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VISTA FIELD DECLARATION

of

Covenants, Conditions and Restrictions

For

Commercial Property

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

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Glossary

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

Assigned Value:	Section 2.3
Act:	Washington Common Interest Ownership Act
Articles of Incorporation:	Paragraph 2.1.1
Assessments:	Section 6.1
Board:	Section 2.2
Bylaws:	Paragraph 2.1.1
Capital Improvement:	Section 8.1.1
Commercial:	Submission to Declaration
Commercial Association:	Paragraph 2.1.1
Commercial Commons:	Section 3.1
Commercial Declaration:	This instrument
Commercial Private Property:	Submission to Declaration
Design Code:	As defined in the Vista Field Declaration
Development Period:	As defined in the Vista Field Declaration
Founder:	Submission to Declaration
Introduction:	Recitals to Submission to Declaration
Mixed-Use Parcel:	Submission to Declaration
Master Plan:	As defined in the Introduction
Master Plan Area:	As defined in the Introduction; legally described on Exhibit A to this Commercial Declaration
Owner:	Submission to Declaration
Parcel:	Submission to Declaration
Residential:	Submission to Declaration
Special Assessment:	Paragraph 6.1.3
Specially Allocated Assessment:	Paragraph 6.1.2
Town Center:	Paragraph 1.1.3
Vista Field:	As defined in the Vista Field Declaration
Vista Field Association:	As defined in the Introduction; Same as Association as defined in the Vista Field Declaration
Vista Field Declaration:	As defined in the Introduction
Vista Field Common Elements:	Same as Common Elements as defined in the Vista Field Declaration
Washington Uniform Common Interest Ownership Act:	As defined in the Introduction

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

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

RECITALS:

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

SUBMISSION TO DECLARATION

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

The word "Commercial" shall mean every use that is not Residential.

The term "Residential" shall be as defined under the Washington Common Interest Ownership Act (the "Act") as revised and interpreted from time to time and shall also include residential apartments and apartment developments (but not hotels), plus all portions of a Parcel qualified as a home occupation under the City of Kennewick Municipal Code, section 18.42.090 as revised and interpreted from time to time.

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

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

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

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

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

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

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

This Commercial Declaration shall run with the land and be binding upon each Owner of Commercial Private Property within Vista Field, their heirs, successors and assigns, and to the extent described in Paragraph 9.2.1, upon all other parties, heirs, successors and assigns having any right, title or interest in all or any part of the community.

Part I:

Development Plan

- 1.1 Master Plan and Phasing
- 1.2 Relationship to Residential Property
- 1.3 Design Review

1.1 Master Plan and Phasing

1.1.1 Master Plan. As further described in the Introduction, the Master Plan describes the mixed-use development to be known as Vista Field. The Master Plan is general in nature and subject to change.

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

1.1.3 Town Center. Most of the Commercial property is located in a portion of Vista Field known as Town Center. The approximate boundaries of the Town Center are described on Exhibit B to the Vista Field Declaration. Commercial uses may occur in other parts of Vista Field.

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

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

1.2 Relationship to Residential Property

1.2.1 Exclusion. Owners of Residential Parcels within Vista Field are not members of the Commercial Association. Notwithstanding anything herein to the contrary, Owners of Residential Parcels and Owners of Mixed-Use Parcels (with respect to the portion used for Residential uses)

do not pay any assessments or other costs for any share of real estate taxes, insurance premiums, maintenance, improvement of, or services or other expenses related to, Commercial Commons.

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

1.2.3 Applicable Provisions. Residential Parcels and the Residential portions of Mixed-Use Parcels are not subject to, or benefitted by, this Commercial Declaration except for the following:

- (a) **Easements.** Owners of Residential property have an easement over the Commercial Commons as provided in paragraph 3.1.4.
- (b) **Design Review.** As described in Section 1.3.2 of this Commercial Declaration, after the Development Period, Design Review for Mixed-Use Parcels shall be assigned to the Commercial Association.
- (c) **Repair and Reconstruction.** Mixed-Use Parcels are subject to the provisions of 8.2.2 regarding repair and reconstruction after a fire or other loss.

1.3 Design Review

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

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

1.3.3 Mixed-Use Parcels. If the Commercial Association exercises a right to review a Mixed-Use Parcel, it shall not charge any costs, fees or other amounts to the Owner of the Mixed-Use Parcel in connection with the review of the Residential portion of such Mixed-Use Parcel.

Part II:

The Commercial Association

- 2.1 Establishment
- 2.2 Board
- 2.3 Assigned Values

2.1 Establishment

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

2.1.2 Membership. Each Owner of Commercial Private Property subject to this Commercial Declaration shall be a member of the Commercial Association. Assessments and voting rights are based only on Commercial uses, including the non-Residential portion of Mixed-Use Parcels, as further provided in Section 2.3. Membership is automatically attached to ownership of the Parcel and cannot be separated from title to the Parcel. Residential Parcels and portions of Mixed-Use Parcels used for Residential uses are not assessed and have no voting rights.

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

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

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

2.2 Board

2.2.1 Selection. The Commercial Association shall be governed by an elected Board in accordance with its Articles of Incorporation and Bylaws. The Founder shall have the right to select the Board during the entire Development Period, unless it waives the right in writing.

2.2.2 Decision Making. Except for those matters described in this Commercial Declaration requiring a vote or consent of the Owners or consent of the Founder, the Board makes all decisions necessary to perform the rights and duties of the Commercial Association under this Commercial Declaration.

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

2.3 Assigned Value

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

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

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

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

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

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

may by rule reduce Assigned Value by up to half for Parcels that are outside of Town Center or for grocery stores or essential services.

Part III:

Shared Spaces and Facilities

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

3.1 Commercial Commons

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

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

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

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

3.1.5 Use by Public. At the election of the Commercial Association from time to time, passive recreational facilities such as parks, squares or plazas that are part of the Commercial Commons

may be open for appropriate use by the public, subject to reasonable regulation by the Commercial Association to prevent nuisances, including without limitation the right to limit hours and days of use and the right to remove individuals who are in violation of the rules and to temporarily or permanently close any Commercial Commons to public use.

3.2 Relationship to Vista Field Common Elements

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

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

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

3.3 Private Agreements

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

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

Part IV: Commercial Association Responsibilities

4.1 Maintenance of Commercial Commons

4.2 Management and Services

4.3 Marketing and Special Events

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

4.1 Maintenance of Commercial Commons

4.1.1 Maintenance Responsibility. The Commercial Association is responsible for managing the Commercial Commons and must keep the Commercial Commons clean and in good repair. The Commercial Association may also make Capital Improvements to the Commercial Commons and may modify the uses of the Commercial Commons if approved in accordance with paragraph 8.1.1.

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

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

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

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

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

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

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

4.2 Management and Services

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

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

4.2.3 Parking Management.

- (a) **Design.** Parking within Vista Field is meant to be used efficiently as part of the walkable design of the community. Much of the parking is intended to be shared, so that guests can park once and walk to various businesses. Through streets have a significant amount of on-street parking, which serves both residents and the Town Center. Because on-street parking narrows the street width and slows traffic, it also serves as a traffic-calming

measure. Larger parking lots or garages are intended to be shielded from view wherever possible.

- (b) **Management.** The Commercial Association shall efficiently manage parking that is either part of the Commercial Commons or that it controls with use rights or other agreements. Management may include a paid parking system or parking validation system as necessary to ensure proper turn-over of spaces and to encourage efficient shared use.
- (c) **Revenue.** Revenue generated from paid parking within the Commercial Commons in excess of expenses shall be used for a fund for improvement of the Town Center or for programming and activities.
- (d) **Redevelopment.** Subject to local government regulation and any private agreements, including mortgage requirements, any parking areas may be redeveloped by the owner of thereof (including the Founder) at any time without the consent of the Owners or the Commercial Association provided done in accordance with the Design Code.

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

4.3 Marketing and Special Events

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

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

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

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

4.3.5 Advertising and Seasonal Decoration. The Commercial Association may install seasonal decorations and promotional signage upon the Vista Field Common Elements within the boundaries of the Town Center, and Commercial Commons, including but not limited to banners,

lights and other decorations. The Commercial Association may also engage in media programming and advertising for Vista Field and for special events.

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

Part V:

Association Budget

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

5.1 Association Budget

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

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

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

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

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

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

5.2 Marketing and Special Events

5.2.1 Budget. The Commercial Association shall budget separately for promotional activities. The marketing budget shall show the net expense to the Commercial Association, taking into account anticipated income, such as admission prices for concerts or the rental of farmers' market stands, and shall include the expenses of set-up, clean-up and restoration of any damage to Vista Field Common Elements or Commercial Commons caused by events.

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

5.3 Limited Commercial Commons

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

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

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

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

5.4 Additional Services

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

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

Part VI:

Assessments

6.1 Assessments

6.2 Effect of Nonpayment of Assessment; Remedies

6.1 Assessments

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

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

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

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

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

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

6.2 Effect of Nonpayment of Assessment; Remedies

6.2.1 Personal Obligation. All Assessments, together with any late fee, charges, fines, interest and cost of collection when delinquent, including a reasonable attorney's fee whether or not suit

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

6.2.2 Charge on Parcel. Each Owner of a Parcel, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to all Assessments, costs and attorneys' fees and other permitted charges under this Commercial Declaration duly levied by the Common Association as provided herein. Such Assessments, together with interest, costs, late charges and reasonable attorneys' fees, shall also be a charge on a Parcel and shall be a continuing lien upon such Parcel against which each such Assessment is made even after such Parcel is transferred or conveyed.

6.2.3 Delinquency. In the event any Assessment or installment thereof remains delinquent for more than 30 days, the Commercial Association may, upon 15 days' prior written notice to the Owner of the Parcel of the existence of the default, accelerate and demand immediate payment of all past due Assessments, interest, costs, late charges, and reasonable attorneys' fees.

6.2.4 Recording of Notice. The amount of any Assessment assessed or charged to any Owner plus interest, costs, late charges, and reasonable attorneys' fees, shall be a lien upon the Parcel. A notice of Assessment may be recorded in the office where real estate conveyances are recorded for the Parcel. Such notice of Assessment may be filed at any time at least 15 days after notice of default has been given to the Owner. The lien for payment of such Assessment and charges shall have priority over all other liens and encumbrances, recorded or unrecorded, limited as otherwise expressly provided herein. Suit to recover a money judgment for unpaid Assessments or charges shall be maintainable without foreclosure or waiver of the lien securing the same. Said liens may be foreclosed as provided in Section 6.2.3 below.

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

6.2.6 Curing of Default. The Commercial Association (or its authorized agent) shall prepare and record a satisfaction and release of the lien for which a notice of Assessment has been filed and recorded in accordance with this Section 6.2 upon timely payment or other satisfaction of all delinquent Assessments set forth in the notice and all other Assessments which have become due and payable following the date of such recordation with respect to the Parcel to which such notice of Assessment was recorded, together with all costs, late charges and interest which have accrued

thereon. A fee of one hundred dollars (\$100.00) or such other amount as may from time to time be set by the Commercial Association covering the cost of preparation and recordation shall be paid to the Commercial Association prior to such action. The satisfaction and release of the lien created by the notice of Assessment shall be executed by Commercial Association or by any authorized agent of the Commercial Association. For the purpose of this paragraph, the term "costs" shall include costs and expenses actually incurred or expended by the Commercial Association in connection with the cost of preparation and recordation of the notice of Assessment and any efforts to collect the delinquent Assessments, including a reasonable sum for attorneys' fees and costs. Unless otherwise prohibited by law, any mortgagee holding a lien on a Parcel may pay any unpaid Assessments or charges with respect to such Parcel, and, upon such payment, shall have a lien on such Parcel for the amounts paid of the same priority as its lien.

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

Notice to Purchasers concerning Unpaid Assessments

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

Part VII: Business Regulation

7.1 Business Standards

7.2 Enforcement

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

7.1 Business Standards

7.1.1 Merchant Mix.

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

7.1.2 Name of Business; Advertising.

- (a) **Review.** The Commercial Association shall have the right to review in advance and approve the name, logo or any identifying symbols to be used with the business.
- (b) **Approval of Advertising.** All advertising for the business to be conducted on the Parcel, whether for print, television, radio, handbills, outside sign or other media, may be subject to the Commercial Association's approval. The Commercial Association may prohibit or regulate the distribution of handbills within Vista Field.

- (c) **Signage.** The Commercial Association may promulgate signage standards and may require that those signs, advertising placards, names, insignia, trademarks, descriptive material or other identification business on the exterior of the building or upon any exterior glass surfaces be specifically approved by the Commercial Association or meet signage standards. Such signage may also be subject to the Design Code.

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

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

7.2 Enforcement

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

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

Part VIII:

Modification, Repair and Reconstruction

8.1 Modification of Commercial Commons

8.2 Repair and Reconstruction

8.1 Modification of Commercial Commons

8.1.1 Capital Improvements.

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

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

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

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

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

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

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

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

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

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

- (a) **Streets.** For any streets that have not previously been dedicated to the public and are established as Common Streets, the Commercial Association, by approval of a two-thirds vote of the Board, shall have the right to dedicate the Common Streets to the public.
- (b) **Other Commercial Commons.** After a meeting for which Owners are given notice and an opportunity for discussion, the Commercial Association, by approval of a two-thirds vote of the Board, may dedicate parks, other Commercial Commons or any property that it owns. No vote or approval of the Owners shall be required.

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

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

8.2 Repair and Reconstruction

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

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

- (a) **Clean-Up.** The Owner of the Parcel shall immediately clear and secure the Parcel. If the Owner fails to clear and secure a Parcel within 30 days after a loss, the Commercial Association shall notify the Owner. If the violation continues for ten days after notice to the Owner, the Commercial Association shall have the right without liability to enter the Parcel to remove debris, raze or remove portions of damaged structures and perform any other clean up the Commercial Association deems necessary to make the Parcel safe and attractive. For non-Residential parcels, the cost of such clean-up may be assessed to the Parcel Owner as a Specially Allocated Assessment.
- (b) **Rebuilding.** Within six (6) months of the loss, the Owner shall proceed to rebuild and restore the improvements and shall continue such improvement until completion without

undue delay. The improvements shall be restored to the plans and specifications existing immediately prior to such damage or destruction, unless other plans are approved through the design review process. If an Owner fails to begin rebuilding within the time allowed or abandons reconstruction, then the Commercial Association has the right but not the obligation to purchase the Parcel at 80% of fair market value in "as is" condition. The reduction in value is intended to allow the Commercial Association to market and resell the Parcel to an Owner who will restore the property.

Part IX:

General Provisions

9.1 Amendment

9.2 Additional Terms

9.1 Amendment

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

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

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

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

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

- (d) exercise any right of Founder under this Commercial Declaration that does not require the consent of the Board and/or any Owners.

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

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

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

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

Notwithstanding Section 9.1.1, no approval or consent of any owners of Residential Parcels or the Residential portion of Mixed-Use Parcels or the Vista Field Association shall be required to terminate this Commercial Declaration.

9.2 Additional Terms

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

9.2.2 Assignability and Waiver.

- (a) **Successors and Assigns.** Wherever used in this Commercial Declaration, the term "Founder" shall mean the Port of Kennewick, its successors and assigns, or any successor or assign of all or substantially all of its interests in the development of the Property unless the instrument conveying such interests provides otherwise. Founder may assign all or any portion of its rights at any time to any successor or assigns, or to the Commercial Association.
- (b) **Termination.** Founder may terminate some or all of its rights sooner by a signed writing, in which case the Founder reserves the right to record an instrument specifying that, prior to

the end of the Development Period, certain actions of the Commercial Association must be approved by the Founder before they become effective.

9.2.3 Interpretation.

- (a) **Generally.** The provisions of this Commercial Declaration shall be liberally construed to effectuate their purpose of creating a uniform and consistent plan for the development and operation of Town Center and other commercial property as a high-quality mixed-use community.
- (b) **Boxed or Italicized Text.** Boxed text and italicized portions may be used as an aid to interpretation. However, if the boxed or italicized portion conflicts with the operative provision, the operative provision shall govern.
- (c) **Applicability of Act.** It is intended that this Commercial Declaration not be subject to the Act. If any provision of this Commercial Declaration, including, without limitation, the assignment of Design Review for Mixed-Use Parcels to the Commercial Association after the Development Period, as described in Section 1.2, or the applicability of the repair and reconstruction provisions of 8.2.2 to Mixed-Use Parcels, is held to cause this Commercial Declaration to be subject to the Act, then those provisions shall be reformed or deleted to the extent necessary to cause this Commercial Declaration to be exempt from the Act.

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

9.2.5 Enforcement of Declaration.

- (a) **Enforcement.** Suit may be brought against any person, persons or entity violating or attempting to violate the provisions of this Commercial Declaration, either to restrain violation or to recover damages, and against his or its property to enforce any lien created by this Commercial Declaration. To enforce this Commercial Declaration or the Rules and Regulations, the Commercial Association, the Founder or any Owner may, without limitation, bring one or more actions for damages, specific performance, declaratory decree and/or injunction, or any other remedy at law or in equity. The Board shall be empowered to cause the Commercial Association to bring suits on behalf of the Commercial Association.
- (b) **No Waiver.** Failure to enforce any provision of this Commercial Declaration or the Rules and Regulations shall not be deemed a waiver of the right to do so at any time thereafter.
- (c) **Association's Legal Fees.** To the greatest extent permitted by law, any and all costs, including but not limited to attorneys' fees and court costs, which may be incurred by the Commercial Association in the enforcement of any of the provisions of this Commercial

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for

the state of: _____

Residing at: _____

My appointment expires: _____

Exhibit A: Legal Description, Master Plan Area

BY-LAWS
for
VISTA FIELD COMMERCIAL ASSOCIATION,
a Washington Nonprofit Corporation

Introduction

The Vista Field Commercial Association (the “Commercial Association”) is organized as a nonprofit corporation under Chapter 24.03, RCW (the “Washington Nonprofit Corporation Act”). These Bylaws were written to comply with that chapter at the time the Commercial Association was formed. However, those laws may change, and the Commercial Association is required to comply with changes to the law.

The Commercial Association is created primarily to manage and maintain certain property in accordance with the Vista Field Declaration of Covenants, Conditions and Restrictions for Commercial Property (the “Commercial Declaration”), as recorded in the public records of Benton County, Washington. Membership in the Commercial Association is limited to owners of Commercial Private Property (as defined in the Commercial Declaration) within the community known as Vista Field, which is established by the Declaration of Covenants, Conditions and Restrictions for Vista Field (the “Vista Field Declaration”), also as recorded in the public records of Benton County, Washington.

The articles of incorporation forming the Commercial Association and these bylaws are not required to be recorded.

Unless otherwise defined in these Bylaws, all capitalized terms are as defined in the Commercial Declaration, and if not in the Commercial Declaration, in the Vista Field Declaration.

I. Membership

1.1 Members. As provided in Section 2.1 of the Commercial Declaration, membership is comprised of each of the Owners of the Commercial Parcels and, with respect to the portions used for non-Residential uses, each of the Owners of the Mixed-Use Parcels. An individual, domestic or foreign profit or nonprofit corporation, a general or limited partnership, an association or other entity may be a member of the Commercial Association.

1.2 Classes of Membership. The membership shall initially consist of two classes:

(a) The Founder Class, which shall comprise the Founder, its successor and assigns. Founder Class Rights means all rights of the Founder Class under these Bylaws. The Founder’s Class shall terminate at the end of the Development Period as defined in the Vista Field Declaration. However, Founder may terminate some or all of its Founder Class Rights sooner by a signed writing, in which case the Founder reserves the right to record an

instrument specifying that, prior to the end of the Development Period, certain actions of the Commercial Association or Board must be approved by the Founder before they become effective. Termination of any Founder Class Rights affects only its rights within the Commercial Association under these Bylaws and shall not affect any of its other reserved rights in the Vista Field Declaration or Commercial Declaration.

- (b) **The General Class**, which shall comprise all other Owners of Parcels subject to the Commercial Declaration.

Upon termination of the Founder's Class, there shall be a single class and the Founder's membership rights shall be the same as any other Owner in accordance with Parcels then owned by the Founder.

1.3 Transfer of Membership with Parcel. Upon the sale, transfer or other disposition of the ownership interest in a Parcel, the owner's membership in the Commercial Association shall automatically be transferred to the new Parcel owner. The Founder may assign its rights in whole or in part at any time as provided in the Vista Field Declaration.

II. Voting, Notices and Membership Meetings

2.1 Voting by Multiple Owners. If only one of the multiple Owners of a Parcel is present at a meeting of the Association, the Owner is entitled to cast all the votes allocated to that Parcel. If more than one of the multiple Owners are present, the votes allocated to that Parcel may be cast only in accordance with the agreement of a majority in interest of the multiple Owners. There is majority agreement if any one of the multiple Owners casts the votes allocated to that Parcel without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Parcel.

2.2 Voting Representative. Corporations, partnerships, limited liability companies, and other entities and organizations shall notify the Commercial Association in writing of the natural person who shall exercise its vote. An Owner may, by written notice to the Board, designate a voting representative for its Parcel. The voting representative need not be an Owner. The designation may be revoked at any time by written notice to the Board from a person having an ownership interest in the Parcel, or by actual notice to the Board of the death or judicially declared incompetence of any person with an ownership interest in the Parcel. This power of designation and revocation may be exercised by the guardian of an Owner, the attorney-in-fact of the Owner under a durable power of attorney, or the administrators or executors of an Owner's estate. If no designation has been made, or if a designation has been revoked and no new designation has been made, the voting representative of the Parcel shall be the group composed of all of its Owners. If a Unit is owned by husband and wife and only one of them is at a meeting, the one who is present will represent the marital community.

2.3 Weighted Voting. Section 2.3 of the Commercial Declaration assigns each Commercial Parcel and Commercial Portion of a Mixed-Use Parcel an Assigned Value. Each Owner of a

Commercial Parcel and Commercial portion of a Mixed-Use Parcel shall have a vote in the Commercial Association, with votes to be weighted in accordance with Assigned Values.

2.4 Voting Procedures. It is the intent of these Bylaws to permit electronic voting and other secure, convenient forms of voting to the greatest extent permitted by law. This section incorporates the provisions of the Washington Nonprofit Corporation Act and shall be considered automatically updated to conform to the provisions of that chapter as amended from time to time.

- (a) **Types of Acceptable Voting.** A member may vote in person, by mail, by electronic transmission, or by proxy in the form of a record executed by the member or a duly authorized attorney-in-fact, or by any other method permitted by law as designated by the Board from time to time. No proxy shall be valid after eleven months from the date of its execution.
- (b) **Identification of Candidates and Proposals.** Whenever proposals or directors or officers are to be elected by members, the vote may be taken by mail or by electronic transmission or by any other method permitted by law as designated by the Board from time to time if the name of each candidate and the text of each proposal to be voted upon are set forth in a record accompanying or contained in the notice of meeting.
- (c) **Requirements for Electronic Voting.** If the election is conducted by electronic transmission, the Commercial Association shall designate an address, location, or system to which the ballot may be electronically transmitted and the ballot shall be electronically transmitted to the designated address, location, or system, in an executed electronically transmitted record.
- (d) **Effect.** Members voting by mail or electronic transmission are present for all purposes of quorum, count of votes, and percentages of total voting power present.

2.5 Annual Meeting. The Commercial Association shall hold an annual meeting of its membership within Vista Field or at another appropriate and convenient place in the state of Washington. The Board of Directors shall determine the place and time of the annual meeting, which shall ordinarily be at least 11 months but no later than 13 months since the previous annual meeting. At the annual meeting, the Owners shall elect members to the Board or fill vacancies (as appropriate, per the term limits of the Board as set forth below), and transact other business of the Commercial Association.

2.6 Special Meetings. Unless specifically provided otherwise in these Bylaws or in the Commercial Declaration, meetings of the membership other than the annual meeting shall be held when directed by the President or the Board of Directors or when requested in writing by members holding ten percent (10%) of the votes having the right to vote at such meeting.

2.7 Notice. Notice of all members' meetings, regular or special, shall be given at the direction of the President or Secretary to each member, either by electronic transmission or by tangible

notice such as mail or personal delivery or by any other method permitted by law as designated by the Board from time to time. Notice shall comply with the requirements of Section 24.03.080, RCW for notice of members' meetings.

2.8 Waiver. Any Owner may waive notice of a meeting or consent to the holding of a meeting without notice or consent to action taken without a meeting, by execution of a waiver or consent in writing. Such waiver or consent may be executed prior to, at, or subsequent to the meeting or Association action to which the waiver or consent relates.

2.9 Percentage Required for Quorum. The Board of Directors may revise the percentage for a quorum from time to time, but in no event shall the required percentage be less than 10% or more than 50% of the Assigned Values.

2.10 Majority Vote. Except as otherwise provided by the Washington Nonprofit Corporations Act, the Commercial Declaration, or by these Bylaws, passage of any matter submitted to vote at a meeting where a quorum is present, shall require the affirmative vote of at least 51% of the votes present.

2.11 Proxies. Proxies shall be in writing and are revocable at any time at the pleasure of the member executing it by written notice to the Association. A proxy shall be valid only for the particular meeting designated and any lawfully adjourned meetings thereof (but in no event shall a proxy be valid for more than eleven months after the date of the first meeting for which it was given). All proxies must be filed with the Secretary before the appointed time of the meeting.

2.12 Electronic Participation. Members and any committee of members of the corporation may participate in a meeting by conference telephone, video call or similar communications equipment so that all persons participating in the meeting can hear each other at the same time or by any other method permitted by law as designated by the Board from time to time. Participation by that method constitutes presence in person at a meeting.

2.13 Action by Members Without a Meeting. Any action required or permitted to be taken at a meeting of the members may be taken without a meeting if a written consent setting forth the action to be taken (in the form of a record) is signed by all of the members entitled to vote with respect to the subject matter thereof. Any such written consent shall be inserted in the minute book as if it were the minutes of a meeting of the Association.

2.14 Rules. Except where in conflict with the Commercial Declaration or these Bylaws or the Washington Nonprofit Corporations Act, Roberts Rules of Order (as amended) shall govern the conduct of all membership meetings.

III. Board of Directors

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

Commercial Declaration and shall have all powers necessary to act on behalf of and to assume all powers of the Commercial Association.

3.2 Standard of Care. Directors of the Board of Directors shall perform their duties in accordance with the standard of care set forth in RCW 24.03.127 as it may be amended from time to time.

3.3 Number of Directors. The Board of Directors shall initially comprise three directors selected by the Founder. Prior to termination of the Founder Class as provided in Section 1.2(a), the board shall comprise between one and seven directors. After termination of the Founder Class as provided in Section 1.2(a), the board may comprise any number of directors between five and 15. At least three months prior to the election, the Board of Directors may, by majority vote, modify the number of Directors from its then-current composition within the permitted range, with any newly created seats to be filled at the election. No reduction in seats shall shorten the term of an existing Director without the consent of that Director.

3.4 Election or appointment of Directors. The Board of Directors shall be appointed or elected as follows:

- (a) **Initial Composition.** As a Founder Class Right, the Founder shall appoint the initial Directors and may continue to select the Directors until termination of the Founder Class as provided in Section 1.2(a). Such Directors serve at the Founder's pleasure and may be removed by the Founder and a substitute selected.
- (b) **After Termination of the Founder Class.** When the Founder Class has terminated as provided in Section 1.2(a), the Board shall be elected by the entire membership in accordance with Assigned Values and the procedures set forth below, including those held by the Founder.
- (c) **Designated Seats.** These bylaws may be amended as provided in Part IX of these Bylaws to designate certain seats on the Board to reasonably represent various types of Commercial Property in Vista Field and to be voted on by Members who are the owners of such types of property. Such representation may be combined with a certain number of seats to be elected at large.

3.5 Qualifications. Directors are not required to be members, it being recognized that individuals who operate businesses in Vista Field or who have other interests in the successful operation of Vista Field may offer talents and service to the community even though such an individual may not be named as the holder of title to a Parcel. Directors are not required to be residents of the state.

3.6 Term. Directors shall hold office for a term of two years. To permit staggered terms, the Board of Directors may establish a procedure for one or more elections in which a director may be elected to a one-year term. Directors may be elected for successive terms.

3.7 No Cumulative Voting. For the election of any directors other than those appointed by the Founder, an Owner may vote for as many candidates as there are Directors to be elected. An Owner is not required to use all of that Owner's votes; however, no cumulative voting shall be permitted. *For example, if there are three seats to be filled, the Owner may cast its vote for one, two or three candidates, but shall not cast more than one vote for any particular candidate.*

3.8 Plurality Votes. The candidates receiving the highest number of votes shall be declared elected. If there are a large number of candidates, the Board of Directors may in advance of the voting determine that a majority or other certain minimum percentage of the votes be required for election and provide for run-off elections if such percentage is not achieved. Otherwise, Directors may be elected by a plurality; a majority is not required.

3.9 Removal. Except for directors selected by the Founder, any director may be removed from office, with or without cause, by at least a majority vote of all Owners, at any duly called meeting of Owners. A special Association meeting to remove a director or directors from office may be called by Owners representing 10% of the Assigned Values giving notice of the meeting unless a lower percentage is permitted by law. The notice shall state the purpose of the meeting and be given to all Owners in writing at least one week prior to the Commercial Association meeting. Directors selected by the Founder may only be removed by the Founder.

3.10 Vacancy. After termination of the Founder Class, any vacancy occurring in the Board of Directors may be filled by a majority vote of the remaining Board of Directors members even if there are not sufficient remaining Board of Directors members to constitute a quorum, except that a vacancy resulting from removal of a director by the Owners shall be filled by a vote of the membership. Prior to termination of the Founder Class, the Founder may replace at any time any Board of Directors member selected by the Founder. A director filling a vacancy shall serve the unexpired term.

3.11 Compensation. Directors shall receive no compensation for their services unless expressly provided for in resolutions duly adopted by the Owners. Directors appointed by the Founder may be compensated by the Founder but not by the Commercial Association. Directors may be reimbursed for expenses.

3.12 Indemnification. The Commercial Association shall indemnify any director or officer, or former director or officer in the manner and to the extent provided in RCW 23B.08.500 through 23B.08.600.

IV. Officers

4.1 President. The President, who shall be elected by the Board of Directors, shall preside over the meetings of the Board of Directors and of the Commercial Association and shall be the chief executive officer of the Commercial Association. In the recess of the Board of Directors, the President shall have general control and management of the business and affairs of the Commercial Association.

4.2 Additional Officers. Subject to the provisions of the Commercial Declaration and Articles, at each annual meeting of the Board of Directors, the Board of Directors shall elect the following officers of the Commercial Association:

- (a) **One or more Vice Presidents**, who shall also be directors and who shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform other such duties as prescribed by the Board of Directors;
- (b) **A Secretary**, who shall keep the minutes of all meetings of the Board of Directors and of the membership and who shall perform all the duties generally incident to the office of Secretary;
- (c) **A Treasurer**, who shall cause to be kept the financial records and books of account of the Commercial Association, and shall be responsible for Association funds and securities (if any); and
- (d) **Such additional officers** as the Board of Directors shall see fit to elect.

An individual may hold more than one position.

4.3 Powers. The officers shall have the general powers usually vested in such officers of a nonprofit corporation, provided that the Board of Directors may delegate any specific powers to any other officer or impose such limitations or restrictions upon the powers of any officer as the Board of Directors may deem necessary.

4.4 Term. Each officer shall hold office for the term of one year and until a successor shall have been elected and qualified.

4.5 Vacancy. The Board of Directors may fill any vacancies in any office. Any officer may be removed at any time, with or without cause, by the affirmative vote of a majority of the whole Board of Directors.

V. Board Meetings

5.1 Meetings; Notice. Meetings of the Board of Directors shall be held upon call by the President or a majority of the Board of Directors on not less than two (2) days' notice to each Director, unless the Board of Directors determines an emergency to exist, in which event the Board of Directors shall give such notice as is reasonable under the circumstances. If notice of regular or special meetings is provided by electronic transmission, it must satisfy the requirements of Section 24.03.009, RCW. Except under emergency conditions, all meetings shall be held in Benton County. Notice should specify the business to be transacted, and the purpose of, any regular or special meeting of the Board but failure to do so shall not invalidate the notice.

5.2 Waiver. Any director may waive notice of a meeting or consent to the holding of a meeting without notice or consent to any action of the Board of Directors without a meeting. Such waiver or consent may be executed prior to, at, or subsequent to the meeting or Board of Directors action to which the waiver or consent relates. Attendance of a director or a committee

member at a meeting shall constitute a waiver of notice of such meeting, except where a director or a committee member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

5.3 Participation, Quorum. Directors may participate in a meeting of the Board or any committee by means of a conference telephone, video call or any similar communications equipment so long as all persons participating in the meeting can hear each other at the same time or by any other method permitted by law as designated by the Board from time to time. Participation by such means shall constitute presence in person at a meeting for the purposes of a quorum. which shall be set at one-half of the directors. Any action required to be taken by vote of the Board of Directors may be taken in the absence of a meeting (or in the absence of a quorum at a meeting) if a consent in the form of a record, setting forth the action so taken, is executed by all of the directors entitled to vote with respect to the subject matter thereof.

5.4 Owners. The Board of Directors may provide for posting of Board meetings on a website or similar means easily accessible by all Owners. Owners other than Directors shall not be entitled to vote or participate in any other way at the Board of Directors meeting unless the Board of Directors so permits.

VI. Committees

6.1 Appointment. The Board may by resolution designate and appoint one or more committees each of which shall consist of two or more directors.

6.2 Powers. The committee may make recommendations to the Board or, to the extent provided in such resolution shall have and exercise the authority of the Board in the management of the corporation. The power of any committee shall be limited as provided by statute and shall not operate to relieve the Board or any individual Director of any responsibility imposed by law.

VII. Records

7.1 Accounting. The Board of Directors shall maintain accounting records according to generally accepted accounting practices and applicable law, which records shall be open to inspection by Owners at reasonable times and upon reasonable notice. After the first sale of a Parcel by the Founder, these accounting records shall include a record of receipts and expenditures and a separate account for each Owner showing the assessments charged to and paid by such Owner. After the first sale of a Parcel by the Founder, within ninety (90) days after the end of each year covered by an annual budget, the Board of Directors shall cause to be furnished to each Owner a statement for such year showing the receipts and expenditures and such other information as the Board of Directors may deem desirable. Upon reasonable notice to the Board of Directors and payment of any fee established by the Board of Director from time to time, any owner shall be furnished a statement of the account setting forth the amount of any unpaid assessments or other charges due and owing from him.

7.2 Meetings. The Board of Directors shall keep a record of all meetings, both of the Board of Directors and of the Commercial Association. For each action taken, the record shall state the vote and a description of the action approved or disapproved, and may, where desired by the Board, the reasons why the action was considered necessary and a summary of the information on which the decision was based. The record shall be available for inspection by any Owner.

VIII. Handling of Funds

8.1 Accounts. The Commercial Association shall establish the necessary funds or accounts to provide properly for the operation and maintenance of the Parcels subject to the Commercial Declaration. Overall superintendence of these funds shall be the responsibility of the Treasurer.

8.2 Loans. No loans shall be made by the Commercial Association to its directors or officers. The directors of the Commercial Association who vote for or assent to the making of a loan to a director or officer shall be jointly and severally liable to the Commercial Association for the amount of such loan until the repayment thereof.

IX. Amendment

The Bylaws may be altered, amended, modified or repealed by (a) two-thirds of the Directors, or (b) assent in writing of members representing a majority of the voting interests, provided, however, that rights reserved to the Founder cannot be modified without the Founder's consent.

X. Interpretation

Operation of the Commercial Association shall at all times comply with the laws for nonprofit corporations under the Washington Nonprofit Corporation Act, and any provision in conflict the Bylaws shall be deemed rewritten to comply. In the event of a conflict among the Bylaws, Articles or Commercial Declaration, the Commercial Declaration shall control, followed by the Articles and then Bylaws.

These Bylaws were adopted by the Board of Directors on _____, 20_____.