides otherwise, (a) except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner of the Parcel and (b) the utility service provider shall promptly repair any damage caused by any such entry and work.

**3.2.5 Easements for Encroachments.** Perpetual non-exclusive easements for any encroachment, and for maintenance, repair, replacement, and use of any such encroachment, located between each Parcel and any adjacent Common Areas and between adjacent Parcels due to the unintentional placement or settling or shifting of the Improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than two feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

**3.2.6 Future Easements.** During the Development Period, Declarant and, after the Development Period, the Association, at any time, reserves the non-exclusive right and power to grant and record such specific additional easements over any portion of the Property as may be necessary, in the discretion of Declarant or Association, as applicable, in connection with the development of any portion of the Property; provided, after the Parcel Conveyance of a Parcel, no new easements may be granted under this Section 3.2.6 with respect to such Parcel (a) without the prior written consent of the then-Owner and any then-Mortgagee of such Parcel as to the location of any such easement, such consent not to be unreasonably withheld, delayed or conditioned and (b) that materially and adversely affect the value or usage of or access to such Parcel.

**3.2.7 Future Easements Over Parcel 1.** During the Development Period, Declarant and, after the Development Period, the Association, reserves the non-exclusive right and power to grant and record non-exclusive easements on and over Parcel 1 for pedestrian and vehicular ingress, egress and access and utilities for the benefit of the properties adjoining the Property.

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**3.3 Easements Retained by Declarant.** So long as Declarant owns any Parcel, Declarant shall retain an easement over, under and across the Common Areas in order to carry out management, sales and related activities necessary or convenient for the sale of Parcels; provided, however, that Declarant shall use commercially reasonable efforts to minimize the impact of its exercise of such easement rights on the uses for which any such Commons Area is established. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of Improvements on the Property; provided, however, that no such rights under this Section 3.3 shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access to a Parcel by the Owner thereof or such Owner's tenants, employees, guests or invitees.

#### ARTICLE 4 COMMON AREAS

**4.1 Title to Common Areas.** With respect to all or any portions of the Common Area Parcels owned by Declarant, Declarant reserves the right, from time to time, to (a) dedicate title to all or any such portions of the Common Area Parcels to the public or any Governmental Authority or (b) after formation of the Association, to convey title to all or any such portions of the Common Area Parcels to the Association (and any such conveyance to the Association shall be free and clear of monetary liens except for nondelinquent taxes and assessments and shall be accepted by, the Association). For clarification, during any period a Common Area is located on a Parcel that is not owned by the Association, the Association and the Owners shall have non-exclusive perpetual easements to use such Common Area for the uses for which they are established as provided in Section 3.2.1 above and Section 4.4 below. The conveyance of any Common Area to the Association by any party other than Declarant shall require the consent of the Class B Member, if any exists.

**4.2 Future Common Areas.** Without limiting any other rights provided in this Declaration, Declarant and the Association reserves the right and power to create additional Common Areas over any portion of the Property, in the discretion of Declarant or Association, as applicable; provided no additional Common Areas may be created under this Section 4.2 with respect to any Parcel without the prior written consent of the then-Owner (including Declarant if Declarant is the then-Owner) and any then-Mortgagee of such Parcel as to the type and location of any such Common Areas, each at their sole discretion.

**4.3 Use of Common Areas.** Except as otherwise provided in this Declaration or contained in any deed or other instrument conveying such Common Areas to the Association, the Common Areas shall be reserved for the use and enjoyment of all Owners; provided, notwithstanding anything to the contrary in this Declaration, prior to the Class B Termination Date, Declarant and, after the Class B Termination Date, the Association may lease, license or otherwise grant rights to private parties to occupy (with or without charging rent or fees) portions of the Common Areas (not required for access to the Parcels and not required by applicable laws for parking for the Parcels) for commercial purposes and special events (e.g., rental to food truck operators) on such terms deemed appropriate by Declarant or the Association, as applicable, and the net income therefrom shall be applied first to Common Expenses for non-Foundational Items

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and then to Common Expenses for Foundational Items. Declarant and the Association shall have authority to abate or enjoin any trespass or encroachment upon the Common Areas at any time, by any reasonable means and with or without having to bring legal proceedings.

**4.4 Owners' Easements.** Subject to provisions of this Declaration, and except for any Restricted Areas, every Owner and such Owner's tenants, employees, guests, and invitees shall have a right and easement in and to the Common Areas for the uses for which they are established, which easement shall be appurtenant to and shall pass with the title to every Parcel.

**4.5 Extent of Owners' Rights.** The easements and rights of enjoyment in the Common Areas created hereby shall be subject to the following and all other provisions of this Declaration:

(a) Any agreements, documents and instruments recorded against the Common Areas prior to the date this Declaration is recorded with the Recorder;

(b) The Governing Documents;

(c) Any restrictions or limitations contained in any deed or other instrument conveying such Common Areas to the Association;

(d) Easements reserved or granted under this Declaration, shown on the Plat of the Property or reserved or granted in any deed or other instrument conveying such Common Areas to the Association;

(e) Easements granted by Declarant or the Association to Governmental Authorities or companies providing utility and communications services and to police, fire and other public officials and to employees of utility companies and communications companies serving the Property; and

(f) Declarant's and the Association's right to: (i) adopt Rules and Regulations pursuant to Section 5.9 regulating use and enjoyment of the Common Areas, including rules limiting the number of persons who may use the Common Areas; (ii) dedicate or transfer all or any part of the Common Areas, subject to any approval requirements as may be set forth in this Declaration; and (iii) designate areas and facilities of Common Areas as Public Areas or Restricted Areas.

**4.6 Enjoyment of Owners' Rights.** Subject to the terms of this Declaration and any Rules and Regulations, any Owner may extend the Owner's right of use and enjoyment of the Common Areas to the Owner's employees, guests, invitees, and tenants and the Owner's tenant's employees, guests, and invitees.

**4.7 Alienation of the Common Areas.** The Association may not encumber, sell or transfer title to the Common Areas owned directly or indirectly by the Association unless such encumbrance, sale or transfer has been approved by the vote or written consent of Owners holding more than fifty percent (50%) of the Class A voting rights, together with the written consent of the Class B member, if any exists; provided the Board may not encumber, sell or

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transfer a Common Area that would unreasonably interfere with the occupancy, use or access to a Parcel by the Owner thereof or such Owner's tenants, employees, guests or invitees.

**4.8 Public Areas.** Declarant, at the time Declarant designates Common Areas (including designated in this Declaration) or conveys Common Areas to the Association, or thereafter the Association, may designate certain portions of such Common Areas as Public Areas which may be used by members of the public as set forth in this Declaration, such designation or conveyance or as determined by the Board; provided, the designation of a Common Area as a Public Area may not be removed without, prior to the end of the Development Period, Declarant and, after the end of the Development Period, the vote or written consent of Owners holding more than fifty percent (50%) of the Class A voting rights, together with the written consent of the Class B member, if any exists. Such Public Areas may include, by way of example, walkways, trails, drives, parking, parks and open spaces.

**4.9 Restricted Areas.** During the Development Period, Declarant and, after the Development Period, the Association shall have the right from time to time to restrict the use and occupancy of portions of the Common Areas, or to restrict the times when such Common Areas may be used and occupied, in order to preserve, maintain, repair or replace such Common Areas, or to improve safety and security within such Common Areas or as otherwise reasonably determined by Declarant or the Board, as applicable; provided restrictions for a Common Area (i) may not unreasonably interfere with the occupancy, use or access to a Parcel by the Owner thereof or such Owner's tenants, employees, guests or invitees or (ii) must be uniformly applied to all Owners and, if a Public Area, members of the public.

## ARTICLE 5 USE RESTRICTIONS

**5.1 Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried on upon any Parcel, nor shall anything be done or placed on any Parcel which interferes with or jeopardizes the enjoyment of any Parcel or the Common Areas. No unlawful use shall be made of a Parcel nor any part thereof, and all Applicable Laws shall be observed. Without limiting the foregoing, the following uses are prohibited on any Parcel: residential, drive-through businesses, automobile-oriented uses, repair shops, and carwashes (as described in the City's zoning code). Columbia Gardens shall not be subject to RCW 64.90. If Declarant or the Association determines that a thing or use of any Parcel is noxious or offensive, such determination shall be conclusive. Declarant or the Association may direct that steps be taken as is reasonably necessary including, without limitation, the institution of legal action or the imposition of fines to abate any activity, remove anything or terminate any such use.

**5.2 Animals.** During the Development Period, Declarant and, after the Development Period, the Association may adopt Rules and Regulations governing dogs, cats and other animals use of the Common Areas. Such Rules and Regulations shall be designed to minimize damage and disturbance to Owners, tenants and occupants within the Common Areas, including Rules and Regulations requiring waste removal, leash controls, noise controls, and similar restrictions. Nothing in this provision shall prevent Declarant or the Association from requiring removal of any animal that presents an actual threat to health or safety or from requiring abatement of any animal constituting a nuisance or unreasonable annoyance.

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**5.3 Unsightly Conditions.** No unsightly conditions shall be permitted to exist on the exterior of any Parcel. Unsightly conditions shall include, without limitation, litter, junk, trash or other debris; broken or damaged furniture or plants; equipment, cans, bottles, ladders, trash barrels, and other such items. No construction debris or waste, plant or grass clippings or other debris of any kind shall be dumped, deposited or placed on any Common Area.

**5.4 Vehicles.** During the Development Period, Declarant and, after the Development Period, the Association may adopt Rules and Regulations governing parking, storage and maintenance of vehicles within the Common Areas. Without limitation, during the Development Period, Declarant and, after the Development Period, the Association may prohibit parking, storage and/or maintenance of vehicles within Common Areas that are not intended for such purposes.

**5.5 Drainage.** Following original grading of a Parcel, no drainage waters shall be diverted or blocked from their natural course so as to discharge upon any other Parcel, Common Area or right-of-way. Prior to making any alteration in the drainage system serving a Parcel, the Owner must make application to, and receive approval from, the City.

**5.6 Completion of Construction.** The construction of any Improvements on any Parcel shall be completed within twelve (12) months following the commencement of construction so as to present a finished appearance when viewed from any angle subject to delays resulting from severe weather conditions or other causes beyond the reasonable control of the Owner. The construction site shall be kept reasonably clean and in workmanlike order during the construction period. All unimproved Parcels shall be kept in a neat and orderly condition, free of brush, vines, weeds and other debris, and grass thereon shall be cut or mowed at sufficient intervals to prevent creation of a nuisance or fire hazard.

**5.7 Storm Drains.** In order to protect the environment, the following materials shall not be dumped into or allowed to enter any public or private storm water drainage system within the Property: petroleum products; trash; animal waste; chemicals and/or paint; steam cleaning waste; washing uncured concrete for cleaning and/or finishing purposes or to expose aggregate; laundry wastes or other soaps; sewage; heated water; chlorine; degreasers and/or solvents; bark or other fibrous material; antifreeze and/or other automotive products; lawn clippings, leaves or branches; animal carcasses; silt; acids or alkalis; recreational vehicle wastes; dyes; or construction materials. In addition, Owners shall take reasonable steps to minimize the runoff of landscaping chemicals such as pesticides, herbicides and fertilizers into storm drains.

**5.8 Pest Control.** No Owner shall permit anything or condition to exist upon any Parcel which shall induce, breed or harbor infectious plant diseases or noxious insects or vermin.

**5.9 Association Rules and Regulations.** In addition to the restrictions in this Declaration, from time to time, during the Development Period, Declarant and, after the Development Period, the Association, with the consent of the Class B Member, if any exists, may adopt, modify or revoke such Rules and Regulations governing the conduct of Persons and the operation and use of Parcels and the Common Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of all of the Parcels; provided such Rules and Regulations shall (a) have no material adverse effect on the title to any Parcel without

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the consent of the Owner thereof and (b) uniformly apply to all Owners and the Owners' tenants, employees, guests or invitees.

## **ARTICLE 6 MAINTENANCE OBLIGATIONS**

As a Common Expense, during the Development Period, Declarant and, after the Development Period, the Association shall maintain, repair, and replace the Common Areas in good condition and repair and in conformance with the Development-Wide Standards and all easements or other agreements with the City or County related to the Common Areas, which obligations under all such easements or other agreements shall be performed by the Association. Such maintenance, repair and replacement shall include, without limitation: (i) removing all litter, trash, refuse and waste from the Common Areas; (ii) maintaining all landscaping, including lawn and garden care and tree and shrub pruning and mulching contained within the Parcel; (iii) irrigating landscaped areas within the Common Areas; (iv) keeping Common Area exterior lighting in proper working order; (v) painting or staining, as appropriate, and regular maintenance and repair of the Common Areas; (vi) keeping all Common Areas signage in good condition and repair; and (vii) keeping parking areas, driveways, curbs, and gutters in good condition and repair and free of potholes, excessive cracks and weeds.

## **ARTICLE 7 DESIGN STANDARDS; PARCEL MAINTENANCE**

**7.1 Design and Construction of Improvements.** All Improvements made to a Parcel must comply with the Development-Wide Standards. During the Development Period, Declarant reserves the right to review and approve all construction and modifications of the Improvements for compliance with the Development-Wide Standards. Rights reserved under this Section 7.1 to Declarant may be exercised directly by Declarant or by a design review committee created by Declarant to act on its behalf. At the end of the Development Period, all reserved rights for design review shall be automatically assigned to the Association, and all reserved design review rights. Declarant may earlier assign its rights to the Association or other entity, in whole or in part, at any time, but is not obligated to do so.

**7.1.1 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 Declarant or the Association 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 Declarant or the Association.

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Declarant or the Association, 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 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 design review to which any excess fees shall be contributed.

**7.1.2 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;
- (b) replacement of roof or other parts of building other than with duplicates of the original material;
- (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; and
- (g) any significant modifications to the landscaping and any removal or substantial pruning of trees or plants

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

**7.2 Owner Maintenance of Parcel.** Each Owner shall maintain, repair and replace the Owner's Parcel and Improvements thereon (other than any Common Areas located thereon) in good condition and repair and in conformance with the Development-Wide Standards. Such maintenance shall include, without limitation: (i) promptly removing all litter, trash, refuse and waste from the Parcel; (ii) maintaining all landscaping, including lawn and garden care and tree and shrub pruning and mulching contained within the Parcel; (iii) irrigating landscaped areas within the Parcel; (iv) keeping exterior lighting within the Parcel (i.e., exclusive of lighting in Common Areas to be maintained by the City or the Association, as applicable) in proper working order; (v) painting or staining, as appropriate, and regular maintenance and repair of the exterior of all Improvements on the Parcel; (vi) keeping all signage (exclusive of Common Area signage to be maintained by the Association) that is visible from outside each building in good condition

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and repair; and (vii) keeping parking areas, driveways, curbs, gutters and private lanes in good condition and repair and free of potholes, excessive cracks and weeds.

**7.3 Corrective Maintenance.** If an Owner fails to maintain its Parcel in conformance with the Development-Wide Standards and pursuant to the requirements of this Declaration, Declarant or the Association may perform the Owner's maintenance responsibilities, after giving the responsible Owner reasonable notice and an opportunity to correct its deficient maintenance. In such event, all costs of the maintenance performed by Declarant or the Association on behalf of the Owner shall be assessed only against such Owner as an Individual Assessment.

## **ARTICLE 8 ASSOCIATION; DEVELOPMENT RIGHTS**

**8.1 Organization.** No later than the end of the Development Period, Declarant shall form the Association to be the association of all of the Owners within Columbia Gardens. The Association shall have such property, powers and obligations as are set forth in this Declaration for the benefit of Columbia Gardens and all Owners of Parcels located therein. The Articles of the Association will provide for its perpetual existence but, if the Association is at any time dissolved, as a condition to such dissolution, the Association's obligations hereunder, including with respect to the operation and maintenance of the Common Areas, shall be assigned to and assumed by a non-profit corporation, association, trust, or other organization devoted to purposes consistent with such obligations. In that event, all of the property, powers and obligations of the Association existing immediately prior to its dissolution shall automatically vest in such successor, and such vesting shall thereafter be confirmed by appropriate conveyances and assignments by the original Association.

**8.2 Membership.** Every Owner of one or more Parcels within the Property shall, upon formation of the Association, be a member of the Association during the entire period of such Owner's ownership. Such membership shall commence, exist and continue simply by virtue of such ownership, shall expire automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership.

**8.3 Voting Rights.** Upon formation of the Association, the voting rights within the Association shall be allocated as follows:

**8.3.1 Allocation of Votes.** Each Parcel shall be allocated the number of votes that equal the Equivalent Units determined for the Parcel pursuant to the attached **Exhibit B**.

**8.3.2 Classes of Voting Membership.** The Association shall have two classes of voting membership:

(a) **Class A.** Class A Members shall be all Owners (including Declarant). Each Class A Member shall be entitled to voting rights for each Parcel owned by such Class A Member as computed in accordance with Section 8.3.1 above.



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(b) **Class B.** The sole Class B Member shall be Declarant. The Class B Member shall have one Class B vote and shall have such voting rights with respect to such Class B vote, including the right to approve, or withhold approval of, certain actions, as are expressly provided to the Class B Member in the relevant sections of this Declaration and the Governing Documents. The Class B membership shall cease on the Class B Termination Date.

**8.3.3 Voting Member.** Each Class A Member shall designate in writing to the secretary of the Association a Voting Member who shall be responsible for casting all votes attributable to each Parcel owned by that Class A Member; provided, however, that if any Parcel is subject to a condominium declaration, the president of the condominium association for such Parcel or the president's designee shall be the Voting Member for such Parcel subject to a condominium. The Association is entitled to rely on a written designation delivered to the secretary until a new written designation appointing a different Voting Member is delivered to the secretary of the Association. A Voting Member will cast all votes attributable to its Parcel on matters requiring a membership vote. Voting Members may, but need not, be Owners. If any Class A Member fails to designate a Voting Member, the Class A Member's votes shall not be counted.

**8.3.4 Multiple Owners; Ownership by Entities.** If a Parcel is owned by more than one Person, all co-Owners shall share the privileges of membership attributable to the Owner of such Parcel, subject to reasonable provisions governing such membership in the Bylaws, and such co-Owners shall appoint a single Voting Member. All such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. Membership rights of an Owner that is not a natural Person may be exercised by any officer, director, partner or trustee, manager or member or by an individual designated from time to time by the Owner in a written notice to the secretary of the Association; provided, however, that the votes of any such entity Owner shall be cast by the Owner's designated Voting Member.

**8.3.5 Voting Requirements.** Except as otherwise expressly provided in this Declaration, all decisions of the Association requiring the consent or approval of the Owners shall require the approval or consent of (a) Owners holding more than fifty percent (50%) of the Class A voting rights and (b) the Class B member, if any exists. For clarification, prior to formation of the Association, the Owners shall not have any voting rights except under Section 14.4.2.

**8.4 General Powers and Obligations.** Subject to the terms, provisions and limitations of this Declaration, the Association shall have, exercise and perform all of the following powers, duties and obligations:

(a) The powers, duties and obligations granted to the Association by this Declaration and the other Governing Documents.

(b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Washington.

(c) Any additional or different powers, duties and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Property.

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The powers and obligations of the Association may from time to time be amended, repealed, enlarged or restricted by changes in this Declaration made in accordance with the provisions in this Declaration, accompanied by any required changes in the Articles or Bylaws made in accordance with such instruments and with the nonprofit corporation laws of the State of Washington.

**8.5 Specific Powers and Duties.** In each case, subject to the terms, provisions and limitations of this Declaration, the powers and duties of the Association shall include, without limitation, the following:

**8.5.1 Maintenance.** The Association shall provide for improvement, maintenance, repairs, and replacement of the Common Areas and the other portions of the Property as provided in Article 6 and other provisions of this Declaration.

**8.5.2 Insurance.** The Association shall obtain and maintain in force certain policies of insurance as provided in Article 12.

**8.5.3 Restoring Damaged Improvements.** In the event of damage to or destruction of Common Areas or other property which the Association insures, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes. If insurance proceeds are sufficient to cover the costs of reconstruction, the Board shall cause such reconstruction to be completed. If insurance proceeds are not available or insufficient to cover the costs of reconstruction, the Board may levy Special Assessments to cover the shortfall. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by the Association for the benefit of the Owners.

**8.5.4 Rulemaking.** Subject to Section 5.9, the Association shall make, establish, promulgate, amend and repeal Rules and Regulations as necessary or desirable.

**8.5.5 Assessments.** The Association shall adopt budgets and impose and collect Assessments as provided in Article 10.

**8.5.6 Development-Wide Standards.** The Association shall have the authority to establish a minimum Development-Wide Standards of maintenance and aesthetic appearance for the Property, including, without limitation, the exterior of Parcels and Improvements thereon and Common Areas; provided, however, that such Development-Wide Standards shall (a) have no material adverse effect on the title to any Parcel without the consent of the Owner thereof and (b) be uniformly applied to all Parcels. The Association shall have the authority to enforce such Development-Wide Standards including, without limitation, the right to levy fines which if unpaid shall constitute an Individual Assessment and a lien on the violator's property as set forth in this Declaration. The Association also shall have the right to abate any violations or nonconforming use or activity, which shall not be deemed a trespass, and the costs of which shall be recovered by Individual Assessments.

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**8.5.7 Enforcement.** The Association may perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of this Declaration and the Rules and Regulations.

**8.5.8 Employment of Agents, Advisers and Contractors.** The Association may employ the services of any Person as managers, hire employees to manage, conduct and perform the business, obligations and duties of the Association and obtain advice and services from such Persons as may be appropriate including, but not limited to, landscape architects, recreational facility professionals, architects, planners, attorneys and accountants, and contract for or otherwise provide for all services necessary or convenient for the management, maintenance and operation of Columbia Gardens; provided, however, that the Association, acting through the Board, shall ensure that any professional manager for Columbia Gardens shall have experience in managing comparable communities, as reasonably determined by the Board.

**8.5.9 Borrow Money.** The Association may borrow and repay moneys for the purpose of maintaining and improving the Common Areas and, subject to Section 4.7, encumber the Common Areas as security for the repayment of such borrowed money.

**8.5.10 Hold Title and Make Conveyances.** The Association may acquire, hold title to and convey, with or without consideration, real and personal property and interests therein, and shall accept any real or personal property, leasehold or other property interests within the Property conveyed to the Association by Declarant which are in the interests of Columbia Gardens as reasonably determined by Declarant.

**8.5.11 Transfer, Dedication and Encumbrance of Common Areas.** Except as otherwise provided in Section 4.7, the Association may, to the extent it determines it to be in the best interests of Columbia Gardens, sell, transfer or encumber all or any portion of the Common Areas, and dedicate or transfer all or any portion of the Common Areas to any public agency, authority, or utility for public purposes.

**8.5.12 Joint Use Agreements.** The Association may enter into joint use agreements with other associations or Persons relating to the joint use of recreational or other facilities, including the joint use of the Common Areas. The Association may enter into agreements with a third party to provide joint use, management, and administrative services, and to perform such other community related activities as may be agreed upon by the Association and such third party. The expense of providing such services by the Association shall be allocated by agreement between the parties.

**8.5.13 Assumption of Other's Maintenance Responsibility.** The Association may, but shall not be obligated to, assume maintenance responsibility for property which is the responsibility of another Person (e.g., a local or state governmental authority) other than an Owner if, in the discretion of the Board, the maintenance of such property provides a benefit to Columbia Gardens and/or such property is not otherwise being maintained in accordance with the Development-Wide Standards. The cost of maintenance assumed in accordance with this section may be a Common Expense to be allocated among all Owners, but shall be an Individual Assessments levied only against the benefited parties if such maintenance materially benefits only certain Parcels.

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**8.5.14 Security.** The Association may, but shall not be obligated to, maintain or support certain activities within Columbia Gardens designed to make the Property more enjoyable or secure than it otherwise might be. Neither the Association, the Declarant nor any managing agent shall be considered insurers or guarantors of security or safety within the Property nor shall either be held liable for any loss or damage by reason of its failure to provide adequate security or the ineffectiveness of security or safety measures undertaken. No representation or warranty is made that any system or measure cannot be compromised or circumvented, nor that any such system or measure will in all cases prevent loss or provide the detection or protection for which it is designed or intended. The Association, the Board and any managing agent are not insurers and each Person using the Common Areas or entering the Property assumes all risks for personal injury and loss or damage to property resulting from acts of third parties.

**8.5.15 Other Services.** The Association shall take such actions and provide such services as are set forth in any Approved Budget. The Association may also provide or contract for such services as the Board may reasonably deem to be of benefit to the Property.

**8.5.16 Relations with Other Property.** The Association may enter into contractual agreements or covenants to share costs with other properties or facilities or for maintaining and/or operating shared or mutually beneficial facilities.

**8.5.17 Implied Rights and Obligations.** The Association may exercise any other right or privilege reasonably to be implied from the existence of any right or privilege expressly given to the Association under this Declaration or reasonably necessary to effectuate any such right or privilege.

**8.6 Declarant Powers.** Notwithstanding anything in this Declaration to the contrary, during the Development Period, Declarant shall perform all obligations of the Association under this Declaration with respect to the Common Areas and Declarant shall have all powers, rights and remedies of the Association and/or the Board under this Declaration, including, without limitation, the right to adopt Rules and Regulations, adopt budgets and levy Assessments.

**8.7 Liability.** A member of the Board or an officer, employee, agent or committee member of the Association or Declarant shall not be liable to the Association or any Owner for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for acts of fraud, gross negligence or intentional wrongful acts. In the event any member of the Board or any officer of the Association or Declarant is made a party to any proceeding because the individual is or was a director or officer of the Association or the Declarant for Columbia Gardens and the act or omission forming the basis for proceeding was within the scope of the authority conferred upon him or her by this Declaration, the Owners shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law.

**8.8 Financial Management.** Notwithstanding anything herein to the contrary, the Association shall exercise all rights under this Article 8 in substantial compliance with the Approved Budget; provided the foregoing shall not limit the right of the Association to levy Special Assessments or adopt supplemental budgets under this Declaration.

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**8.9 Development Rights.** During the Development Period, the Declarant reserves the following rights (collectively, the “**Development Rights**”): (a) designate Common Areas on Parcels it owns and (b) change the boundaries of, and subdivide or combine, any Parcels that it owns. In connection with the exercise of its Development Rights to change boundaries, subdivide or combine Parcels, Declarant shall execute and record an amendment to the Declaration and the Plat reflecting any necessary changes to those documents, including but not limited to, listing and showing each new or altered Parcels and its Equivalent Units.

## ARTICLE 9 BOARD OF DIRECTORS

Upon formation of the Association, the powers and duties of the Association and the affairs of the Association shall be conducted by its Board as duly elected in accordance with this Article 9 and the Bylaws.

**9.1 Selection of the Board.** Upon formation of the Association, the Owner of each Parcel (other than the Common Area Parcels) shall designate a member to the Board for such Parcel. Each person so appointed shall serve at the pleasure of the Owner who appointed that person. All members of the Board shall be Owners or, if the Owner is an entity: any officer, director, or employee of a corporation; any partner or employee of a partnership; and member, manager or employee of a limited liability company; or any trustee or beneficiary of a trust. The Board shall elect officers in accordance with the procedures provided in the Bylaws. The members of the Board and officers shall take office upon appointment or election.

**9.2 Powers of the Board.** Except as provided in this Declaration, the Board shall at all times act on behalf of the Association. The Board may exercise all powers of the Association, except as otherwise provided in this Declaration.

**9.3 Voting Requirements.** Except as provided in this Declaration, at all meetings of the Board, a majority of the directors shall constitute a quorum for the transaction of business, and the acts of the majority of the directors present at a meeting at which a quorum is present shall be the acts of the Board. If there is less than a quorum present at any meeting of the Board, the majority of those present may adjourn the meeting from time to time. At the adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted without further notice.

**9.4 Managing Agent.** Subject to the consent of the Class B Member, if any exists, the Board may contract with an experienced professional managing agent to assist the Board in the management and operation of the Columbia Gardens and may delegate such of its powers and duties to the managing agent as it deems to be appropriate, except as limited herein. Any contract with a managing agent shall have a term no longer than one year (but may be renewable by agreement of the parties for successive one-year periods) and shall be terminable by the Board without payment of a termination fee, either (1) for cause, on 30 days’ written notice, or (2) without cause, on not more than 90 days’ written notice.

**9.5 Limitations on Board Authority.** The Board shall not act on behalf of the Association to amend or terminate this Declaration in any manner that requires the vote or

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approval of the Owners or Eligible Mortgagees or to elect members of the Board or determine the qualifications, powers, and duties, or terms of office of members of the Board.

## ARTICLE 10 ASSESSMENTS

**10.1 Power to Assess.** Declarant and the Association shall levy Assessments as required to fund its obligations and liabilities hereunder and under the other Governing Documents. The Assessments levied pursuant to this Declaration shall be used to fulfill the obligations and liabilities of Declarant and the Association hereunder and under the other Governing Documents.

**10.2 Apportionment of Assessments.** The Owner of each Parcel, other than Parcels exempted from assessment pursuant to Section 10.4, shall pay their allocated interest, as calculated pursuant to the attached **Exhibit B**, of the General Assessments and Special Assessments, commencing as provided in the attached **Exhibit B**.

### 10.3 Types of Assessments.

**10.3.1 General Assessments.** Declarant and the Association is hereby authorized to levy General Assessments against all Parcels to fund the Common Expenses. The amount of the General Assessment allocated to each Parcel shall be determined in the manner described in Section 10.2. In determining the General Assessments, Declarant or the Board may consider any Assessment income expected to be generated from any changes in the status of the then-existing Parcels anticipated during the fiscal year. From and after the fifth (5<sup>th</sup>) anniversary of the recording of this Declaration until the end of the Development Period, Declarant or, after the end of the Development Period, the Board shall from time to time and at least annually prepare an operating budget for Columbia Gardens and the Association, taking into account the current costs of maintenance and services and future needs of Columbia Gardens and the Association and any previous over Assessment. The budget shall provide for such reserve or contingency funds as Declarant or the Board, as applicable, deems necessary or as may be required by law. Not less than sixty (60) days before the end of the fiscal year, prior to the end of the Development Period, Declarant or, after the end of the Development Period, the Board shall prepare and adopt a budget for the Association for the coming year. Within thirty (30) days after the adoption of a final budget by Declarant or the Board, as applicable, a copy of the final budget shall be sent to each Owner of a Parcel, notice of the amount of the General Assessment to be levied pursuant to such budget, and, after the Development Period, notice of a meeting to consider ratification of the budget. Such meeting shall be held not less than fourteen (14) nor more than sixty (60) days from the mailing of such materials. Prior to the end of the Development Period, the budget and assessments shall not require the consent of Owners of the Parcels. After the end of the Development Period, the final budget shall be ratified unless disapproved by the Class B Member, if such exists, or unless disapproved at a meeting by Owners of Parcels representing at least sixty-seven percent (67%) of the total Class A voting rights in the Association. Such ratification shall be effective whether or not a quorum is present. The budget adopted by the Declarant prior to the end of the Development Period and the budget ratified by the Board, Class B Member, if such exists, and Owners of Parcels after the end of the Development Period, shall be referred to herein as the “*Approved Budget*.” If an Approved

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Budget provides to be inadequate for any reason, prior to the end of the Development Period, Declarant and, after the end of the Development Period, the Board may supplement the budget and adjust the Assessments against the Parcels from time to time during the year; provided any such supplemental budget shall be subject to ratification as provided in this Section 10.3.1 for regular annual budgets.

**10.3.2 Failure to Ratify Budget.** If any budget after the end of the Development Period is not ratified pursuant to Section 10.3.1, the prior year's budget (including reserves) shall remain in effect, with automatic increases for fixed expenses and for inflationary increases for other expenses until a new budget is ratified.

**10.3.3 Special Assessments.** Subject to the ratification procedure described in Section 10.3.1, Declarant and the Board may levy during any fiscal year a Special Assessment against Parcels, applicable to that year only, for the purpose of covering all or any part of the cost of any construction or reconstruction, unexpected repair, or acquisition or replacement of a described capital improvement, or for any other one-time expenditure not to be paid for out of General Assessments. Special Assessments shall be apportioned as provided in Section 10.2 and may be payable in lump sum or in installments, with or without interest or discount, as determined by the Board.

**10.3.4 Individual Assessments.** Without limiting the required Individual Assessments provided for elsewhere in this Declaration, for any Common Expense or any part of a Common Expense benefiting fewer than all of the Parcels Declarant or the Board, as applicable shall endeavor in good faith to assess such expenses exclusively against the Parcels benefited as an Individual Assessment. Individual Assessments shall also include Assessments levied against any Parcel (a) to reimburse Declarant or the Association for costs incurred in bringing such Parcel or its Owner into compliance with the provisions of this Declaration or the Rules and Regulations, (b) for fines or other charges imposed pursuant to this Declaration for violation thereof and (c) to reimburse Declarant or the Association for costs incurred as the result of the Owner of a Parcel or any of its, his or her guests, tenants, licensees, agents, or employees damaging any of the Common Elements as a result of vandalism, intentional damage, negligence, or misuse. This paragraph shall not be used to reduce the obligation of any insurer to Declarant or the Association. Unless otherwise provided by Declarant or the Board, as applicable, an Individual Assessment shall be due thirty (30) days after Declarant or the Board, as applicable has given written notice thereof to the Owner subject to the Individual Assessment.

**10.4 Exempt Property.** The following property shall be exempt from payment of General Assessments and Special Assessments:

- (a) Common Areas Parcels;
- (b) Any property dedicated to and accepted by any Governmental Authority or public utility; and
- (c) Any other property owned by the Association.

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**10.5 Operations Fund.** After the end of the Development Period, the Association shall keep all funds received by it as Assessments, other than reserves, separate and apart from its other funds, in an Operations Fund.

**10.6 Commencement of Assessment Obligation; Time of Payment.** The obligation to pay Assessments under this Declaration shall commence as to each Parcel as provided in the attached **Exhibit B**.

**10.7 Payment of Assessments.** Assessments shall be not less frequently than quarterly in such manner and on such dates as Declarant or the Board, as applicable, may establish. If any Owner is delinquent in paying any Assessments or other charges levied on the Owner's Parcel more than twice in any fiscal year, Declarant or the Board, as applicable, may require the outstanding balance on all Assessments for the remainder of such fiscal year to be paid in full immediately.

**10.8 Personal Obligations for Assessments.** Declarant, for each Parcel owned by it within the Property, hereby covenants, and each Owner of any Parcel by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant to pay, prior to the end of the Development Period, to Declarant and, after the end of the Development Period, to the Association all Assessments or other charges as may be fixed, established and collected from time to time in the manner provided in this Declaration. Such Assessments, charges and other costs shall also be the personal obligation of the Person who was the Owner of such Parcel at the time when the Assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 11.

**10.9 No Waiver.** Failure of Declarant or the Board to fix Assessment amounts or rates or to notify each Owner an Assessment shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner shall continue to pay Assessments on the same basis as during the last year for which an Assessment was made, if any, until a new Assessment is levied, at which time Declarant or the Association, as applicable, may retroactively assess any shortfalls in collections.

**10.10 No Option to Exempt.** No Owner may exempt itself from liability for Assessments by non-use of Common Areas, abandonment of its Parcel, or any other means. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of Declarant, the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

**10.11 Certificate.** Upon written request, prior to the end of the Development Period, Declarant and, after the end of the Development Period, the Association shall furnish to any Owner liable for any type of Assessment or any Mortgagee of a Parcel a certificate in writing setting forth whether such Assessment has been paid. Such certificate shall be conclusive evidence of payment. The advance payment of a reasonable processing fee for the issuance of such certificate may be required.



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**10.12 Inspection of Books and Records.** After the end of the Development Period, the Association shall cause to be kept complete and accurate books and records of the receipts and expenditures of the Association, in a form that complies with standard accounting principles. Upon reasonable written request, the Association shall make available to Owners, Mortgagees, prospective purchasers and their prospective mortgagees, and the agents or attorneys of any of them, current copies of the books, records, and financial statements of the Association, and the most recent annual audited financial statement, if one is prepared. “*Available*” shall mean available for inspection upon request, during normal business hours or under other reasonable circumstances. The Association may require the requesting party to pay a reasonable charge to pay the cost of making the copies.

**10.13 Fiscal Year.** The fiscal year under this Declaration and for the Association will be from January 1<sup>st</sup> through December 31<sup>st</sup> of each calendar year.

## **ARTICLE 11 ENFORCEMENT**

**11.1 Violation of General Protective Covenants.** In the event any Owner shall violate any provisions of the Governing Documents, then, prior to the end of the Development Period, Declarant may and, after the end of the Development Period, the Association acting through the Board shall notify the Owner in writing of any such specific violations. If the Owner is unable, unwilling or refuses to comply with the specific directives for remedy or abatement, or the parties cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be heard and after fifteen (15) days’ prior written notice to the Owner (provided no notice or opportunity to be heard shall be required in the event of an emergency threatening personal injury or material property damage), then, prior to the end of the Development Period, Declarant and, after the end of the Development Period, the Association acting through the Board, shall have the right to do any or all of the following:

(a) Assess reasonable fines against such Owner in the manner and amount Declarant or the Board, as applicable, deems appropriate in relation to the violation, which fines shall constitute Individual Assessments for purposes of this Declaration;

(b) Enter the offending Parcel and remove the cause of such violation, or alter, repair or change the item which is in violation of this Declaration in such a manner as to make it conform thereto, in which case Declarant or the Association, as applicable, may assess such Owner for the entire cost of the work done, which amount shall be payable to the Declarant or the Association, as applicable, as an Individual Assessment, provided that no items of construction shall be altered or demolished in the absence of judicial proceedings;

(c) Suspend the voting rights and/or the right to use the Common Areas for the period that the violations remain unabated, provided no Owner shall be deprived of access to and from its Parcel in the absence of a foreclosure thereof or court order to such effect; and

(d) Bring suit or action against the Owner to enforce this Declaration.

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**11.2 Lien for Assessments.** Declarant and the Association shall have a lien against each Parcel to secure payment of delinquent Assessments, as well as interest, late charges (subject to the limitations of Washington law), and costs of collection (including attorneys' fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior and (b) the lien or charge of any recorded first Mortgage (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value, but not with respect to assessments that became delinquent before such mortgage was recorded. Such lien may be enforced by suit, judgment, and judicial or non-judicial foreclosure. Sale or transfer of any Parcel shall not affect the Assessment lien or relieve such Parcel from the lien for any subsequent Assessments. However, the sale or transfer of any Parcel pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such Assessments first due after the first Mortgage was recorded and prior to the Mortgagee's foreclosure. The subsequent Owner of the foreclosed Parcel shall not be personally liable for Assessments on such Parcel due prior to such acquisition of title. Such unpaid Assessments shall be deemed to be Common Expenses collectible from Owners of all Parcels subject to Assessments, including such acquirer, its successors and assigns.

**11.3 Default in Payment of Assessments; Enforcement of Lien.** If an Assessment or other charge levied under this Declaration is not paid within thirty (30) days of its due date, such Assessment or charge shall become delinquent and shall bear interest from the due date at the rate set forth below. In such event Declarant or the Association, as applicable, may exercise any or all of the following remedies:

(a) Suspend such Owner's right to use the Common Areas until such amounts, plus other charges under this Declaration, are paid in full and may declare all remaining periodic installments of any General Assessment and any Special Assessment for the fiscal year immediately due and payable. In no event, however, shall any Owner be deprived of access to and from the Owner's Parcel in the absence of a foreclosure thereof or court order to such effect.

(b) Bid for the Parcel at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Parcel. The lien shall be foreclosed in accordance with the provisions regarding the foreclosure of liens against real property under Washington law. While a Parcel is owned by the Association following foreclosure: (i) no Assessment shall be levied on it and (ii) each other Parcel shall be charged, in addition to its usual Assessment, its pro rata share of Assessments that would have been charged such Parcel had it not been acquired by the Association.

(c) Bring an action to recover a money judgment for unpaid Assessments under this Declaration without foreclosing or waiving the lien described in Section 11.2. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

(d) Exercise any other remedy available to it by law or in equity.

**11.4 Interest, Expenses and Attorneys' Fees.** Any amount not paid to Declarant or the Association when due in accordance with this Declaration shall bear interest from the due date until paid at a rate of 12% per annum, but not to exceed the lawful rate of interest under the

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laws of the State of Washington. A late charge may be charged for each delinquent Assessment in an amount established from time to time by Declarant or the Board, as applicable. In the event Declarant or the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien established from time to time by resolution of the Board. In the event Declarant or the Association shall bring any suit or action to enforce this Declaration or incurs any costs or collection agency charges to collect any money due under this Declaration or to foreclose a lien, the Owner-defendant shall pay to Declarant or the Association as applicable, all costs and expenses incurred by it in connection with such suit or action, with or without litigation, including attorneys' fees. The prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof or in connection with any bankruptcy proceedings or special bankruptcy issues or remedies.

**11.5 Non-Exclusiveness of Remedies.** An election by Declarant or the Association to pursue any remedy provided for violation of this Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted under this Declaration. The remedies provided in this Declaration are not exclusive but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law to Declarant and the Association. In addition, any aggrieved Owner may bring an action against another Owner or the Association to enjoin, abate or remedy any violation of this Declaration by appropriate legal proceedings.

#### **11.6 Dispute Resolution.**

**11.6.1 Mediation.** In the interest of attempting to resolve disputes without the expense and uncertainty of litigation, any claim, controversy or dispute by or among the Declarant, Association or one or more Owners, or any of them, arising out of or related to this Declaration or any of the other Governing Documents, shall be subject to mediation, except as otherwise provided herein. Such mediation shall be non-binding but good faith participation in the mediation shall be a condition precedent to having the dispute resolved by litigation.

**11.6.2 Selection of Mediator.** The mediation shall be conducted by a single mediator selected by mutual agreement of the parties. The mediator selected shall be neutral and unbiased, except to the extent the mediator's prior relationship with any party is fully disclosed and consented to by the other party or parties. If the parties are unable to agree upon the mediator within twenty (20) business days after a party's demand for mediation, upon application of any party, the regional administrator for the American Arbitration Association responsible for King County, Washington shall designate the mediator.

**11.6.3 Mediator's Fees.** The fees charged by the mediator shall be shared equally by the parties to the mediation. The mediator's compensation shall include compensation for materials, travel, office assistance and incidentals necessary for the mediator to provide the mediation services.

**11.6.4 Excluded Matters.** Notwithstanding the foregoing, the following matters shall not be subject to mediation under this Section 11.6:

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(a) actions relating to the collection of fees, Assessments, fines and other charges imposed or levied by Declarant or the Association;

(b) actions to enforce any order, decision or award rendered pursuant to litigation properly brought pursuant to this Section 11.6;

(c) any action by Declarant, the Association or any Owner to obtain equitable relief (e.g., temporary restraining order, injunction, or specific performance) in order to maintain the status quo and preserve Declarant's, the Association's or the Owner's ability to enforce the provisions of this Declaration;

(d) any action for declaratory or injunctive relief which seeks a determination as to applicability, enforcement, clarification, or interpretation of any provisions of the Declaration;

(e) any action between Owners, which does not include Declarant or the Association as a party, if such suit asserts a claim which would constitute a cause of action independent of the Governing Documents;

(f) any action in which any indispensable party is not subject to this Section 11.6;

(g) any action as to which any applicable statute of limitations would expire within 120 days of a demand for mediation having been given, unless the party or parties against whom the claim is made agree to toll the statute of limitations as to such claim for such period as may reasonably be necessary to comply with the provisions of this Section 11.6;

(h) any action between an Owner and a builder of improvements within such Owner's Parcel; and

(i) any action between an Owner and any tenant, subtenant, or other occupant, guest, or user of such Owner's Parcel.

**11.6.5 Survival.** The provisions of this Section 11.6 shall survive the transfer by any party of its interest or involvement in Columbia Gardens and any Parcel therein.

## **ARTICLE 12 INSURANCE**

**12.1 Owner's Insurance; Damage.** Each Owner of a Parcel (other than Declarant) shall carry property insurance for the full replacement cost of all insurable Improvements on the Owner's Parcel (other than Common Elements located on such Parcel), less a reasonable deductible. No Owner is required to carry earthquake or flood insurance. If an Owner elects to repair or to reconstruct such Improvements following a casualty, all such work shall be completed promptly and with due diligence. If an Owner elects not to repair or to reconstruct such Improvements, the Owner shall, within a reasonable time following the casualty as determined by the Board, cause the Improvements to be demolished, shall remove all related debris, and shall

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grade landscape and secure the site. All costs which are not covered by insurance proceeds are the responsibility of the appropriate Owner.

**12.2 Association Insurance.** From and after the end of the Development Period, the Association shall maintain the following insurance as a Common Expense:

**12.2.1 Property.** The Association shall obtain and maintain property insurance on the Common Areas for which it has assumed responsibility for maintenance, repair and/or replacement. The face amount of the policy shall be sufficient to cover the full replacement cost of the insured property.

**12.2.2 Liability.** The Association shall maintain a commercial general liability policy, insuring the Association and its members for damage or injury caused by the negligence of the Association, or its members, employees, agents or contractors acting on its behalf. If generally available at a reasonable cost, the policy shall have at least a \$1,000,000 combined single limit per occurrence or in the aggregate.

**12.2.3 Fidelity.** At the election of the Board, the Association may maintain fidelity insurance, if generally available at reasonable cost, covering all persons responsible for handling Association funds with such amounts of coverage as determined by the Board.

**12.2.4 Directors and Officers.** At the election of the Board, the Association shall maintain directors and officers liability insurance coverage with such amounts of coverage as determined by the Board, insuring the Association and its officers, directors and committee members (former, present and future) from liability for actions or decisions for which the Association has the duty to indemnify them.

**12.2.5 Standards.** All insurance coverage obtained by the Association shall (i) be written with a company authorized to do business in Washington; (ii) be written in the name of the Association as trustee for the benefited parties; (iii) vest in the Board exclusive authority to adjust losses; provided that a Mortgagor having an interest in such losses may participate in settlement negotiations; (iv) provide that it will not be brought into contribution with insurance purchased by individual Owners, occupants or other Mortgagors; (v) if for property insurance, have inflation guard endorsements, if reasonably available; (vi) if containing a co-insurance clause, have an agreed amount endorsement, if reasonably available; (vii) if available, provide for a certificate of insurance to be furnished upon request; (viii) if available, provide that the Association shall be given not less than thirty (30) days' notice prior to any cancellation, non-renewal or substantial modification. The Association shall conduct an annual review of the sufficiency of its insurance coverage by one or more qualified persons, at least one of whom must be familiar with insurable replacement costs in Western Washington.

**12.2.6 Employees.** If appropriate, the Association shall also obtain worker's compensation and employer's liability coverage to the extent required by law, and such other insurance as the Board deems necessary and advisable.

**12.2.7 General Terms.** The policies maintained by the Association may contain reasonable deductibles which shall be disregarded in determining whether the insurance meets the coverage requirements hereunder. In the event of an insured loss, the deductible shall

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be treated as a Common Expense in the same manner as the premiums for the applicable insurance. However, if the Board reasonably determines, after notice and an opportunity to be heard under the Bylaws, that the loss results from negligence or willful misconduct of one or more Owners, then the Board may assess the full amount of such deductible against such responsible Owners.

### **ARTICLE 13 MORTGAGEES**

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Parcels. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

**13.1 Subordination of Lien to Mortgages.** The lien of the Assessments or charges provided for in this Declaration shall be subordinate to the lien of any first Mortgage on such Parcel which was made in good faith and for value and which was recorded prior to the date on which the Assessment sought to be enforced became delinquent. Sale or transfer of any Parcel shall not affect the Assessment lien, but the sale or transfer of any Parcel which is subject to any mortgage or deed of trust pursuant to a decree of foreclosure or nonjudicial sale thereunder shall extinguish any lien of an Assessment that became delinquent after the recording of the Mortgage; provided such unpaid Assessments shall be deemed to be Common Expenses collectible from Owners of all Parcels subject to Assessments, including the acquirer of any Parcel pursuant to a foreclosure or nonjudicial sale. Such sale or transfer, however, shall not release the Owner of a Parcel from liability for any Assessments or charges thereafter becoming due or from the lien of such Assessments or charges thereafter becoming due.

**13.2 Notification of Eligible Mortgagee.** If an Eligible Mortgagee has requested notice in writing from, prior to the end of the Development Period, Declarant or, after the end of the Development Period, the Association, Declarant or the Board, as applicable, shall notify such Eligible Mortgagee of any Parcel of any default in performance of this Declaration by the Owner which is not cured within sixty (60) days after notice of default to the Owner. Any Eligible Mortgagee shall, upon written request, also be entitled to receive written notice of all meetings of the Association and be permitted to designate a representative to attend such meetings.

**13.3 Notice to Association.** Upon request, each Owner shall be obligated to furnish to Declarant or the Association the name and address of the holder of any Mortgage encumbering such Owner's Parcel.

### **ARTICLE 14 MISCELLANEOUS PROVISIONS**

**14.1 No Implied Obligations.** Except as expressly provided herein, nothing in this Declaration shall be construed to require Declarant or any successor to subject additional property to this Declaration or to improve or develop any of the Property (including Common Areas) or to do so for any particular uses.

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**14.2 Additional Covenants.** The terms of this Declaration shall govern and control over any conflicting or inconsistent terms in any declaration of covenants, conditions and restrictions, declaration of condominium or other easements, agreements or other instrument affecting any portion of the Property prior to the Effective Date.

**14.3 Right to Transfer or Assign Declarant's Rights.** Any or all of Declarant's rights and related obligations under this Declaration may be transferred in whole or in part to other Persons in connection with the sale or transfer of all of the remaining Parcels then owned by Declarant; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant then has under this Declaration. No such transfer or assignment shall be effective unless it is in a written instrument signed by Declarant and recorded with the Recorder with a copy provided to all Owners. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to record any written assignment, but such assignment shall not relieve Declarant from liability with respect to such Person's exercise of such right.

**14.4 Amendments.**

**14.4.1 By Declarant.** During the Development Period, Declarant may unilaterally amend this Declaration pursuant to its exercise of Development Rights provided in this Declaration. In addition, during the Development Period, Declarant may unilaterally amend this Declaration for any purpose, provided such amendment (1) has no adverse effect on the title to or value of any Parcel (including the financeability thereof) without the consent of the Owner thereof and any Eligible Mortgagee then holding a Mortgage on such Parcel; and (2) has no adverse effect on any right, privilege, or protection granted to the Owner of any Parcel under this Declaration or the value or usage of an Owner's Parcel without the consent of the Owner thereof and any Eligible Mortgagee then holding a Mortgage on such Parcel.

(a) Examples of amendments which would be deemed to have an adverse effect and would therefore require a vote of the Owners include: (i) a change in the method by which Equivalent Units and Owner interests are calculated; (ii) a change in voting rights or the allocation of Assessments; (iii) a restriction on an Owner's right to use, sell, transfer, mortgage, encumber or lease its Parcel; (iv) a change in the budget ratification process; (v) a change in the restrictions on Declarant's amendment rights; (vi) the addition or withdrawal of property from Columbia Gardens; and (vii) an increase Declarant's rights hereunder.

(b) Examples of amendments which would not be deemed to have an adverse effect and would therefore not require a vote of the Owners include an amendment that is necessary to: (i) bring any provision hereof into compliance with any applicable government statute, rule or regulation, or judicial determination which is in conflict herewith; (ii) enable any reputable title insurance company to issue title insurance coverage with respect to any portion of Columbia Gardens; (iii) enable an institutional or governmental lender, holder, insurer or guarantor of mortgage loans to make, insure or guarantee mortgage loans with respect to property within Columbia Gardens; or (iv) satisfy the requirements of any local, state or federal governmental agency; provided, none of the foregoing amendments in this subsection (b) would result in any of the adverse effects set forth in subsection (a) above.

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(c) Any amendment properly adopted by Declarant shall become effective only upon recordation with the Recorder of an instrument executed by the Declarant setting forth in full the amendment or amendments.

**14.4.2 By Owners.** This Declaration may be amended by the vote or written consent of Owners of Parcels holding not less than seventy-five percent (75%) of the voting rights held by Class A Member, together with the written consent of the Class B Member, if any exists; provided the following actions shall require the unanimous consent of the Owners of Parcels, together with the written consent of the Class B Member, if any exists: (i) a restriction on an Owner's right to use, sell, transfer, mortgage, encumber or lease its Parcel and (ii) the termination or repeal of this Declaration. Any such properly adopted amendment shall become effective only when executed by the president of the Association and recorded with the Recorder. For clarification, prior to the formation of the Association, the voting rights of the Class A Members for purposes of this Section 14.4.2 shall be determined as if the Association was formed.

**14.4.3 Consent of Eligible Mortgagees.** Notwithstanding any other provision of this Declaration, the consent of any Eligible Mortgagee then holding a first Mortgage duly recorded against a Parcel shall be required in order to withdraw such Parcel or portion thereof from this Declaration. In addition, the consent of seventy-five percent (75%) of Eligible Mortgagees then holding a first Mortgage duly recorded against any Parcel shall be required in order to (a) repeal or terminate this Declaration or (b) add or materially amend any provision of this Declaration, which governs any of the following: (1) voting rights; (2) Assessments or Assessment liens; (3) rights of an Owner to sell, transfer or lease a Parcel; (4) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, mortgage, encumber, or lease its Parcel, and/or (5) the rights expressly conferred upon Mortgagees in this Declaration with respect to any unsatisfied Mortgage duly recorded against any Parcel. An Eligible Mortgagee who receives a written request from Declarant or the Association to consent to an amendment who does not deliver to Declarant or the Association, as applicable, in accordance with Section 14.12 a negative response within thirty (30) days shall be deemed to have consented to such request, provided Declarant's or the Association's request was delivered in accordance with Section 14.12.

**14.5 Duration.** Unless repealed or terminated in accordance with the provisions of Section 14.4, this Declaration shall have perpetual duration. If State of Washington law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of twenty (20) years each, unless repealed in accordance with the provisions of Section 14.4 above.

**14.6 Joint Owners.** In any case in which two or more Persons share the ownership of any Parcel, regardless of the form of ownership, the responsibility of such Persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such Persons sharing the ownership of any Parcel shall constitute the act or consent of the entire ownership interest; provided, however, that except for votes duly cast by a Voting Member in accordance with Section 8.3.3, if such Persons disagree among themselves as to the manner in which any consent shall be given with respect to a pending matter, any such Person



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may deliver written notice of such disagreement, prior to the end of the Development Period, to Declarant and, after the end of the Development Period, to the Association, and the right of consent involved shall then be disregarded completely in determining the proportion of consents given with respect to such matter.

**14.7 Lessees and Other Invitees.** Lessees, licensees, invitees, contractors, guests, and other Persons entering the Property under rights derived from an Owner shall comply with all of the provisions of this Declaration and the Rule and Regulations restricting or regulating the Owner's use, improvement or enjoyment of the Owner's Parcel, the Common Areas and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such Persons in the same manner and to the same extent as if the failure had been committed by such Owner.

**14.8 Notice of Sale or Transfer of Title.** Any Owner selling or otherwise transferring title to the Owner's Parcel shall give written notice, prior to the end of the Development Period, to Declarant and, after the end of the Development Period, to the Association, within seven (7) days after such transfer of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as Declarant or the Association, as applicable, may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Parcel, including Assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

**14.9 Nonwaiver.** Failure by Declarant, the Association or by any Owner to enforce any covenant or restriction in this Declaration contained shall in no event be deemed a waiver of the right to do so thereafter.

**14.10 Construction; Severability; Number; Captions.** This Declaration shall be governed and construed under the laws of the State of Washington. It shall be liberally construed as an entire document to accomplish the purposes thereof as stated in the introductory sections of this Declaration. Nevertheless, each provision of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision.

**14.11 Terminology and Captions.** As used in this Declaration, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used in this Declaration are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

**14.12 Notices and Other Documents.** Any notice or other document permitted or required by this Declaration may be delivered either personally or by mail. Delivery by mail shall be deemed made 48 hours after having been deposited in the United States mail as certified or registered mail, with postage prepaid, addressed as follows: (a) if to Declarant: its registered office address filed with the Washington Secretary of State; (b) if to the Association: its registered office address filed with the Washington Secretary of State; or (c) if to an Owner, to such Owner at the address as it has registered with the Association or, if no address has been

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registered with the Association, at its registered office address filed with the Washington Secretary of State, or, if no address has been filed with the Washington Secretary of State, at the address maintained by the Benton County Assessor for mailing of tax bills for such Owner's Parcel. The address of a party registered with the Association may be changed at any time by notice in writing delivered as provided in this section.

[signature on following page]

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**In Witness Whereof**, the undersigned have executed this Declaration of Covenants, Conditions, Restrictions, and Easements for Columbia Gardens effective as of the day and year first written above.

**DECLARANT:**

THE PORT OF KENNEWICK

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ } ss.

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.

Given Under My Hand and Official Seal this \_\_\_\_ day of \_\_\_\_\_, 2022.

Printed  
Name: \_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

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## EXHIBIT A

Legal Description of PropertyPARCEL 1

THAT PORTION OF LOTS 11, 12, 13, 14, AND 15 AND TRACT 6, REPLAT OF COLUMBIA GARDENS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 2 OF PLATS, PAGE 92, RECORDS OF BENTON COUNTY, WASHINGTON, SITUATE IN GOVERNMENT LOTS 3 & 4, SECTION 31, TOWNSHIP 9 NORTH, RANGE 30 EAST WILLAMETTE MERIDIAN, CITY OF KENNEWICK, BENTON COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SECTION 6, TOWNSHIP 8 NORTH, RANGE 30 EAST WILLAMETTE MERIDIAN; THENCE NORTH 89°18'50" EAST 840.65 FEET ALONG THE SOUTH LINE OF SAID SECTION 31; THENCE NORTH 0°41'10" WEST 40.00 FEET TO A POINT ON THE WEST LINE OF LOT 9, SAID REPLAT OF COLUMBIA GARDENS; THENCE NORTH 89°18'50" EAST 100.00 FEET ALONG THE NORTHERLY RIGHT OF WAY MARGIN OF COLUMBIA DRIVE; THENCE SOUTH 0°48'10" EAST 10.00 FEET ALONG SAID RIGHT OF WAY MARGIN; THENCE NORTH 89°18'50" EAST 90.00 FEET ALONG SAID RIGHT OF WAY MARGIN; THENCE NORTH 0°48'10" WEST 10.00 FEET ALONG SAID RIGHT OF WAY MARGIN; THENCE NORTH 89°18'50" EAST 72.86 FEET ALONG SAID RIGHT OF WAY MARGIN TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID RIGHT OF WAY MARGIN NORTH 00°01'10" EAST 23.09 FEET; THENCE NORTH 09°53'46" EAST 36.69 FEET; THENCE NORTH 00°37'14" WEST 2.34 FEET; THENCE NORTH 00°37'14" WEST 81.21 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 60.25 FEET; THENCE NORTHEASTERLY 15.02 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 14°17'13"; TO THE BEGINNING OF A REVERSE CURVE, CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 25.25 FEET; THENCE NORTHWESTERLY 32.52 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 73°47'41"; THENCE NORTH 60°07'43" WEST 14.53 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 27.25 FEET; THENCE NORTHWESTERLY 14.46 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 30°23'39"; THENCE SOUTH 89°28'38" WEST 46.45 FEET TO THE WEST LINE OF PARCEL D OF RECORD SURVEY RECORDED IN VOLUME 1 OF SURVEYS, PAGE 4236, RECORDS OF BENTON COUNTY; THENCE NORTH 00°44'20" WEST 40.32 FEET ALONG SAID WEST LINE; THENCE LEAVING SAID WEST LINE NORTH 89°14'16" EAST 47.56 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 65.25 FEET; THENCE SOUTHEASTERLY 34.13 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 29°58'18"; THENCE SOUTH 60°47'26" EAST 67.75 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 6.75 FEET; THENCE NORTHEASTERLY 10.55 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 89°30'33"; THENCE NORTH 29°42'01" EAST 12.69 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 10.25 FEET; THENCE NORTHEASTERLY 10.69 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 59°45'25"; THENCE NORTH 89°27'27" EAST 7.89 FEET; THENCE NORTH 89°27'27" EAST 77.83 FEET; THENCE NORTH 00°39'06" WEST 43.58 FEET; THENCE NORTH 26°20'54" EAST 34.93 FEET TO THE US ARMY CORPS OF ENGINEERS MONUMENTED PROJECT BOUNDARY FOR THE McNARY PROJECT; THENCE SOUTH 55°35'51" EAST 55.83

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FEET ALONG SAID MONUMENTED PROJECT BOUNDARY; THENCE SOUTH 66°22'42" EAST 109.39 FEET ALONG SAID MONUMENTED PROJECT BOUNDARY; THENCE NORTH 88°56'16" EAST 52.81 FEET ALONG SAID MONUMENTED PROJECT BOUNDARY; THENCE LEAVING SAID MONUMENTED PROJECT BOUNDARY SOUTH 00°41'08" EAST 31.29 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 5.30 FEET; THENCE SOUTHWESTERLY 8.33 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00"; THENCE SOUTH 89°18'52" WEST 34.77 FEET; THENCE SOUTH 00°34'30" EAST 169.12 FEET; THENCE SOUTH 05°22'02" EAST 8.03 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 13.17 FEET; THENCE SOUTHEASTERLY 12.84 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 55°50'38" (THE LONG CHORD OF SAID CURVE BEARS SOUTH 61°03'29" EAST 12.33 FEET;); THENCE SOUTH 00°41'10" EAST 1.12 FEET TO THE NORTHERLY RIGHT OF WAY MARGIN OF COLUMBIA DRIVE; THENCE SOUTH 89°18'50" WEST 65.31 FEET ALONG SAID RIGHT OF WAY MARGIN; THENCE LEAVING SAID RIGHT OF WAY MARGIN NORTH 00°41'10" WEST 1.12 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 11.01 FEET; THENCE NORTHEASTERLY 13.15 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 68°27'13" (THE LONG CHORD OF SAID CURVE BEARS NORTH 57°40'42" EAST 12.39 FEET;); THENCE NORTH 02°27'35" EAST 26.14 FEET; THENCE NORTH 10°48'34" EAST 35.24 FEET; THENCE NORTH 00°38'15" WEST 69.88 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 29.25 FEET; THENCE NORTHWESTERLY 45.96 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90°01'23"; THENCE SOUTH 89°20'23" WEST 214.16 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 29.25 FEET; THENCE SOUTHWESTERLY 45.96 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90°01'48"; THENCE SOUTH 00°41'26" EAST 69.49 FEET; THENCE SOUTH 11°33'11" EAST 36.12 FEET; THENCE SOUTH 00°24'02" EAST 23.29 FEET TO THE NORTHERLY RIGHT OF WAY MARGIN OF COLUMBIA DRIVE; THENCE SOUTH 89°18'50" WEST 46.56 FEET ALONG SAID RIGHT OF WAY MARGIN; TO THE TRUE POINT OF BEGINNING.

PARCEL 2

THAT PORTION OF LOT 15 AND TRACT 6, REPLAT OF COLUMBIA GARDENS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 2 OF PLATS, PAGE 92, RECORDS OF BENTON COUNTY, WASHINGTON, SITUATE IN GOVERNMENT LOTS 3 & 4, SECTION 31, TOWNSHIP 9 NORTH, RANGE 30 EAST WILLAMETTE MERIDIAN, CITY OF KENNEWICK, BENTON COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SECTION 6, TOWNSHIP 8 NORTH, RANGE 30 EAST WILLAMETTE MERIDIAN; THENCE NORTH 89°18'50" EAST 1529.84 FEET ALONG THE SOUTH LINE OF SAID SECTION 31; THENCE NORTH 0°41'10" WEST 30.00 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY MARGIN OF COLUMBIA DRIVE AND THE TRUE POINT OF BEGINNING; THENCE SOUTH 89°18'50" WEST 67.56 FEET ALONG SAID RIGHT OF WAY MARGIN; THENCE NORTH 00°41'10" WEST 1.12 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 13.17 FEET; THENCE NORTHWESTERLY 12.84 FEET ALONG THE ARC OF SAID CURVE THROUGH A

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CENTRAL ANGLE OF 55°50'38" (THE LONG CHORD OF SAID CURVE BEARS NORTH 61°03'29" WEST 12.33 FEET) THENCE NORTH 05°22'02" WEST 8.03 FEET; THENCE NORTH 00°34'30" WEST 169.12 FEET; THENCE NORTH 89°18'52" EAST 34.77 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 5.30 FEET; THENCE NORTHEASTERLY 8.33 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00"; THENCE NORTH 00°41'08" WEST 31.29 FEET TO THE US ARMY CORPS OF ENGINEERS MONUMENTED PROJECT BOUNDARY FOR THE McNARY PROJECT; THENCE NORTH 88°56'16" EAST 38.09 FEET ALONG SAID MONUMENTED PROJECT BOUNDARY TO THE NORTHEAST CORNER OF "NEW LOT 15" AS SHOWN ON RECORD SURVEY RECORDED IN VOLUME 1 OF SURVEYS, PAGE 4574, RECORDS OF BENTON COUNTY; THENCE SOUTH 00°48'10" EAST 221.19 FEET ALONG THE EAST LINE OF SAID "NEW LOT 15" TO THE TRUE POINT OF BEGINNING.

### PARCEL 3

THAT PORTION OF LOTS 10 AND 11 AND TRACT 6, REPLAT OF COLUMBIA GARDENS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 2 OF PLATS, PAGE 92, RECORDS OF BENTON COUNTY, WASHINGTON, SITUATE IN GOVERNMENT LOTS 3 & 4, SECTION 31, TOWNSHIP 9 NORTH, RANGE 30 EAST WILLAMETTE MERIDIAN, CITY OF KENNEWICK, BENTON COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SECTION 6, TOWNSHIP 8 NORTH, RANGE 30 EAST WILLAMETTE MERIDIAN; THENCE NORTH 89°18'50" EAST 840.65 FEET ALONG THE SOUTH LINE OF SAID SECTION 31; THENCE NORTH 0°41'10" WEST 40.00 FEET TO A POINT ON THE WEST LINE OF LOT 9, SAID REPLAT OF COLUMBIA GARDENS; THENCE NORTH 89°18'50" EAST 100.00 FEET ALONG THE NORTHERLY RIGHT OF WAY MARGIN OF COLUMBIA DRIVE; THENCE SOUTH 0°48'10" EAST 10.00 FEET ALONG SAID RIGHT OF WAY MARGIN; THENCE NORTH 89°18'50" EAST 90.00 FEET ALONG SAID RIGHT OF WAY MARGIN; THENCE NORTH 0°48'10" WEST 10.00 FEET ALONG SAID RIGHT OF WAY MARGIN; THENCE LEAVING SAID RIGHT OF WAY MARGIN CONTINUING NORTH 0°48'10" WEST 61.37 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 00°48'10" WEST 129.10 FEET; THENCE SOUTH 89°03'04" WEST 2.11 FEET; THENCE NORTH 00°44'20" WEST 6.41 FEET; THENCE NORTH 89°28'38" EAST 46.45 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 27.25 FEET; THENCE SOUTHEASTERLY 14.46 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 30°23'39"; THENCE SOUTH 60°07'43" EAST 14.53 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 25.25 FEET; THENCE SOUTHEASTERLY 32.52 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 73°47'41"; TO THE BEGINNING OF A REVERSE CURVE, CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 60.25 FEET; THENCE SOUTHWESTERLY 15.02 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 14°17'13"; THENCE SOUTH 00°37'14" EAST 81.21 FEET; THENCE SOUTH 89°13'54" WEST 80.01 FEET TO THE TRUE POINT OF BEGINNING.

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PARCEL 4

THAT PORTION OF LOTS 12, 13, AND 14, REPLAT OF COLUMBIA GARDENS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 2 OF PLATS, PAGE 92, RECORDS OF BENTON COUNTY, WASHINGTON, SITUATE IN GOVERNMENT LOTS 3 & 4, SECTION 31, TOWNSHIP 9 NORTH, RANGE 30 EAST WILLAMETTE MERIDIAN, CITY OF KENNEWICK, BENTON COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SECTION 6, TOWNSHIP 8 NORTH, RANGE 30 EAST WILLAMETTE MERIDIAN; THENCE NORTH 89°18'50" EAST 840.65 FEET ALONG THE SOUTH LINE OF SAID SECTION 31; THENCE NORTH 0°41'10" WEST 40.00 FEET TO A POINT ON THE WEST LINE OF LOT 9, SAID REPLAT OF COLUMBIA GARDENS; THENCE NORTH 89°18'50" EAST 100.00 FEET ALONG THE NORTHERLY RIGHT OF WAY MARGIN OF COLUMBIA DRIVE; THENCE SOUTH 0°48'10" EAST 10.00 FEET ALONG SAID RIGHT OF WAY MARGIN; THENCE NORTH 89°18'50" EAST 90.00 FEET ALONG SAID RIGHT OF WAY MARGIN; THENCE NORTH 0°48'10" WEST 10.00 FEET ALONG SAID RIGHT OF WAY MARGIN; THENCE NORTH 89°18'50" EAST 119.42 FEET ALONG SAID RIGHT OF WAY MARGIN TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID RIGHT OF WAY MARGIN NORTH 00°24'02" WEST 23.29 FEET; THENCE NORTH 11°33'11" WEST 36.12 FEET; THENCE NORTH 00°41'26" WEST 69.49 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 29.25 FEET; THENCE NORTHEASTERLY 45.96 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90°01'48"; THENCE NORTH 89°20'23" EAST 214.16 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 29.25 FEET; THENCE SOUTHEASTERLY 45.96 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90°01'23"; THENCE SOUTH 00°38'15" EAST 69.88 FEET; THENCE SOUTH 10°48'34" WEST 35.24 FEET; THENCE SOUTH 02°27'35" WEST 26.14 FEET;

TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 11.01 FEET; THENCE SOUTHWESTERLY 13.15 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 68°27'13" (THE LONG CHORD OF SAID CURVE BEARS SOUTH 57°40'42" WEST 12.39 FEET); THENCE SOUTH 00°41'10" EAST 1.12 FEET TO THE NORTHERLY RIGHT OF WAY MARGIN OF COLUMBIA DRIVE; THENCE SOUTH 89°18'50" WEST 23.09 FEET ALONG SAID RIGHT OF WAY MARGIN; THENCE NORTH 82°40'58" WEST 33.54 FEET ALONG SAID RIGHT OF WAY MARGIN; THENCE NORTH 00°48'10" WEST 5.33 FEET ALONG SAID RIGHT OF WAY MARGIN; THENCE SOUTH 89°18'50" WEST 190.58 FEET ALONG SAID RIGHT OF WAY MARGIN TO THE TRUE POINT OF BEGINNING.

PARCEL 5

THAT PORTION OF LOTS 10 AND 11, REPLAT OF COLUMBIA GARDENS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 2 OF PLATS, PAGE 92, RECORDS OF BENTON COUNTY, WASHINGTON, SITUATE IN GOVERNMENT LOTS 3 & 4, SECTION 31, TOWNSHIP 9 NORTH, RANGE 30 EAST WILLAMETTE MERIDIAN, CITY OF KENNEWICK, BENTON COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

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BEGINNING AT THE NORTHWEST CORNER OF SECTION 6, TOWNSHIP 8 NORTH, RANGE 30 EAST WILLAMETTE MERIDIAN; THENCE NORTH 89°18'50" EAST 840.65 FEET ALONG THE SOUTH LINE OF SAID SECTION 31; THENCE NORTH 0°41'10" WEST 40.00 FEET TO A POINT ON THE WEST LINE OF LOT 9, SAID REPLAT OF COLUMBIA GARDENS; THENCE NORTH 89°18'50" EAST 100.00 FEET ALONG THE NORTHERLY RIGHT OF WAY MARGIN OF COLUMBIA DRIVE; THENCE SOUTH 0°48'10" EAST 10.00 FEET ALONG SAID RIGHT OF WAY MARGIN; THENCE NORTH 89°18'50" EAST 90.00 FEET ALONG SAID RIGHT OF WAY MARGIN; THENCE NORTH 0°48'10" WEST 10.00 FEET ALONG SAID RIGHT OF WAY MARGIN TO THE TRUE POINT OF BEGINNING; THENCE NORTH 00°48'10" WEST 61.37 FEET; THENCE NORTH 89°13'54" EAST 80.01 FEET; THENCE SOUTH 00°37'14" EAST 2.34 FEET; THENCE SOUTH 09°53'46" WEST 36.69 FEET; THENCE SOUTH 00°01'10" WEST 23.09 FEET TO THE NORTHERLY RIGHT OF WAY MARGIN OF COLUMBIA DRIVE; THENCE SOUTH 89°18'50" WEST 72.86 FEET ALONG SAID RIGHT OF WAY MARGIN TO THE TRUE POINT OF BEGINNING.

#### PARCEL 6

THAT PORTION OF LOTS 9 AND 10, REPLAT OF COLUMBIA GARDENS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 2 OF PLATS, PAGE 92, RECORDS OF BENTON COUNTY, WASHINGTON, SITUATE IN GOVERNMENT LOTS 3 & 4, SECTION 31, TOWNSHIP 9 NORTH, RANGE 30 EAST WILLAMETTE MERIDIAN, CITY OF KENNEWICK, BENTON COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SECTION 6, TOWNSHIP 8 NORTH, RANGE 30 EAST WILLAMETTE MERIDIAN; THENCE NORTH 89°18'50" EAST 840.65 FEET ALONG THE SOUTH LINE OF SAID SECTION 31; THENCE NORTH 0°41'10" WEST 40.00 FEET TO A POINT ON THE WEST LINE OF LOT 9, SAID REPLAT OF COLUMBIA GARDENS AND THE TRUE POINT OF BEGINNING; THENCE NORTH 00°48'10" WEST 190.11 FEET ALONG THE WEST LINE OF SAID LOT 9 TO THE NORTHWEST CORNER THEREOF; THENCE NORTH 89°19'44" EAST 100.00 FEET ALONG THE NORTH LINE OF SAID LOT 9 TO THE NORTHEAST CORNER THEREOF; THENCE NORTH 89°05'36" EAST 61.30 FEET ALONG THE NORTH LINE OF SAID LOT 10; THENCE NORTH 88°54'37" EAST 7.99 FEET ALONG SAID NORTH LINE; THENCE NORTH 89°03'04" EAST 20.71 FEET ALONG SAID NORTH LINE; THENCE LEAVING SAID NORTH LINE SOUTH 00°48'10" EAST 190.47 FEET TO THE NORTHERLY RIGHT OF WAY MARGIN OF COLUMBIA DRIVE; THENCE SOUTH 00°48'10" EAST 10.00 FEET ALONG SAID RIGHT OF WAY MARGIN; THENCE SOUTH 89°18'50" WEST 90.00 FEET ALONG SAID RIGHT OF WAY MARGIN; THENCE NORTH 00°48'10" WEST 10.00 FEET ALONG SAID RIGHT OF WAY MARGIN; THENCE SOUTH 89°18'50" WEST 100.00 FEET ALONG SAID RIGHT OF WAY MARGIN TO THE TRUE POINT OF BEGINNING.



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PARCEL 7

THAT PORTION OF TRACT 6, REPLAT OF COLUMBIA GARDENS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 2 OF PLATS, PAGE 92, RECORDS OF BENTON COUNTY, WASHINGTON, SITUATE IN GOVERNMENT LOTS 3 & 4, SECTION 31, TOWNSHIP 9 NORTH, RANGE 30 EAST WILLAMETTE MERIDIAN, CITY OF KENNEWICK, BENTON COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SECTION 6, TOWNSHIP 8 NORTH, RANGE 30 EAST WILLAMETTE MERIDIAN; THENCE NORTH 89°18'50" EAST 840.65 FEET ALONG THE SOUTH LINE OF SAID SECTION 31; THENCE NORTH 0°41'10" WEST 40.00 FEET TO A POINT ON THE WEST LINE OF LOT 9, SAID REPLAT OF COLUMBIA GARDENS; THENCE NORTH 00°48'10" WEST 190.11 FEET ALONG THE WEST LINE OF SAID LOT 9 TO THE NORTHWEST CORNER THEREOF; THENCE NORTH 89°19'44" EAST 100.00 FEET ALONG THE NORTH LINE OF SAID LOT 9 TO THE NORTHEAST CORNER THEREOF; THENCE NORTH 89°05'36" EAST 61.30 FEET ALONG THE NORTH LINE OF SAID LOT 10; THENCE NORTH 88°54'37" EAST 7.99 FEET ALONG SAID NORTH LINE; THENCE NORTH 89°03'04" EAST 18.60 FEET ALONG THE NORTH LINE OF SAID LOT 10; THENCE NORTH 0°44'20" WEST 6.41 FEET; THENCE NORTH 0°44'20" WEST 40.32 FEET ALONG THE WEST LINE OF PARCEL D OF RECORD SURVEY RECORDED IN VOLUME 1 OF SURVEYS, PAGE 4236, RECORDS OF BENTON COUNTY TO THE TRUE POINT OF BEGINNING; THENCE NORTH 00°44'20" WEST, 107.03 FEET ALONG SAID WEST LINE; THENCE SOUTH 89°34'53" WEST, 18.47 FEET ALONG SAID WEST LINE; THENCE NORTH 03°26'43" EAST, 99.78 FEET ALONG SAID WEST LINE TO THE US ARMY CORPS OF ENGINEERS MONUMENTED PROJECT BOUNDARY FOR THE McNARY PROJECT; THENCE SOUTH 62°42'19" EAST, 146.37 FEET ALONG SAID MONUMENTED PROJECT BOUNDARY; THENCE LEAVING SAID MONUMENTED PROJECT BOUNDARY SOUTH 00°39'06" EAST, 168.20 FEET; THENCE NORTH 60°47'26" WEST, 43.37 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 65.25 FEET; THENCE NORTHWESTERLY 34.13 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 29°58'18"; THENCE SOUTH 89°14'16" WEST, 47.56 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 8

THAT PORTION OF TRACT 6, REPLAT OF COLUMBIA GARDENS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 2 OF PLATS, PAGE 92, RECORDS OF BENTON COUNTY, WASHINGTON, SITUATE IN GOVERNMENT LOTS 3 & 4, SECTION 31, TOWNSHIP 9 NORTH, RANGE 30 EAST WILLAMETTE MERIDIAN, CITY OF KENNEWICK, BENTON COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SECTION 6, TOWNSHIP 8 NORTH, RANGE 30 EAST WILLAMETTE MERIDIAN; THENCE NORTH 89°18'50" EAST 840.65 FEET ALONG THE SOUTH LINE OF SAID SECTION 31; THENCE NORTH 0°41'10" WEST 40.00 FEET TO A POINT ON THE WEST LINE OF LOT 9, SAID REPLAT OF COLUMBIA GARDENS; THENCE NORTH 00°48'10" WEST 190.11 FEET ALONG THE WEST LINE OF SAID LOT 9 TO THE NORTHWEST CORNER THEREOF; THENCE NORTH 89°19'44" EAST 100.00 FEET ALONG THE NORTH LINE OF SAID LOT 9 TO THE NORTHEAST CORNER THEREOF; THENCE NORTH 89°05'36" EAST

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61.30 FEET ALONG THE NORTH LINE OF SAID LOT 10; THENCE NORTH 88°54'37" EAST 7.99 FEET ALONG SAID NORTH LINE; THENCE NORTH 89°03'04" EAST 18.60 FEET ALONG THE NORTH LINE OF SAID LOT 10; THENCE NORTH 0°44'20" WEST 153.76 FEET ALONG THE WEST LINE OF PARCEL D OF RECORD SURVEY RECORDED IN VOLUME 1 OF SURVEYS, PAGE 4236, RECORDS OF BENTON COUNTY; THENCE SOUTH 89°34'53" WEST 18.47 FEET ALONG SAID WEST LINE; THENCE NORTH 03°26'43" EAST 99.78 FEET ALONG SAID WEST LINE TO THE US ARMY CORPS OF ENGINEERS MONUMENTED PROJECT BOUNDARY FOR THE McNARY PROJECT; THENCE SOUTH 62°42'19" EAST 146.37 FEET ALONG SAID MONUMENTED PROJECT BOUNDARY TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 62°42'19" EAST 91.68 FEET ALONG SAID MONUMENTED PROJECT BOUNDARY; THENCE LEAVING SAID MONUMENTED PROJECT BOUNDARY SOUTH 26°20'54" WEST 52.84 FEET; THENCE SOUTH 00°39'06" EAST 61.49 FEET; THENCE SOUTH 89°20'54" WEST 3.50 FEET; THENCE SOUTH 00°39'06" EAST 10.36 FEET; THENCE SOUTH 89°27'27" WEST 7.89 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 10.25 FEET; THENCE SOUTHWESTERLY 10.69 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 59°45'25"; THENCE SOUTH 29°42'01" WEST 12.69 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 6.75 FEET; THENCE SOUTHWESTERLY 10.55 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 89°30'33"; THENCE NORTH 60°47'26" WEST 24.38 FEET; THENCE NORTH 00°39'06" WEST 168.20 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 9

THAT PORTION OF TRACT 6, REPLAT OF COLUMBIA GARDENS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 2 OF PLATS, PAGE 92, RECORDS OF BENTON COUNTY, WASHINGTON, SITUATE IN GOVERNMENT LOTS 3 & 4, SECTION 31, TOWNSHIP 9 NORTH, RANGE 30 EAST WILLAMETTE MERIDIAN, CITY OF KENNEWICK, BENTON COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SECTION 6, TOWNSHIP 8 NORTH, RANGE 30 EAST WILLAMETTE MERIDIAN; THENCE NORTH 89°18'50" EAST 840.65 FEET ALONG THE SOUTH LINE OF SAID SECTION 31; THENCE NORTH 0°41'10" WEST 40.00 FEET TO A POINT ON THE WEST LINE OF LOT 9, SAID REPLAT OF COLUMBIA GARDENS; THENCE NORTH 00°48'10" WEST 190.11 FEET ALONG THE WEST LINE OF SAID LOT 9 TO THE NORTHWEST CORNER THEREOF; THENCE NORTH 89°19'44" EAST 100.00 FEET ALONG THE NORTH LINE OF SAID LOT 9 TO THE NORTHEAST CORNER THEREOF; THENCE NORTH 89°05'36" EAST 61.30 FEET ALONG THE NORTH LINE OF SAID LOT 10; THENCE NORTH 88°54'37" EAST 7.99 FEET ALONG SAID NORTH LINE; THENCE NORTH 89°03'04" EAST 18.60 FEET ALONG THE NORTH LINE OF SAID LOT 10; THENCE NORTH 0°44'20" WEST 153.76 FEET ALONG THE WEST LINE OF PARCEL D OF RECORD SURVEY RECORDED IN VOLUME 1 OF SURVEYS, PAGE 4236, RECORDS OF BENTON COUNTY; THENCE SOUTH 89°34'53" WEST 18.47 FEET ALONG SAID WEST LINE; THENCE NORTH 03°26'43" EAST 99.78 FEET ALONG SAID WEST LINE TO THE US ARMY CORPS OF ENGINEERS MONUMENTED PROJECT BOUNDARY FOR THE McNARY PROJECT; THENCE SOUTH 62°42'19" EAST 238.05 FEET ALONG SAID MONUMENTED PROJECT BOUNDARY TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 62°42'19" EAST 13.67 FEET ALONG SAID MONUMENTED PROJECT BOUNDARY; THENCE SOUTH 55°35'51" EAST 66.12 FEET ALONG SAID MONUMENTED

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PROJECT BOUNDARY; THENCE SOUTH 26°20'54" WEST 34.93 FEET; THENCE SOUTH 00°39'06" EAST 43.58 FEET; THENCE SOUTH 89°27'27" WEST 77.83 FEET; THENCE NORTH 00°39'06" WEST 10.36 FEET; THENCE NORTH 89°20'54" EAST 3.50 FEET; THENCE NORTH 00°39'06" WEST 61.49 FEET; THENCE NORTH 26°20'54" EAST 52.84 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 10

THE WEST 90 FEET OF LOT 16 AND THE SOUTH 20 FEET OF THAT PORTION OF TRACT 7, LYING EAST OF THE NORTHERLY EXTENSION OF WEST LINE OF SAID LOT 16 AND WEST OF THE NORTHERLY EXTENSION OF THE EAST LINE OF THE WEST 90 FEET OF SAID LOT 16, REPLAT OF COLUMBIA GARDENS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 2 OF PLATS, PAGE 92 RECORDS OF BENTON COUNTY, WASHINGTON,

EXCEPT PORTION DEEDED TO UNITED STATES OF AMERICA.

TOGETHER WITH:

LOT 16, EXCEPT THE WEST 90 FEET THEREOF, AND EXCEPT THE SOUTH 10 FEET THEREOF CONDEMNED FOR STREET PURPOSES BY CITY OF KENNEWICK UNDER SUPERIOR COURT CASE NO. 7650; ALL OF LOT 17, EXCEPT THE SOUTH 10 FEET THEREOF CONDEMNED FOR STREET PURPOSES BY CITY OF KENNEWICK UNDER BENTON COUNTY SUPERIOR COURT CASE NO. 7650; AND THAT PORTION OF TRACT 7 DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 16; THENCE EAST ALONG THE NORTH LINE OF SAID LOT 16, 90 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING EAST ALONG THE NORTH LINE OF SAID LOTS 16 AND 17 TO THE NORTHEAST CORNER OF LOT 17; THENCE NORTH ALONG THE EAST LINE OF SAID LOT 17, EXTENDED TO THE SOUTHERLY MEANDER LINE OF THE COLUMBIA RIVER; THENCE WESTERLY ALONG THE SOUTHERLY MEANDER LINE OF SAID RIVER TO A POINT DUE NORTH OF THE TRUE POINT OF BEGINNING; THENCE SOUTH TO THE TRUE POINT OF BEGINNING.

EXCEPT THE NORTH PORTION OF EACH SAID LOTS AND PARCELS HERETOFORE CONVEYED TO THE UNITED STATES OF AMERICA; ALL BEING IN REPLAT OF COLUMBIA GARDENS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 2 OF PLATS, PAGE 92 RECORDS OF BENTON COUNTY, WASHINGTON,

TOGETHER WITH THE EAST 10 FEET OF THE FOLLOWING DESCRIBED PARCEL OF LAND:

LOT 15 AND THE SOUTH 20 FEET OF THAT PORTION OF TRACTS 6 AND 7 LYING BETWEEN THE NORTHERLY EXTENSIONS OF THE WEST AND EAST LINES OF SAID LOT 15, REPLAT OF COLUMBIA GARDENS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 2 OF PLATS, PAGE 92, RECORDS OF BENTON COUNTY, WASHINGTON.

**EXHIBIT B****Formula for Assessments and Voting Rights****A. Determination of Equivalent Units**

Assessment obligations and voting rights under this Declaration shall be based upon the number of "Equivalent Units" allocated to a particular Parcel.

Each Parcel within the Property (other than the Common Area Parcels) shall be allocated one (1) Equivalent Unit for each 1,000 gross square feet of demised space in building(s) located on such Parcel rounded to the nearest 100 square feet. For clarification, the Common Area Parcels, which primary use is for Common Areas, shall not be allocated any Equivalent Units.

For purposes of calculating Equivalent Units, gross square footage shall be computed by measuring from the outside faces of exterior walls, disregarding cornices, pilasters, buttresses, etc., that extend beyond the wall faces. Gross square footage shall include each above- or below-grade floor, mezzanine and penthouse. The footprints of stairways, elevator shafts, and vertical duct shafts are to be counted as gross area on each floor through which they pass. Gross square footage shall exclude: (i) covered patios, porches or balconies and (ii) portions of upper floors eliminated by spaces or lobbies that rise above single-floor ceiling height.

Prior to the end of the Development Period, Declarant and, after the end of the Development Period, the Association shall determine Equivalent Units.

**B. Calculation of Assessments**

The allocated interest of any Assessment levied hereunder for each Parcel shall be computed by multiplying the total amount to be assessed by a fraction, the numerator of which is the total of the Equivalent Units allocated to such Parcel and the denominator of which is the sum of all such Equivalent Units allocated to all Parcels. For clarification, the Common Area Parcels, which primary use is for Common Areas, shall not have an allocated interest of any Assessment and shall not be required to pay Assessments.

Prior to the end of the Development Period, Declarant and, after the end of the Development Period, the Association shall calculate allocated interests for Assessments.

**C. Payment of Assessments**

Notwithstanding any to the contrary in this **Exhibit B** and this Declaration:

(1) Declarant shall (i) until the fifth (5<sup>th</sup>) anniversary of the recording of this Declaration, pay all Common Expenses and (ii) after the fifth (5<sup>th</sup>) anniversary of the recording of this Declaration until the Subsidy Termination Date, pay thirty-five percent (35%) of the Common Expenses for the Foundational Items and one hundred percent (100%) of all other Common Expenses; provided, notwithstanding the foregoing, an Owner of Parcel shall remain one hundred percent (100%) liable for the following (payable within thirty (30) days after Declarant has given written notice thereof to such Owner): (a) reimburse

Declarant or the Association for costs incurred in bringing such Parcel or its Owner into compliance with the provisions of this Declaration or the Rules and Regulations, (b) pay to Declarant or the Association for fines or other charges imposed pursuant to this Declaration for violation thereof and (c) to reimburse Declarant or the Association for costs incurred as the result of the Owner of a Parcel or any of its, his or her guests, tenants, licensees, agents, or employees damaging any of the Common Elements as a result of vandalism, intentional damage, negligence, or misuse. This paragraph shall not be used to reduce the obligation of any insurer to Declarant or the Association.

(2) Until issuance of the certificate of occupancy for the initial building constructed on a Parcel, Declarant shall pay any Assessments levied against such Parcel; provided, notwithstanding the foregoing, the Owner of Parcel shall (within thirty (30) days after Declarant has given written notice thereof to such Owner: (a) reimburse Declarant for any Assessments or costs incurred in bringing such Parcel or its Owner into compliance with the provisions of this Declaration or the Rules and Regulations, (b) pay to reimburse Declarant for fines or other charges imposed pursuant to this Declaration for violation thereof and (c) to reimburse Declarant for any Assessments or costs incurred as the result of the Owner of a Parcel or any of its, his or her guests, tenants, licensees, agents, or employees damaging any of the Common Elements as a result of vandalism, intentional damage, negligence, or misuse. This paragraph shall not be used to reduce the obligation of any insurer to Declarant or the Association. For clarification, this paragraph only applies to the initial building constructed on a Parcel and after issuance of the certificate of occupancy for the initial building constructed on a Parcel, the Owner of such Parcel (and not Declarant) shall be responsible for all Assessments against such Parcel even if the initial building constructed on a Parcel is damaged or destroyed.

#### **D. Initial Allocated Interest**

The initial number of Equivalent Units allocated to each Parcel before the Improvements thereon have received a certificate of occupancy are as follows:

<b>Parcel</b>	<b>Equivalent Units</b>
1	0
2	0
3	0
4	10.0
5	1.0

6	5.5
7	5.5
8	3.5
9	2.7
10	12.4
TOTAL:	40.6

If the boundaries between two Parcels are relocated or a Parcel is subdivided in two Parcels prior to the issuance of a certificate of occupancy for the Improvements on such Parcels, the above initial number of Equivalent Units for such Parcels shall be adjusted based on the actual Improvements and/or anticipated future Improvements on the Parcels involved, as applicable, and an amendment to this Declaration stating the adjusted initial number of Equivalent Units for such Parcels shall be recorded.

#### **E. Recalculation of Equivalent Units**

Upon issuance of the certificate of occupancy for the Improvements on a Parcel, Equivalent Units will be recalculated under Section A of this **Exhibit B**. The Owner shall provide all reasonably requested information regarding the Improvements constructed on the Parcel, including the gross square footage of buildings constructed on its Parcel. The Equivalent Units allocated to such Parcel shall then be recalculated under Section A of this **Exhibit B** and the Owner of such Parcel shall be notified in writing of the recalculation. Unless the Owner notifies Declarant or the Board, as applicable, in writing within thirty (30) days following its receipt of the notice that it objects to the recalculation of Equivalent Units, Declarant's or the Board's determination, as applicable, shall be final. Declarant or the Board, as applicable, shall give any Owner that objects to the calculation of Equivalent Units for its Parcel the opportunity to be heard to contest the recalculation.

Following the determination of Equivalent Units for a Parcel upon issuance of the certificate of occupancy for a Parcel, Declarant or the Board, as applicable, shall have the authority to modify its determination of Equivalent Units for the Parcel as a result of subsequent development of the Parcel or other information which comes to Declarant's or the Board's attention. Declarant or the Board, as applicable, shall, provide written notice to the Owner of any such Parcel and the Owner shall have the right to object as provided in the preceding paragraph; provided, however, that no adjustments need to be made in any Assessment previously levied to reflect any such recalculation of Equivalent Units.

Unless the Declarant or the Association elects otherwise, the recalculation of Equivalent Units

shall only occur annually as of January 1<sup>st</sup> of the applicable calendar year.

**F. Voting Rights**

The percentage of the total voting power allocated to each Parcel in the Association shall be computed by dividing the Equivalent Units allocated to such Parcel by the total Equivalent Units allocated to all Parcels eligible to vote.

**EXHIBIT C****Common Areas**

1. The portion of Parcel 1 labeled “Right of Way Area” on **Exhibit C-1** attached hereto for purposes of streets, drives and sidewalks. The portion of Parcel 1 labeled “Parking Area” on **Exhibit C-1** for purposes of parking and areas for operation of privately-owned food trucks, other similar uses and special events. The portion of Parcel 1 labeled “Recreational Area” on **Exhibit C-1** for purposes of recreational and open space improvements and uses and special events. The portions of the Parcels labeled “Columbia Drive Streetscape” on **Exhibit C-1** attached hereto for purposes of walkways, sidewalks, broadwalks, trails, trees, vegetation, landscaping, irrigations and utility systems and facilities.

The portion of Parcel 1 labeled “Right of Way Area” on **Exhibit C-1** attached hereto may only be used for streets, drives and sidewalks providing access to the Parcels unless consented to by (i) all Owners served by such streets and sidewalks, (ii) all Eligible Mortgagees then holding a first Mortgage duly recorded against any such Parcels served by such streets and sidewalks and (iii) the Class B member, if any exists.

Declarant, during the Development Period, and the Association, after the Development Period, reserve the right, from time to time to change the configuration and uses of the portions of Parcel 1 labeled “Parking Area” and “Recreational Area” including, without limitation, altering, removing, replacing, and/or adding improvements.

2. Parcels 2 and 3 for purposes of parking and, to the extent not required by applicable laws for parking for the Parcels, for purposes of special events and other uses.
3. All walkways, sidewalks, broadwalks, trails, trees, vegetation, landscaping, irrigations and utility systems and facilities, and other improvements installed by Declarant or the Association located on any Common Area.
4. All utilities, storm water drainage, detention and conveyance systems and facilities, and other infrastructure and facilities installed by Declarant, the Association or utility companies located on any Common Area or Parcels from time to time serving (i) the Common Areas and/or (ii) more than one Parcel.
5. All exterior lighting systems and facilities installed by Declarant, the Association or utilities companies located on any Common Area or Parcel from time to time serving the (i) Common Areas and/or (ii) more than one Parcel.
6. Any project identification, traffic, wayfinding, and directional signage located on any Common Area or any Parcel from time to time serving the Common Areas and/or more than one Parcel.



**EXHIBIT C-1**

**Certain Common Areas**



# Clover Island Shoreline Restoration

November 2021 – May 2022



























































































# 8,692 total plantings of which 339 are trees

## **Tree/Shrub Species Association – Columbia Basin, WA**

Quaking Aspen/Red-Osier Dogwood

White Alder/Mockorange

Black Hawthorn/Common Snowberry

Ponderosa Pine/Common Snowberry

Rocky Mountain Juniper/Big Sagebrush

Quaking Aspen/Common Snowberry

White Alder/Red-Osier Dogwood

Black Hawthorn/Wood's Rose

Rocky Mountain Juniper/Mockorange

Plus a number of other ground cover plants and shrubs including: elderberry, service berry, sumac, oregon grape, scouler willow, douglas spirea, rabbitbrush, etc....

And a riparian seed mix of wheatgrass, fescue, ricegrass, mountain brome, bluegrass, and lupine





























# SHORELINE CLOSED

## NO TRESPASS

Please stay on sidewalk/asphalt.

As the plants grow they will stabilize the riverbank.

Thank you for helping to restore the shoreline.

PORT of  
**KENNEWICK**









