

Return Address:

Skamania County Commissioners
PO Box 790
Stevenson, WA 98648

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| <i>Document Title(s) or transactions contained herein:</i> 1. Real Estate Purchase and Sale Agreement |
| <i>GRANTOR(S) (Last name, first name, middle initial)</i> 1. Skamania County <input type="checkbox"/> Additional names on page _____ of document. |
| <i>GRANTEE(S) (Last name, first name, middle initial)</i> 1. Port of Skamania County 2. <input type="checkbox"/> Additional names on page _____ of document. |
| <i>LEGAL DESCRIPTION (Abbreviated: i.e., Lot, Block, Plat or Section, Township, Range, Quarter/Quarter)</i> Section 27, Township 4 North, Range 7 East, W.M. <input type="checkbox"/> Complete legal on page _____ of document. |
| <i>REFERENCE NUMBER(S) of Documents assigned or released:</i> Book 221 Page 1 through 75 AF 143859, 143860, 143861, 143862 Recorded February 26, 2002 <input type="checkbox"/> Additional numbers on page _____ of document. |
| <i>ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER</i> 04-07-27—0-0-1800-00 04-07-27—0-0-1900-00 04-07-27—0-0-2000-00 <input type="checkbox"/> Property Tax Parcel ID is not yet assigned <input type="checkbox"/> Additional parcel numbers on page _____ of document. |
| The Auditor/Recorder will rely on the information provided on the form. The Staff will not read the document to verify the accuracy or completeness of the indexing information. |

5-03-2011
VC
Per Scott P.
NOT A Sale
That will be later.



**REAL ESTATE
PURCHASE AND SALE AGREEMENT**

by and between

SKAMANIA COUNTY, a Political Subdivision of the State of Washington, as Seller

and

**PORT OF SKAMANIA COUNTY, a Washington Municipal Corporation,
as Buyer**

May 3, 2011
Effective Date

List of Exhibits

- Exhibit A Legal Description of Property
- Exhibit B Sketch of Property
- Exhibit B-1 Sketch of Residential Leased Premises
- Exhibit C Assignment and Bill of Sale
- Exhibit D Memorandum of Agreement
- Exhibit E Memorandum of Understanding

Unofficial
Copy

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (this "**Agreement**") is made and entered into effective as of May 3, 2011 (the "**Effective Date**") by and between **SKAMANIA COUNTY**, a Political Subdivision of the State of Washington ("**Seller**"), and **PORT OF SKAMANIA COUNTY**, a Washington Municipal Corporation ("**Buyer**"). Seller and Buyer are sometimes individually or collectively referred to herein as a "**Party**" or the "**Parties**."

RECITALS

A. Seller is the owner of certain real property as more particularly described on the legal description attached hereto as Exhibit A (the "**Property**") consisting of approximately one hundred eighty six (186) acres, which real property is located in the County of Skamania ("**County**"), State of Washington. A sketch of the Property is attached hereto as Exhibit B.

B. Seller desires to sell the Property to Buyer, and Buyer desires to purchase the Property from Seller, in accordance with the terms and conditions contained in this Agreement.

C. This agreement contemplates a period for Buyer to evaluate the property to determine its feasibility for economic development projects. Buyer will manage the property on Seller's behalf pursuant to a Memorandum of Understanding (MOU—Exhibit E) during the feasibility period.

D. This agreement is entered into pursuant to the Interlocal Cooperation Act, RCW Ch. 39.34. The statutory terms are included in Section 8.3.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Buyer and Seller hereby agree as follows:

1. DEFINITIONS.

1.1 "**Authority**" or "**Authorities**" shall mean all federal, state and local governmental and quasi-governmental bodies, agencies, boards and authorities having jurisdiction over the Property, including, without limitation, the County, courts, special taxing districts, administrative tribunals and public and private utilities.

1.2 "**Business Day**" shall mean a day of the year other than Saturdays, Sundays and legal holidays on which banks are required to be closed in the state in which the Property is located.

1.3 **"Buyer's Indemnitees"** shall mean Buyer's members, officers, directors, employees, agents, contractors, attorneys and their respective representatives and successors in interest.

1.4 **"Cash"** shall mean (i) currency of the United States of America, (ii) cashier's check(s) currently dated and payable to Escrow Agent or Seller, as required under this Agreement, drawn and paid through a national banking institution, tendered to Escrow Agent or Seller, as required under this Agreement at least one additional Business Day before funds are required to be available in Escrow or (iii) an amount credited by wire transfer into Escrow Agent's or Seller's bank account as required under this Agreement.

1.5 **"Closing"** shall mean (i) the act of conveyance of the Property by Seller to Buyer, as evidenced by the recordation of the Deed and (ii) the concurrent delivery to Seller by Buyer of the Purchase Price for the Property, or, if Escrow Agent or Buyer is unable to deliver the Purchase Price, or any portion thereof, to Seller on the date of recording of the Deed notwithstanding Buyer's delivery of the Purchase Price into Escrow on or before the recording of the Deed, the delivery to Seller by Buyer of the Purchase Price for the Property on the next Business Day following the date of recording of the Deed, in which case the Closing shall be deemed to have occurred on the date of the recording of the Deed.

1.6 **"Closing Date"** shall mean the date on which a Deed conveying fee title to the Property by Seller to Buyer is recorded in the official real estate records of the County.

1.7 **"County"** shall have the meaning set forth in Recital A of this Agreement.

1.8 **"Deed"** shall mean a statutory warranty deed conveying to Buyer fee title to the Property.

1.9 **"Existing Entitlements"** shall mean all of the following in Seller's possession or control: all existing applications, water rights certifications, appraisals, insurance valuations, permits, authorizations, consents, orders, certificates, licenses, existing plans for the Property, including general and specific plans, current zoning, preliminary and final plat maps, environmental approvals and mitigation, environmental impact report certifications, engineering and design, telecommunication engineering, grading and improvement plans, approvals, registrations, qualifications and other entitlements granted, issued or otherwise enacted by any Authorities pertaining or relating to the Property and all statutory and other rights, credits and entitlements benefiting the Property, but not including Implementing Entitlements.

1.10 **"Existing Property Information"** shall mean all existing documents and materials in Seller's possession or control concerning the Property, including, without limitation: all books, records, and operating statements for the Property that reasonably relate to Buyer's due diligence inspections and review, including, without limitations, matters affecting valuation, environmental and development concerns, for the past three (3) years; all current surveys of the Property in Seller's possession or reasonably available to Seller; all current contracts related to the Property, if any, and any proposed contracts being negotiated,

if any; all engineering reports, soils reports, plans, environmental reports and market studies for the Property in Seller's possession or reasonably available to Seller; the results of any inspection studies for the Property that Seller may have commissioned, including any Phase I environmental study and soils studies; all information concerning zoning and entitlements and any system development charge credits and other development rights for the Property previously obtained by or granted to Seller; and all other existing documents or instruments deemed necessary or appropriate by Buyer reasonably related to Buyer's acquisition and development of the Property. The Existing Property Information shall not include any correspondence, reports, studies, memoranda, marketing materials, intellectual property, materials or communications protected by the attorney-client privilege, or any other information that Seller is obligated to hold confidential and not publish or disclose to any third party, but shall include such information if it may be published or disclosed under the protection of a confidentiality agreement with Buyer. If such information may not be published or disclosed even if protected by a confidentiality agreement with Buyer, Seller shall nonetheless provide Buyer a summary of the information being withheld and the basis on which it is being withheld.

1.11 **"Extension Period"** shall mean any extension of the date by which the Notice of Closing must be given within a period of one calendar year following the expiration of the Feasibility Period or any then expiring Extension Period in accordance with Section 10.2.

1.12 **"Feasibility Period"** shall mean a period of time commencing on the Effective Date and expiring on the date that is one calendar year after the Effective Date of this Agreement. As the term is used herein as the context requires, Feasibility Period shall also include any Extension Period properly exercised by the Purchaser.

1.13 **"Force Majeure"** shall mean any act of God, act or omission of any Authority, casualty, epidemic, war, insurrection, riot, fire, flood, earthquake, or strike, boycott or other labor dispute.

1.14 **"Hazardous Material"** shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to those substances, materials or wastes regulated now or in the future under any Hazardous Materials Laws and any and all of those substances included within the definitions of "hazardous substances," "hazardous materials," "hazardous waste," "hazardous chemical substance or mixture," "imminently hazardous chemical substance or mixture," "toxic substances," "hazardous air pollutant," "toxic pollutant" or "solid waste" under any Laws. Hazardous Materials shall also mean any and all other similar terms defined under any Laws and materials and wastes which are, or in the future become, regulated under applicable Laws for the protection of health or the environment or which are classified as hazardous or toxic substances, materials or waste, pollutants or contaminants, as defined, listed or regulated by any Laws, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) any petroleum products or fractions thereof, (iii) asbestos, (iv) polychlorinated biphenyls, (v) flammable

explosives, (vi) urea formaldehyde, (vii) radon gas, (viii) methane gas, (ix) lead-based paint, and (x) radioactive materials and waste.

1.15 **“Hazardous Material Laws”** shall mean all Laws, orders, licenses and permits relating to Hazardous Material.

1.16 **“Implementing Entitlements”** shall mean all applications, water certifications, including water rights, water quantity, quality and potability tests, permits, authorizations, consents, orders, certificates, licenses, general, specific and other plans, zoning, preliminary and final plat maps, environmental approvals and mitigation, environmental impact report certifications or similar environmental clearance certifications, engineering and design, grading and improvement plans, approvals, registrations, qualifications and other entitlements granted, issued or otherwise enacted by any Authorities pertaining or relating to the Property or applied for, processed or obtained by Buyer in connection with the development of the Property and all statutory and other rights, credits and entitlements benefiting the Property. The Implementing Entitlements shall include, without limitation, all entitlements necessary, in Buyer's sole discretion, so as to allow Buyer to proceed with Buyer's proposed development of the Property, including zoning required to permit Buyer's contemplated development, and such agreements as may be necessary with other Authorities with respect to major offsite public improvements for Buyer's proposed development of the Property.

1.17 **“Laws”** shall mean all federal, state and local laws, common laws, rules, regulations, ordinances and codes as they may be amended or modified from time to time. The term “Laws” includes Hazardous Material Laws.

1.18 **“Leases”** shall mean the leases with Seller's existing tenants (the **“Tenants”**).

1.19 **“Notice of Closing”** shall mean the Buyer's written notice of its election to close in accordance with Section 10.

1.20 **“Project”** shall mean the industrial, commercial, retail, open space and other uses in an economic development project to be developed on the Property.

1.21 **“Property”** shall mean the real property referenced in Recital A and more particularly described in Exhibit A, and all of Seller's right, title and interest in and to all entitlements, easements, rights, rights of way, water, water rights, minerals, mineral rights, air rights, development rights, plans, permits, applications, approvals and privileges appurtenant thereto, all streets and water courses adjacent to, abutting or serving the real property, and all improvements, personal property and fixtures located thereon.

1.22 **“Property Development Information”** shall mean all covenants, studies, water system plans and studies, surveys, site plans, engineering plans and specifications, including telecommunication and water system planning and engineering, applications and submittals, preliminary and final plat maps, environmental reports and studies, soil studies, engineering reports, documents and materials in Buyer's possession

concerning the development and sale of the Property; provided, however, the Property Development Information shall not include any correspondence, reports, studies, memoranda, marketing materials, intellectual property, or any other information which is proprietary to Buyer or any entity affiliated therewith or is of the nature that Buyer or any such affiliate is obligated to hold it confidential and not publish it or disclose it to any third party.

1.23 **"Seller's Indemnitees"** shall mean Seller's elected officials, officers, employees, agents, contractors, attorneys, and their respective representatives and successors in interest.

1.24 **"Title Company"** shall mean Skamania County Title Insurance Company.

1.25 **"Title Policy"** shall mean the ALTA Extended Coverage Owner's title insurance policy, as more particularly described in Section 7.2.

2. **PURCHASE AND SALE.** Subject to the terms and conditions set forth herein, Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to acquire from Seller, the Property in accordance with the terms hereof.

3. **EARNEST MONEY DEPOSIT.** No Earnest Money deposit is required of Purchaser. However, Purchaser intends to confer other benefits upon the Property during the Feasibility Period and expend time and effort determining the Feasibility of the property to the public needs, which shall constitute adequate consideration for enforcement of this Purchase and Sale Agreement.

4. **PURCHASE PRICE.** The purchase price for the Property (the **"Purchase Price"**) shall be one dollar (\$1.00), payable at closing.

5. **ESCROW.** The Parties may, by mutual agreement, elect to close this transaction in escrow. In that event, the Parties shall designate an escrow agent to close the transaction and negotiate the distribution of closing costs. Absent such a designation, the County agrees to deliver a good and sufficient warranty deed to the Port at closing.

6. **FEASIBILITY PERIOD, ENTITLEMENTS AND MANAGEMENT AUTHORITY.**

6.1 **Suitability for Use; Joint Special Meeting(s).** Buyer shall have the right during the Feasibility Period as defined in Section 1.12 above to make such investigations, studies and tests with respect to the Property as Buyer deems necessary or appropriate to determine, in its sole and absolute discretion, the suitability of the Property for acquisition and development by Buyer. If Buyer disapproves or is deemed to have disapproved feasibility as provided in this Section 6, then this Agreement shall terminate. At or near the end of the one-year Feasibility Period and any extension period provided in Section 10.2, below, or at the request of either party at any other time, the parties agree to hold a joint Special Meeting to consider whether or not to extend the Feasibility Period and/or any extension period. At that time, either party may elect to terminate this agreement. If Buyer

neither extends the Closing Date by any of the Extension Periods nor gives the Notice of Approval (as defined below) on or before the last day of the Feasibility Period, Buyer shall be deemed to have disapproved feasibility and this Agreement shall terminate at the expiration of the Feasibility Period. In addition to the termination rights afforded at each Special Meeting, either party shall have the right, in its sole and absolute discretion, to terminate this Agreement by delivering at least ninety day's prior written notice thereof to the other at any time on or before the last day of the Feasibility Period, and neither Party shall then have any further obligation hereunder, except for the obligations of the Parties described in Section 12 and the obligations of the Buyer described in Section 6.3, which obligations shall survive termination of this Agreement.

6.2 Existing Development Documents, Plans and Permits. Within thirty (30) calendar days after the Effective Date of this Agreement or such later time as the Parties may agree, Seller shall deliver or otherwise make available to Buyer at Buyer's sole expense the Existing Entitlements and Existing Property Information in the possession or control of Seller. Seller shall promptly deliver to Buyer complete copies of all correspondence, notices, additional information, or other communications affecting or modifying any of the Existing Entitlements or Existing Property Information received or obtained by Seller. Seller represents and warrants to Buyer that Seller has the right to deliver copies of the Existing Property Information and Existing Entitlements to Buyer without thereby violating any agreement concerning the use or publication of such Existing Property Information or Existing Entitlements.

6.3 Buyer's Investigation of the Property.

(a) During the Feasibility Period and any Extension Period, Seller hereby grants to Buyer and its authorized agents, including consultants, engineers and authorized designees, the right to enter upon the Property and to make all inspections and investigations of the condition of the Property which it may reasonably deem necessary, including, without limitation to, soil borings, percolation tests, engineering and topographical studies, the availability of utilities, and any other tests or studies reasonably related to determining the feasibility of developing the Property and the costs associated therewith, all of which inspections shall be undertaken at Buyer's sole expense. Provided, however, such inspections and investigations shall not unreasonably disturb the use of leased Property by existing Tenants. Neither Buyer nor any agents, consultants, engineers and/or authorized designees retained by or acting on behalf of Buyer shall enter upon the Property to perform such inspections and investigations and tests or for any purpose whatsoever unless and until Seller has been furnished with a certificate of general public liability and property damage insurance insuring Seller against any loss or liability arising from the activities to be conducted by Buyer or such other person, corporation or entity acting for or on behalf of Buyer as authorized by this section, said liability insurance to be written by insurers authorized to do business in the State of Washington, reasonably acceptable to Seller, to be on an occurrence basis, to name Seller as an additional insured, and to be in an amount of at least \$2,000,000.00 per occurrence. Such insurance limits shall not constitute the limit of liability of Buyer with respect to Buyer's investigations under this Agreement. Seller shall cooperate in providing Buyer with any information reasonably necessary for Buyer's investigation and

evaluation of the Property to the extent such information is reasonably available to Seller. Buyer shall keep the Property free from any mechanic's liens resulting from Buyer's testing, inspections and investigations under this Section 6.3(a) and, if Buyer elects to terminate this Agreement, Buyer shall repair and restore any physical damage caused to the Property arising from Buyer's testing, inspections and investigation. Seller shall continue to insure all improvements against fire and other casualty losses during the Feasibility Period.

(b) Buyer shall indemnify, defend and hold Seller and Seller's Indemnitees harmless from and against all losses, damages, claims, suits, liens, liabilities, judgments, costs and expenses, including reasonable attorneys' fees, arising from any bodily injury, property damage or mechanic's lien claim caused by Buyer or its authorized representatives' exercise of its rights under this Section 6.3 on any of the Property; provided, however, Buyer shall have no liability or duty to indemnify for discovery of any condition discovered but not created by Buyer. Buyer shall, however, have an obligation to indemnify the Seller and Seller's Indemnitees should Buyer enhance or exacerbate any condition discovered but not created by Buyer. This provision shall survive the Closing or the termination of this Agreement for any reason.

6.4 **Buyer's Management of the Property.** During the Feasibility Period Seller shall grant Buyer full and complete authority to manage the property on behalf of Seller. During the Feasibility Period and all extensions, the County hereby authorizes the Buyer to manage and market the property for future economic development. The parties shall enter into a Memorandum of Understanding that will provide either compensation to Buyer for management services, or assign rents and profits to Buyer during the Feasibility Period, or some combination thereof. A copy of the MOU in effect as of the Effective Date is attached hereto as Exhibit E.

6.5 **Processing of Implementing Entitlements.**

(a) Buyer shall have the right during the Feasibility Period (and if Buyer elects to go forward with the transaction contemplated by this Agreement, after the Feasibility Period) to determine, in its sole and absolute discretion, whether it is able to obtain the Implementing Entitlements for the Property. Buyer will be deemed to have obtained all Implementing Entitlements when all submittals have been made, all hearings have been conducted, all final approvals have been given or issued and all applicable periods of appeal have expired.

(b) During the Feasibility Period (and if Buyer elects to go forward with the transaction contemplated by this Agreement, after the Feasibility Period), Buyer shall have the right, at Buyer's sole cost and expense, to apply for and process all Implementing Entitlements necessary or appropriate for the subdivision and the development of the Property as contemplated by Buyer. Seller shall cooperate with and assist Buyer in the processing of the Implementing Entitlements, but without cost to Seller, including without limitation attending meetings with Authorities relating to the same, and to the extent necessary or appropriate, executing and delivering all items and materials related to the processing of the Implementing Entitlements, joining in proceedings for and/or the execution of petitions, applications, annexations, easements, plats, zone changes, master plans, plan amendments,

planned unit developments, subdivisions, partitions, boundary or lot line adjustments and dedications that may be required for the development of the Property as determined by Buyer in Buyer's sole and absolute discretion. Seller hereby appoints Buyer as Seller's agent and attorney-in-fact to execute any Implementing Entitlements, including, without limitation, applications, plats, master plans or similar items for submission to Authorities that may be necessary in Buyer's judgment to pursue its project (which includes the Property), subject to the following requirements: (i) before submitting any such items to Authorities, Buyer shall give Seller not less than ten (10) days advance notice, in the manner set forth in Section 14.12 (except that notice for this purpose may also be given by electronic transmission) setting forth in reasonable detail Buyer's intention to do so; and upon submission, Buyer shall promptly provide Seller (with copies as set forth in Section 14.12) of a true copy of each such submitted item.

6.6 **Farming Operations, Subsurface Rights and Existing Leases.**

(a) **Farming operations.** During the Feasibility Period (and if Buyer elects to go forward with the transaction contemplated by this Agreement, after the Feasibility Period) and following Closing, if Closing occurs on or before the Effective Date Seller shall cause Tenant to cease all new farming operations from the ground on the Property except that Tenant may entitle current farming tenants to any and all emblements due to planted crops.

(b) **Mineral Rights; Geothermal Rights.** After the Effective Date, Seller shall not impair or convey any mineral rights or geothermal rights relating to the property.

(c) **Existing Leases.** Seller shall work with Tenant and Buyer to review all existing leases and other possessory rights to the Property (i) verifying that Tenants will vacate the Leased Premises prior to closing or (ii) certifying that Tenant's (including any sublessees or other contracting parties of Tenant) use and activities have been in full compliance with all applicable Laws, including but not limited to any Hazardous Material Laws, and Tenant (including any sublessees or other contracting parties of Tenant) has not encroached on nor committed any trespass on the properties adjoining the Leased Premises, and (iii) containing customary assurances included in tenant estoppel certificates, including but not limited to assurances that the Lease is a valid lease and in full force and effect and represents the entire agreement between the parties, there is no existing default on the part of Seller or Tenant in any of the terms and conditions thereof and no event has occurred which, with the passage of time or giving of notice, or both, would constitute an event of default, the Lease has not been amended other than as disclosed by Seller, and there is no option to purchase or right of first refusal under the Lease (the "**Estoppel Certificate**").

(d) If Seller fails to timely deliver the Estoppel Certificates to Buyer, Buyer shall have the right, at its sole and absolute discretion to terminate this Agreement upon thirty (30) days notice, and the Parties shall have no further obligation to one another with respect to this Agreement, except for the obligations of the Parties described in Section 12 and Buyer described in Section 6.3.

6.7 **Notice of Approval.** On or before the last day of the Feasibility Period plus any Extension Period, Buyer shall have the conditional right (i) to proceed with the acquisition of the Property by delivering written notice of approval ("**Notice of Approval**") to Seller, or (ii) to terminate this Agreement. This right to proceed with acquisition of the property is expressly conditioned on the County's decision of whether or not to proceed with the sale in the Special Meeting(s) described in Section 6.1, above. If Buyer does not deliver Notice of Approval on or before the last day of the Feasibility Period, Buyer shall be deemed to have elected to terminate this Agreement; and the Parties shall have no further obligation to one another with respect to this Agreement, except for the obligations of the Parties described in Section 12 and the obligation of Buyer described in Section 6.3.

6.8 **Notice of Closing.**

(a) On or before the later of the last day of the Feasibility Period or, if extended, five (5) Business Days following the last day of the last Extension Period through which Buyer has exercised its right to extending the Closing Date, Buyer shall have the right (i) to proceed to Closing by delivering written notice of its election to close in accordance with Section 10 ("**CLOSING**") to Seller, or (ii) to terminate this Agreement. If Buyer delivers the Notice of Approval, but does not extend the Closing Date beyond the Feasibility Period, Buyer shall be deemed to have delivered the Notice of Closing as of the last day of the Feasibility Period and elected to proceed to Closing. If Buyer exercises its right to extend the Closing Date, but does not deliver Notice of Closing on or before five (5) Business Days following the last day of the last Extension Period through which Buyer has extended the Closing Date, Buyer shall be deemed to have delivered the Notice of Closing as of the last day of such Extension Period and elected to proceed to Closing.

(b) Notwithstanding any provisions of this Agreement to the contrary, if Buyer delivers the Notice of Approval and/or delivers or is deemed to have delivered the Notice of Closing but subsequently elects to terminate this Agreement due to a material default or material breach by Seller hereunder, then (i) this Agreement shall terminate;; and (ii) the Parties shall have no further obligation to one another with respect to this Agreement, except for the obligations of the Parties described in Section 12 and the obligations of Buyer described in Section 6.3.

(c) In the event that Buyer delivers the Notice of Approval and/or delivers or is deemed to have delivered the Notice of Closing, but subsequently elects to terminate this Agreement for any reason other than a material default or material breach by Seller hereunder, then (i) this Agreement shall terminate and (ii) the Parties shall have no further obligations to one another with respect to this Agreement, except for the obligations of the Parties described in Section 12 and the obligations of Buyer described in Section 6.3.

7. **TITLE.**

7.1 **Title Report.** Buyer may procure at its own expense an up-to-date preliminary title report prepared by the Title Company covering the entire Property (the "**Preliminary Report**"), together with legible copies of all documents referenced therein as

exceptions to title and a plot plan for the Property showing all the locations of all recorded easements, to the extent a recorded survey so depicts such recorded easements.

7.2 **Title Policy.** Buyer's obligation to proceed with the Closing and to consummate the transactions contemplated by this Agreement shall be conditioned upon the commitment by Title Company to issue the Title Policy showing title to the Property vested in Buyer with liability equal to the tax appraised value of the property, subject only to the Permitted Exceptions.

8. **REPRESENTATIONS, WARRANTIES AND COVENANTS.**

8.1 **Seller's Representations, Warranties and Covenants.** In addition to the representations, warranties and covenants of Seller contained in other sections of this Agreement, Seller hereby represents, warrants and covenants to Buyer as follows, all of which shall survive the Closing Date:

(a) Seller is a Political Subdivision of the State of Washington, duly formed and in existence under the laws of the State of Washington and has the full power and authority to execute this Agreement and bind Seller. The entering into and performance by Seller of the transactions contemplated by this Agreement will not violate or breach any agreement, covenant or obligation binding on Seller.

(b) This Agreement has been duly authorized and executed by Seller and the representatives signing on behalf of Seller, and upon delivery to and execution by Buyer shall be a valid and binding agreement of Seller.

(c) Seller owns marketable fee simple title to the Property and has the full right, capacity, power and authority to enter into and carry out the terms of this Agreement. Seller has not alienated, encumbered, transferred, leased (other than the Lease), assigned or otherwise conveyed its interest in the Property or any portion thereof in any manner that is not reflected in the recording office for real estate records of the county in which the Property is located, nor has Seller entered into any agreement to do so, nor shall Seller do so after the Effective Date, except as permitted under this subsection. Seller has delivered to Buyer a true copy of the Leases, including all modifications, amendments, notices and other documents relevant thereto. To the best of Seller's actual knowledge, without having conducted any independent investigation thereof, there are no uncured defaults under the Leases and no event has occurred that with notice or lapse of time would constitute a default under the Leases. Except as specifically contemplated in this Agreement, Seller and Tenant shall not amend the Leases without the prior written consent of Buyer, which Buyer may withhold in its sole and absolute discretion. To the best of Seller's actual knowledge, without having conducted any independent investigation thereof, Tenant's use and activities on the Leased Premises have been in full compliance with all applicable Laws, including but not limited to all Hazardous Material Laws, and Tenant has not encroached on nor committed any trespass on the properties adjoining the Leased Premises. Tenant's consent is not required for any assignment of the Lease by Seller.

(d) To the best of Seller's actual knowledge, without having conducted any independent investigation thereof, there is no known violation of any Laws affecting the Property, nor has Seller received any written notice of any Law violations affecting the Property.

(e) To the best of Seller's actual knowledge, without having conducted any independent investigation or testing thereof, during the time Seller has owned the Property, neither Seller, nor, to the best of Seller's knowledge, without having conducted any independent investigation or testing thereof, any third party (including, but not limited to, Tenant) has used, generated, manufactured, stored or disposed any Hazardous Materials in, at, on, under or about the Property or transported any Hazardous Materials to or from the Property or violated any Hazardous Material Laws, apart from the use and storage of petrochemicals for fueling and operating vehicles and equipment on the Property, or as Seller has otherwise disclosed in writing to Buyer prior to closing. To the best of Seller's actual knowledge, without having undertaken any independent investigation thereof, Seller is not aware of any violation nor has Seller been advised of any current investigation with regard to the violation of any Laws relating to industrial hygiene, worker health and safety, or to the environmental conditions in, at, on, under or about the Property including, but not limited to, soil and groundwater conditions. During the time Seller has owned the Property, to the best of Seller's knowledge, there has been no discharge, migration or release of any Hazardous Materials from, into, on, under or about the Property. To the best of Seller's actual knowledge, without any independent investigation, there is not now, nor has there ever been on or in the Property underground or surface storage tanks, except for a decommissioned underground fuel tank located on the home site in the shed that is East of the barn. To the best of Seller's actual knowledge, without any independent investigation, there is not now, nor has there ever been on or in the Property, any asbestos-containing materials or any polychlorinated biphenyls used in hydraulic oils, electrical transformers or other equipment. Seller hereby assigns to Buyer as of the Closing Date all claims, counterclaims, defenses or actions pursuant to any Laws that Seller may have against any third parties relating to the existence of any Hazardous Materials in, at, on, under or about the Property. Moreover, Seller shall defend, indemnify and hold harmless Buyer and Buyer's Indemnitees from any liability, loss, cost, damage or expense, including, without limitation, court costs, expert witness fees and attorneys' fees, that Buyer or Buyer's Indemnitees may suffer or incur as a result of any claim, demand, action, cost or judgment made or obtained by any individual, partnership, corporation, entity, governmental agency or person which arises out of or results from Seller's breach or default with respect to any of the representations, warranties or covenants above set forth in this subsection.

(f) To the best of Seller's actual knowledge, without having conducted any independent investigation thereof, Seller is not aware of any endangered or threatened species or protected natural habitat, flora or fauna located on the Property, except as otherwise disclosed to Buyer in writing as part of its Existing Encumbrances.

(g) To the best of Seller's actual knowledge, without having conducted any independent investigation thereof, there are no pending or threatened suits, actions or

arbitrations, or legal, administrative, or other proceedings or governmental investigations concerning the Property.

(h) Except for the Existing Entitlements delivered to Buyer pursuant to Section 6.2. Seller has not made any commitment or representation to any Authority or any adjoining or surrounding property owner that would in any way be binding on Buyer or would interfere with Buyer's ability to develop the Project, and will not make any such commitment or representation which would adversely affect the Project, without Buyer's written consent.

(i) The execution and delivery of this Agreement and the consummation of the transaction contemplated hereby will not result in any violation of or default under any agreement to that Seller is a party or by which its assets are bound, or any Laws applicable to Seller.

(j) To the best of Seller's knowledge, there are no natural hazard and safety problems relating to the Property other than those typical to the existing use of the Property.

(k) Between the Effective Date and the Closing Date, and subject to the Tenant's permitted activities under the Lease:

(i) Seller shall not take any action or fail to take any commercially reasonable action which would cause any of the representations or warranties made by Seller under this Agreement to be in any material respect not completely true and accurate;

(ii) Seller will (a) comply with all Law affecting the Property, and (b) not commit any waste or nuisance with respect thereto;

(iii) Seller shall (a) execute any application, consent or documents reasonably necessary for Buyer to investigate the Property; (b) execute any and all consents, authorizations or other documents reasonably necessary for Buyer to pursue applications, permitting, entitlements, and the Implementing Entitlements in connection with the Project; (c) without Buyer's prior written approval, not enter into any new agreement affecting the Property which is not terminable prior to each Closing; and (d) take all such other actions and perform such other obligations as are required or contemplated hereunder including, without limitation, all of Seller's express obligations pertaining to satisfaction of any of the Conditions to Closing;

(iv) In the event that changes occur as to any information, documents or exhibits referred to in the subsections of this Section 8.1 or in the Existing Property Information, Seller will promptly disclose same to Buyer when first available to Seller; and in the event of any change which may be reasonably deemed by Buyer to be materially adverse (and not caused by a material default or material breach by Seller hereunder, which shall be governed by the terms of Section 11), Buyer may, at its election, terminate this Agreement by delivering written notice to Seller, and neither Party shall have any further obligations hereunder, except as expressly provided in this Agreement.

To the best of Seller's actual knowledge, without having conducted any independent investigation thereof, neither this Agreement, nor any exhibit hereto, nor any exhibit, document, certificate, or statement prepared by Seller (but not prepared by third parties) in connection with the transaction contemplated herein (whether delivered prior to, simultaneously with, or subsequent to the execution of this Agreement) contains any untrue statement of material fact or omits to state a material fact in any way concerning the Property or otherwise affecting or concerning the transaction contemplated hereby. As to any reports or other materials provided to Buyer and prepared by third parties, Seller is not warranting (and will not be liable or responsible for) the accuracy, fitness or usability of such reports or materials or any recommendations or conclusions stated therein. Representations and warranties of Seller in this Agreement that are made "to the knowledge of Seller" (or using words of similar effect) are made to the best of Seller's actual knowledge, without independent investigation or examination. If Seller obtains actual knowledge prior to Closing of a fact that would make any of the representations and warranties of Seller in this Agreement false or inaccurate in any respect, Seller will notify Buyer of such fact. The falsehood or inaccuracy of any representation or warranty of Seller under this Agreement, except those that Seller gains actual knowledge of after the Effective Date and promptly notifies Buyer of, which Buyer reasonably deems to be materially adverse shall be a material breach by Seller governed by the terms of Section 11.2. Seller will not be liable to Buyer for the inaccuracy of any such representations and warranties after the Closing Date unless Seller had actual knowledge on the Closing Date that such representation or warranty by Seller was false or Seller failed to disclose to Buyer the fact known to Seller that made the representation or warranty false.

Each of the representations and warranties made by Seller in this Agreement, or in any exhibit or on any document or instrument prepared by Seller (but not prepared by third parties) and delivered pursuant hereto, shall be true and correct in all material respects as of the Effective Date, and shall be deemed to be made again as of the Closing Date, and shall then be true and correct in all material respects. The truth and accuracy of each of the representations and warranties, and the performance of all covenants of Seller contained in this Agreement, are conditions precedent to the occurrence of the Closing. Seller shall defend, indemnify and hold harmless Buyer and Buyer's Indemnitees for any breach of Seller's representations and warranties herein. This indemnity shall include the reasonable attorneys' fees, costs and legal expenses of Buyer.

(l) Except for the representations and warranties expressly provided in Section 8.1 above and/or elsewhere in this Agreement, Buyer agrees that if it approves the items reserved for its approval hereunder and completes the purchase of the Property (i) that it is purchasing the Property on an "AS IS, WHERE IS, WITH ALL FAULTS" basis and based on its own investigation of the Property; (ii) that neither Seller nor Seller's employees, agents, brokers, representatives, managers, property managers, asset managers, officers, principals, attorneys or contractors (collectively, "**Sellers Representatives**") have made any warranty, representation or guarantee, expressed, implied or statutory, written or oral, including, without limitation, any implied warranty of merchantability or fitness for any use or purpose or of reasonable workmanship, concerning the Property or any of the products or improvements located thereon or therein except as more fully provided in Section 8.1 and/or elsewhere in

this Agreement; (iii) that neither Seller nor Seller's Representatives have made any warranty, representation, or guarantee, express, implied or statutory, written or oral, pertaining to the Property's compliance with any Laws, except as more fully provided in Section 8.1 and/or elsewhere in this Agreement; and (iv) that neither Seller nor Seller's Representatives have made any warranty, representation or guarantee, expressed, implied or statutory, written or oral, as to any government limitation or restriction, or absence thereof, pertaining to the Property, or as to the presence or absence of any latent defect, subsurface soil condition, environmental condition, hazardous substance, toxic waste or any other matter pertaining to the physical condition (title, mapping, construction, or otherwise) of the Property except as provided in Section 8.1 and/or elsewhere in this Agreement. Buyer is or as of the closing date will be familiar with the Property and its suitability for Buyer's intended use. If prior to Closing, Seller obtains actual knowledge of a material change in any material fact warranted or represented herein, Seller shall promptly notify Buyer.

8.2 Buyer's Representations, Warranties and Covenants. Buyer represents and warrants to Seller:

(a) Buyer is a Municipal Corporation duly organized, validly existing and in good standing in the State of Washington, and Buyer is authorized to do business in the State of Washington and has the capacity and full power and authority to enter into and bind Buyer and carry out the agreements contained in, and the transactions contemplated by, this Agreement. The entering into and performance by Buyer of the transactions contemplated by this Agreement will not violate any agreement, covenant or obligation binding on Buyer.

(b) This Agreement has been duly authorized and executed by Buyer and the individuals signing on behalf of Buyer and, upon delivery to and execution by Seller, shall be a valid and binding agreement of Buyer.

(c) Buyer represents that it is a knowledgeable and sophisticated Buyer of real estate and that Buyer is relying solely on its own expertise and the expertise of its consultants and advisors and is making and relying upon its own inspections of all aspects of the Property.

(d) Buyer is not entering into the transactions described in this Agreement with an intent to defraud any creditor or to prefer the rights of one creditor over any other.

Each of the representations and warranties made by Buyer in this Agreement, or in any exhibit or on any document or instrument prepared by Buyer and delivered pursuant hereto, shall be true and correct in all material respects as of the Effective Date, and shall be deemed to be made again as of the Closing Date, and shall then be true and correct in all material respects. The truth and accuracy of each of the representations and warranties, and the performance of all covenants of Buyer contained in this Agreement, are conditions precedent to the occurrence of the Closing. Buyer shall defend, indemnify and hold harmless Seller and Seller's Indemnitees for any breach of Buyer's representations and warranties herein. This indemnity shall include the reasonable attorneys' fees, costs and legal expenses of Seller.

8.3 Joint Representations of Parties to Interlocal Cooperation Act Agreement. The parties represent the following pursuant to RCW Ch 39.34:

(a) Duration. The duration is set forth in paragraph 6.1, above, or as otherwise agreed to by the parties pursuant to this Agreement.

(b) Organization. No new entity will be created to administer this agreement.

(c) Purpose. The purpose is to have the Port acquire the property for economic development purposes.

(d) Manner of Financing. The Port intends to finance the actual purchase price in cash as part of its general funds budget. Additional acquisition costs (studies, tests, surveys, etc.) may depend on grant or loan financing during the Port's feasibility period.

(e) Termination of Agreement. The Port shall have the right to terminate this agreement at any time during the feasibility period. Upon termination, the parties contractual interests shall cease, except as specifically provided in this agreement.

(f) Other. This Agreement contains all terms relating to the property purchase. A separate Memorandum of Understanding shall governs the Port's management authority and responsibility during the feasibility period.

(g) Selection of Administrator. The Executive Director of the Port shall be the Administrator for this Interlocal Agreement.

(h) Manner of Acquiring Property. This Agreement sets forth that ownership of the real property described herein shall remain in fee with the County unless and until the Port exercises its right to purchase. Thereafter, upon recording of a deed, fee ownership shall be in the Port. Personal property shall follow the real property ownership, except that at all times titled personal property shall be owned by the agency in title.

9. CONDEMNATION AND/OR CASUALTY. With respect to any portion of the Property, in the event of:

9.1 (i) the institution of any proceedings by any Authority which shall relate to the taking or proposed taking by eminent domain prior to Closing, or in the event of the taking by eminent domain prior to Closing, or (ii) the occurrence of any casualty, Seller shall promptly notify Buyer and Buyer shall thereafter have the right and option to terminate this Agreement as to all or that portion of the Property affected by the taking or the casualty by giving Seller written notice of Buyer's election to terminate on or before the earlier of the Closing Date or the date that is sixty (60) days after Buyer's receipt of Seller's written notice. Seller hereby agrees to furnish Buyer with written notice of any such proposed condemnation or casualty within seven (7) Business Days after Seller's receipt of such notification, with respect to a condemnation, or receipt of knowledge, with respect to a casualty.

9.2 Should Buyer elect to close on any portion of the Property affected by the condemnation (by not timely notifying Seller of Buyer's election to terminate as referenced above), then this Agreement shall remain in full force and effect, and (i) if such condemnation is concluded prior to Closing on that portion of the Property subject to such condemnation, then (a) the Property shall thereafter exclude the portion of the Property that is the subject such condemnation, and (b) Seller shall be entitled to all monies received or collected for the taking of the fee simple interest in that portion of the Property so taken plus all monies received or collected for any diminution of value to the Encumbered Parcels, but Buyer shall retain all other rights and remedies that it may be entitled to assert against the condemning authority as a claim for an award, separate from that of Seller's, arising out of such condemnation, (ii) if such condemnation is not concluded prior to Closing on that portion of the Property subject to such condemnation, then the Closing shall take place as herein provided without reduction in the Purchase Price, and Seller shall assign and transfer to Buyer at the Closing by written instrument all of Seller's right, title and interest in any condemnation awards. Should Buyer elect not to terminate this Agreement with respect to the portion of the Property affected by a casualty, the Parties hereto shall proceed to the Closing and Seller shall assign and convey to Buyer all of its right, title and interest in all insurance proceeds in connection with such casualty with respect to the affected portion of the Property.

10. CLOSING.

10.1 **Closing Date.** The Closing Date shall occur after satisfaction of all of Buyer's Conditions to Closing, but, subject to Force Majeure, the Closing Date shall occur no later than thirty (30) calendar days following Buyer's delivery, or deemed delivery, of its Notice of Closing. Notwithstanding the above, the outside Closing Date shall be no later than two (2) calendar years after Effective Date, except as such outside Closing Date may be extended for a maximum period of thirty (30) days due to Force Majeure.

10.2 **Extension Period(s).** Buyer, with the County's prior written consent,, shall have the right in its discretion to extend the date by which the Notice of Closing must be delivered, and as a result the Closing Date, by increments of one (1) period of one (1) calendar year each (each an "**Extension Period**") following the expiration of the Feasibility Period or any then-expiring Extension Period as described in this Section 10.2. The parties agree to participate in the joint Special Meeting described in Section 6.1, above, to consider any request for extension of the Feasibility Period and take action on such a request at the meeting.

10.3 **Buyer's Conditions to Closing.** Buyer's obligation to complete the Closing shall be conditioned upon the satisfaction (or Buyer's written waiver thereof) of each of the conditions precedent set forth in this Section 10.3 (collectively, "**Buyer's Conditions to Closing**"). If Buyer's Conditions to Closing are not satisfied (or waived by Buyer), then, without limiting any other remedies Buyer may have hereunder, Buyer shall have the right to terminate this Agreement. Buyer's Conditions to Closing are as follows:

(a) Buyer shall have approved the condition of title of the Property pursuant to the terms of Section 7 within the timeline so provided;

(b) Buyer shall have obtained all Implementing Entitlements necessary to proceed with Buyer's contemplated development of the Property;

(c) The Title Company shall be irrevocably committed to issue the Title Policy (subject only to the Permitted Exceptions) to Buyer on the Closing Date, and Seller shall be ready, willing and able to transfer to Buyer good and marketable fee simple title and exclusive possession to the Property; provided, however, possession shall be subject to the Leases with existing Tenants.

(d) Buyer shall have verified, and Seller shall have confirmed, that no material or adverse events or circumstances have occurred or arisen with respect to the Property since the Effective Date;

(e) Seller shall have timely performed each of its covenants and obligations including, without limitation, delivering to Buyer or depositing into Escrow all documents required under Section 10.5; and

(f) All warranties and representations of Seller set forth in this Agreement shall be true and correct as of the Closing Date.

Buyer's Conditions to Closing described above are for the benefit of Buyer only, and Buyer may, in its sole and absolute discretion by delivery of written notice to Seller elect to waive any or all of such conditions and proceed with the Closing prior to the occurrence of the condition(s) so waived or to terminate this Agreement.

10.4 Seller's Conditions to Closing. Seller's obligation to complete the Closing shall be conditioned upon the satisfaction (or Seller's written waiver thereof) of each of the conditions precedent set forth in this Section 10.4 (collectively, "**Seller's Conditions to Closing**"). If Seller's Conditions to Closing are not satisfied (or waived by Seller), then, without limiting any other remedies Seller may have hereunder, Seller shall have the right to terminate this Agreement.

(a) Buyer shall have timely performed each of its covenants and obligations, including without limitation delivering to Seller or depositing into Escrow all documents required under Section 10.5; and

(b) All warranties and representations of Buyer set forth in this Agreement shall be true and correct as of the Closing Date.

Seller's Conditions to Closing described above are for the benefit of Seller only, and Seller may, in its sole and absolute discretion by delivery of written notice to Buyer, elect to waive any or all of such conditions and proceed with the Closing prior to the occurrence of the condition(s) so waived or to terminate this Agreement.

10.5 **Closing Documents.** The Parties shall deposit or, in the absence of Escrow, have in hand the following executed documents and other items prior to the Closing Date:

(a) **Seller's Deliveries.** Seller shall deposit or have:

(i) a good and sufficient Warranty Deed conveying to Buyer fee title and exclusive possession to the Property, subject only to the Permitted Exceptions;

(ii) an assignment and bill of sale of all of Seller's right, title and interest in and to any and all entitlements, plans, agreements (including the Leases if the Leases have not expired), and reports pertaining to the Property and any related personal property in the form of Exhibit C attached hereto (the "**Assignment**"); and

(iii) an affidavit from Seller in the form required by the Title Company to issue the Title Policy (subject only to the Permitted Exceptions) to Buyer at Closing, which affidavit attests that (a) no individual, entity, or Authority has any claim against the Property including under the applicable construction lien Law pursuant to a contract with Seller or other party; (b) no individual, entity or Authority is either in possession of the Property or has a possessory interest in the Property (other than the Tenant if the Lease has not expired); and (c) no improvements to the Property have been made for which payment has not been made, other than improvements made by Buyer.

(b) **Buyer's Deliveries.** Buyer shall deposit:

(i) The sum of one dollar (\$1.00);

(ii) Buyer's share of closing costs and prorations as provided in Section 10.7.

(c) **Additional Instruments.** Seller and Buyer shall each execute, acknowledge and deposit such other instruments as are reasonably required by Escrow Agent, if applicable, or otherwise required to proceed to with Closing and consummate the sale of the Property in accordance with the terms of this Agreement.

10.6 **Actions by Escrow Agent or Buyer's Representative.** On the Closing Date, provided each of the conditions to the Parties' obligations has been satisfied or waived, Escrow Agent or Buyer's representative shall undertake and perform the following acts in the following order:

(a) **Deed.** Record the Deed for the Property with the recording offices of the County and obtain a conformed copy thereof for delivery to Buyer;

(b) **Purchase Price.** Distribute to Seller, or to such party as Seller may instruct, the Purchase Price delivered by Buyer as provided in Section 10.5(b)(i), less Seller's share of closing costs and prorations as provided in Section 10.7; and

(c) Deliveries to Buyer. Deliver to Buyer (i) the conformed copy of the recorded Deed, (ii) the original executed Assignment and (iii) the Title Policy covering the Property, subject only to the Permitted Exceptions.

10.7 Prorations and Closing Costs.

(a) Prorations. The following items shall be prorated and adjusted between Seller and Buyer as of the midnight preceding the Closing, except as otherwise specified:

(i) Rent. Any rent paid by Tenant, including deposits, pre-paid rent and Leasehold Excise taxes on any rent. Any security deposit or similar amounts held by Seller, including interest thereon, to which the Tenant may be entitled upon the expiration or earlier termination of the Lease shall be paid, without proration, to Buyer.

(b) Closing Costs. In connection with the Closing, (i) with respect to the Title Policy, Buyer shall pay that part of the premium attributable to a standard coverage owners policy and Buyer shall pay the additional premium for the extended coverage and title endorsements; (ii) State and County excise tax shall be paid by Seller; (iii) any other transfer, deed or documentary transfer taxes or fees shall be paid by Seller; (iv) the escrow fee of Escrow Agent shall be paid one-half by Seller and one-half by Buyer; and (v) Buyer shall pay recording fees for recording the Deed, and all other fees and costs shall be allocated between Seller and Buyer in accordance with customary practice in the County. Each Party shall bear its own legal costs in connection with the negotiation of this Agreement and the completion of the Closing.

11. DEFAULT.

11.1 Mediation Upon Default. Buyer and seller each agree that in the event of a material default or breach hereunder by either party, the parties agree to enter into mandatory mediation to address and resolve the default or compensate the non-breaching party, using a mutually agreeable mediator. The parties agree to use their best efforts to reach a settlement of any dispute, recognizing that the public interest is not well served by an adversarial relationship between governmental agencies. The agencies agree to enter into the mediation with the goal of a prompt, fair resolution of the dispute, with compromise and expediency paramount.

11.2 Arbitration Last Resort. In the event mediation proves unsuccessful, the parties agree to binding arbitration before a mutually agreed upon arbitrator. In the event the parties are unable to agree on an arbitrator, they select the American Arbitration Association (AAA) rules for the selection of the arbitrator and conduct of the hearing.

11.3 Nothing in this Section 11 is intended to limit or impair Seller's obligations of indemnification arising under this Agreement, all of which obligations shall survive the termination of this Agreement.

12. REAL ESTATE COMMISSION. Neither party has employed a real estate agent in this transaction.

13. DEVELOPMENT OF PROJECT.

13.1 Seller's Cooperation. Seller agrees to cooperate with Buyer at all times during the pendency of this Agreement in connection with Buyer's efforts to obtain the Implementing Entitlements, which cooperation shall include, without limitation, appointing Buyer as its agent to act on Seller's behalf with respect to all such matters and/or joining in any applications or petitions for any of the foregoing.

13.2 Buyer's Development Costs. Except as otherwise provided in the Memorandum of Understanding or other writing between the parties, commencing with the Effective Date and for the duration of this Agreement, Buyer shall be solely responsible for all costs and expenses in connection with the development of the Property, including, without limitation, the cost of (i) all engineering and other required consultant expenses necessary to design and obtain the Implementing Entitlements for the Property, (ii) construction of all infrastructure and other subdivision improvements, and (iii) all permitting and impact fees imposed by applicable Authorities.

14. GENERAL PROVISIONS.

14.1 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument. To facilitate execution, the Parties agree that this Agreement may be executed and transmitted electronically by email or facsimile to the other Party and that the executed electronic counterpart shall be binding and enforceable as an original.

14.2 Section and Subsection Headings. The section and subsection headings herein contained are for the purposes of identification only and shall not be considered in construing this Agreement.

14.3 Entire Agreement. This Agreement, together with all exhibits hereto and documents referred to herein, if any, constitute the entire Agreement among the Parties hereto with respect to the subject matter hereof, and supersede all prior understandings or agreements. This Agreement may be modified only by a writing signed by all Parties.

14.4 Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect and shall in no way be impaired or invalidated, and the Parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

14.5 Governing Law. This Agreement and each and every related document are to be governed by, and construed in accordance with, the laws of the state of Washington

(except to the extent preempted by federal law). The Parties agree to venue in Skamania County, Washington.

14.6 **Waiver of Covenants, Conditions or Remedies.** The waiver by one Party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such Party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement. The exercise of any remedy provided in this Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

14.7 **Legal Advice.** Each Party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared the same.

14.8 **Time of the Essence.** Time shall be of the essence as to all dates and times of performance, whether they are contained herein or contained in any escrow instructions to be executed pursuant to this Agreement, and all escrow instructions shall contain a provision to this effect.

14.9 **Computation of Time.** Any time period provided for in this Agreement which ends on any day other than a Business Day shall extend to 5:00 P.M. Pacific Standard Time on the next full Business Day.

14.10 **Attorneys' Fees.** In the event that any Party hereto institutes an action or proceeding for a declaration of the rights of the Parties under this Agreement, the parties agree to bear their own attorneys' fees and to any court costs incurred.

14.11 **Assignment.** Buyer may only assign this Agreement and its rights and obligations hereunder to an affiliate Project entity organized by Buyer for the development of the Property and/or the Project in accordance with its customary practices in developing planned communities by delivery of written notice of such assignment to Seller, provided that such assignee expressly assumes the obligations of Buyer hereunder. Upon any such assignment by Buyer, subject to and following Closing, Buyer shall be fully relieved from any further liability hereunder. Seller shall not assign this Agreement or its rights and obligations hereunder, or under the Promissory Note or Deed of Trust given at Closing, without the prior written consent of Buyer which consent may be withheld in Buyer's sole and absolute discretion. This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the Parties to this Agreement.

14.12 **Notices.** All notices and demands which either Party is required or desires to give to the other shall be given in writing by certified mail, return receipt requested with appropriate postage paid; by private overnight courier service; or by personal delivery, to the address or fax number set forth below for the respective Party, provided that if any Party gives notice of a change of name or address or number, notices to that Party shall thereafter be

given as demanded in that notice. All notices and demands so given shall be effective only upon actual receipt by the Party (or refusal to accept such delivery) to whom notice or demand is being given.

If to Seller: Skamania County, Washington
County Commissioners
PO Box 790
Stevenson, WA 98648

with a copy to:

And with a copy to: Skamania County Prosecuting Attorney
PO Box 790
Stevenson, WA 98648

If to Buyer: Port of Skamania County
PO Box 1099
Stevenson, WA 98648

with a copy to: Kenneth B. Woodrich
Woodrich & Archer LLP
PO Box 510
110 SW Cascade Ave.
Stevenson, WA 98648
Fax: (509) 427-7618
E-mail: Ken@Woodrich.com

If to Escrow Agent:

14.13 Memorandum of Agreement. Upon mutual execution of this Agreement, the Parties shall also execute a Memorandum of Agreement substantially in the form and content of Exhibit D attached hereto ("**Memorandum of Agreement**"). Buyer will record the Memorandum of Agreement in the recording office of County concurrently with or after Closing. Within three (3) business days following termination, the Buyer shall prepare and record a quitclaim deed terminating the Memorandum of Agreement if this Agreement terminates for any reason other than the default of Seller.

14.14 Incorporation. The Recitals set forth above, and the exhibits attached hereto, are hereby incorporated by reference into this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

SELLER:

**SKAMANIA COUNTY, a Political
Subdivision of the State of Washington**

By: *Paul Pearce*
Chairman
Date: 5/3/11

By: *Jim Richardson*
Commissioner
Date: 5/3/11

By: *Robert Anderson*
Commissioner
Date: 5/3/11

BUYER:

**PORT OF SKAMANIA COUNTY, a
Washington Municipal Corporation,**

By: *Tony Bolstad*
Chairman, Tony Bolstad, District 1
Date: Apr 27, 2011

By: *WD Truitt*
Commissioner, WD Truitt, District 2
Date: April 27, 2011

By: *Kevin Waters*
Commissioner, Kevin Waters, District 3
Date: 4/27/11

APPROVED AS TO FORM:

Adam Kick
Adam Kick, Prosecuting Attorney

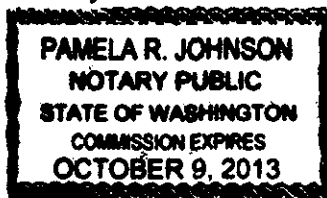
APPROVED AS TO FORM:

Kenneth B. Woodrich
Kenneth B. Woodrich, Port Attorney

STATE OF Washington)
) SS.
COUNTY OF Skamania)

On May 5, 2011, before me, Pamela R. Johnson personally appeared Paul Pearce, Jim Richardson, and Robert Anderson, duly elected Commissioners of Skamania County, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



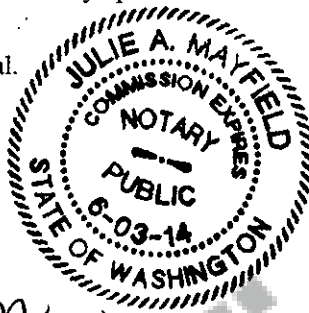
Pamela R. Johnson
Notary Public in and for the State of WA
Pamela R. Johnson
Name Printed
My appointment expires: 10/9/13

[Notary acknowledgment continued on following page]

STATE OF Washington)
COUNTY OF Skamania) ss.

On April 27, 2011, before me, Julie Mayfield personally appeared Tony Bolstad duly elected Commissioner of the Port of Skamania County, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

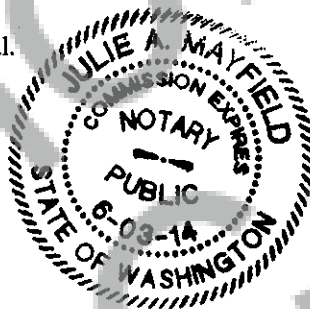


Julie A. Mayfield
Notary Public in and for the State of WA
Julie A. Mayfield
Name Printed
My appointment expires: 6-3-14

STATE OF Washington)
COUNTY OF Skamania) ss.

On April 27, 2011, before me, Julie Mayfield personally appeared W.D. Trutt duly elected Commissioner of the Port of Skamania County, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

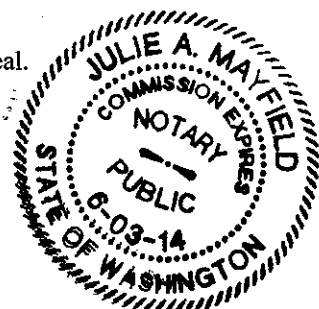


Julie A. Mayfield
Notary Public in and for the State of WA
Julie A. Mayfield
Name Printed
My appointment expires: 6-3-14

STATE OF Washington)
COUNTY OF Skamania) ss.

On April 27, 2011, before me, Julie Mayfield personally appeared Kevin Waters duly elected Commissioner of the Port of Skamania County, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Julie A. Mayfield
Notary Public in and for the State of WA
Julie A. Mayfield
Name Printed
My appointment expires: 6-3-14

EXHIBIT A

Legal Description of Property

Reference:

Book 221
Page 1 through 75

Record #: 143859, 143860, 143861, 143862

Recorded: February 26, 2002 (Skamania County Auditor)

EXHIBIT B

Sketch of Property

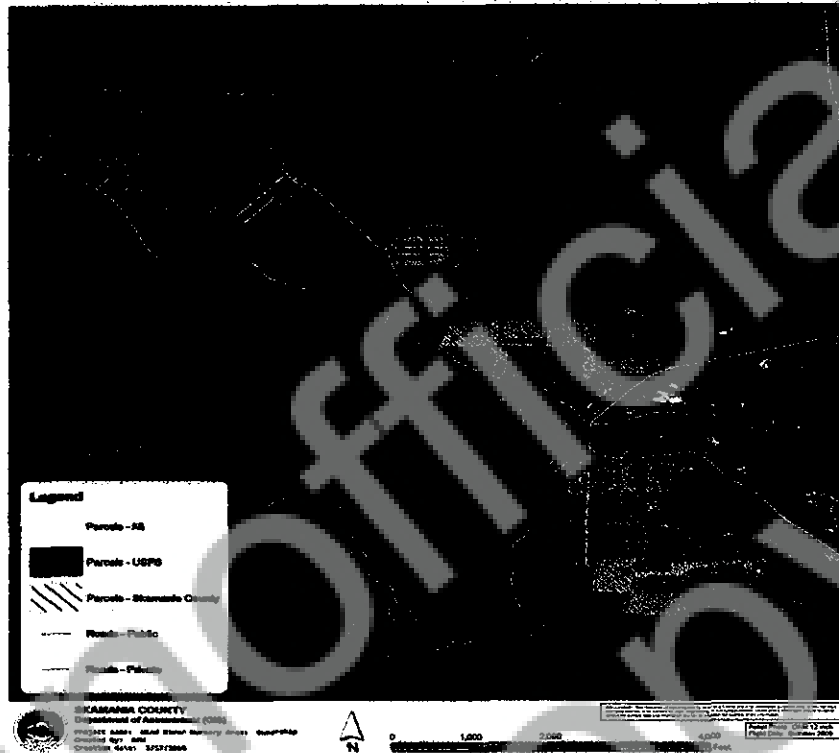


EXHIBIT B TO REAL ESTATE PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS
SKETCH OF PROPERTY

EXHIBIT B-1

Sketch of Residential Leased Premises

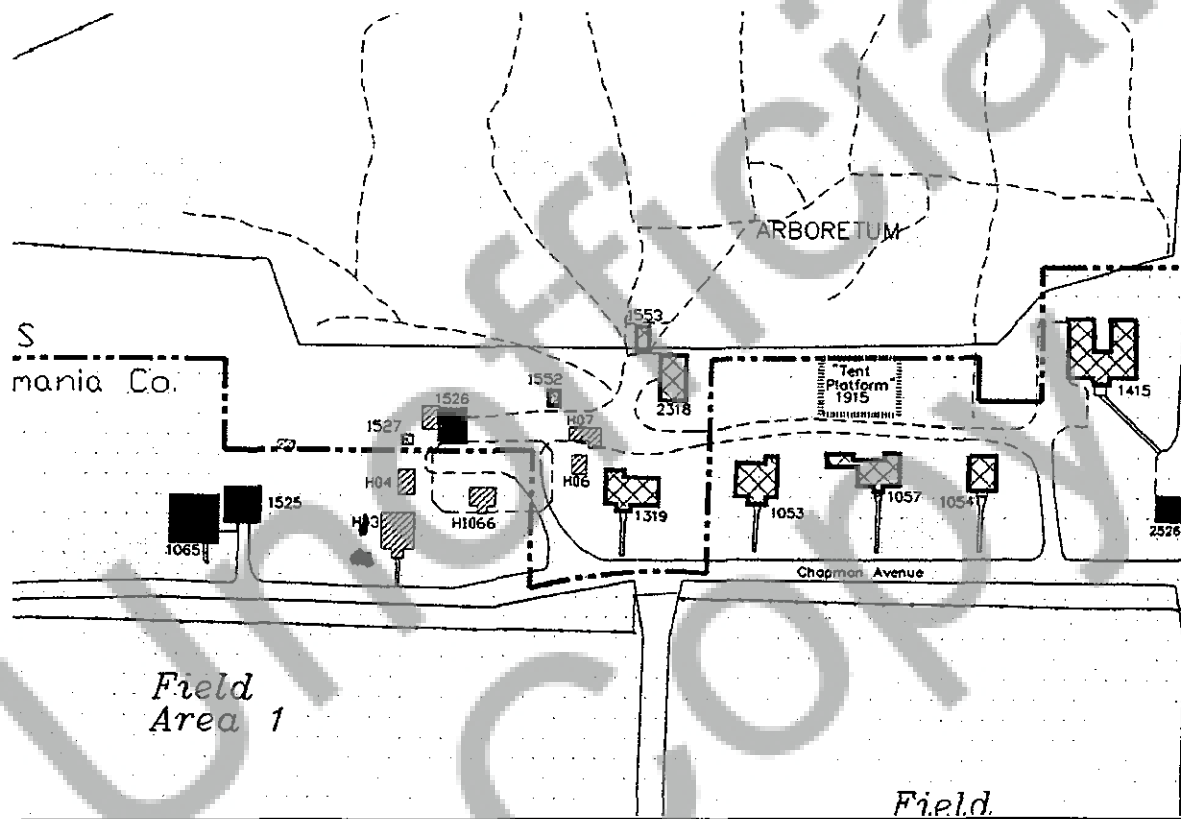


EXHIBIT B-1 TO REAL ESTATE PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS
SKETCH OF RESIDENTIAL LEASED PREMESIS

EXHIBIT C
Assignment
ASSIGNMENT AND BILL OF SALE

Reference is hereby made: (i) that certain property located in the County of Skamania, State of Washington, more described in Exhibit A to that certain Real Estate Purchase Agreement between Seller and Buyer (as such parties are defined below) dated as of May 3, 2011, (ii) to the improvements, personal property and fixtures located thereon, and (iii) to the entitlements, easements, rights, mineral rights, water, water rights, air rights, development rights, plans, approvals and privileges incident thereto (collectively, the "Property").

For good and valuable consideration, receipt of which is hereby acknowledged, the undersigned, SKAMANIA COUNTY, a political subdivision of the State of Washington ("Seller"), does hereby, give, grant, bargain, sell, transfer, assign, convey and deliver to PORT OF SKAMANIA COUNTY, a Washington Municipal Corporation ("Buyer"), all of Seller's right, title and interest in all assets, rights, materials and/or claims used, owned or held in connection with the use, management, development or enjoyment of the Property, including, without limitation: (i) all Existing Entitlements, Implementing Entitlements, subdivision agreements and other agreements relating to the development of the Property; (ii) existing Property Information; (iii) all warranties, claims and any similar rights relating to and benefiting the Property or the assets transferred hereby; (iv) all intangible rights, goodwill and rights benefiting the Property; (v) all development rights benefiting the Property; (vi) all rights, claims or awards benefiting the Property; (vii) all improvements, personal property and fixtures located on or about the Property; and (viii) all rights to receive a reimbursement, credit or refund from the applicable agency or entity of any deposits or fees paid in connection with the development of the Property.

Seller hereby covenants that it will, at any time and from time to time upon written request therefore, execute and deliver to Buyer, its nominees, successor and/or assigns, any new or confirmatory instruments and do and perform any other acts that Buyer, its nominees, successors and/or assigns, may request in order to fully transfer possession and control of, and protect the rights of Buyer, its nominees, successors and/or assigns in, all the assets of Seller intended to be transferred and assigned hereby.

Dated this 3rd day of May, 2011

SELLER:

**SKAMANIA COUNTY, a political
subdivision of the State of Washington**

By: [Signature]
Chair Board of County Commissioners
 [Print Name and Office of Person Signing]

By: _____

 [Print Name and Office of Person Signing]

EXHIBIT D

Memorandum of Agreement

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

PORT OF SKAMANIA COUNTY

PO Box 1099
Stevenson, Washington 98648

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (this "Memorandum") is entered into as of May 3, 2011, by and between SKAMANIA COUNTY, a political subdivision of the State of Washington ("Seller"), and PORT OF SKAMANIA COUNTY, a Washington Municipal Corporation ("Buyer"), with reference to the following facts:

RECITALS

A. Seller is the owner of certain real property located in the County of Skamania ("County"), State of Washington, as more particularly described on Exhibit A of the Purchase and Sale Agreement attached hereto (the "Property").

B. Buyer and Seller have entered into that certain Real Estate Purchase Agreement dated as of May 3, 2011 (as amended from time to time, the "Agreement").

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Memorandum and the Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Buyer and Seller hereby agree as follows:

1. **Agreement to Buy and Sell.** Subject to the terms and conditions set forth in the Agreement, Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to acquire and purchase from Seller, the Property.

2. **No Amendment to Agreement.** This Memorandum is solely to put third parties on notice of Buyer's right to purchase the Property from Seller as provided herein and nothing

contained in this Memorandum shall, or shall be deemed to, modify or amend the Agreement in any respect. In the event of any conflict between the provisions of the Agreement and the provisions of this Memorandum, the provisions of the Agreement shall prevail.

3. **Termination.** This Memorandum shall automatically terminate and be of no further force or effect seven hundred thirty (730) days following the date of the Agreement (the "Termination Date") unless earlier terminated by Buyer's recording of a quitclaim deed terminating this Memorandum or extended or terminated by Buyer and Seller in writing before that date.

IN WITNESS WHEREOF, the parties have signed this Memorandum on the date first written above.

SELLER:

**SKAMANIA COUNTY, a Political
Subdivision of the State of Washington**

By: [Signature]
Chairman
Date: 5/3/11

By: [Signature]
Commissioner
Date: 5/3/11

By: [Signature]
Commissioner
Date: 5/3/11

APPROVED AS TO FORM:

[Signature]
Adam Kick, Prosecuting Attorney

BUYER:

**PORT OF SKAMANIA COUNTY, a
Washington Municipal Corporation,**

By: [Signature]
Chairman, Tony Bolstad, District 1
Date: April 27, 2011

By: [Signature]
Commissioner, WD Truitt, District 2
Date: April 27, 2011

By: [Signature]
Commissioner, Kevin Waters, District 3
Date: 4/27/11

APPROVED AS TO FORM:

[Signature]
Kenneth B. Woodrich, Port Attorney

ATTEST:

[Signature]
Clerk of the Board

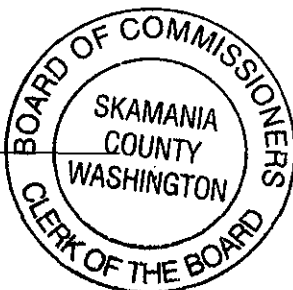




EXHIBIT E

MEMORANDUM OF UNDERSTANDING
Between
SKAMANIA COUNTY, a Political Subdivision of the State of Washington
and
PORT OF SKAMANIA COUNTY, a Washington Municipal Corporation
Exhibit "E" to Purchase and Sale Agreement

A. Introduction:

The Memorandum of Understanding (MOU) is created pursuant to Paragraph 6.4 of the REAL ESTATE PURCHASE AND SALE AGREEMENT (PSA) dated May 3, 2011 between the parties, outlining the authority and responsibility of the Purchaser Port of Skamania County (Port) to manage the Wind River Business Park (WRBP) property as described in Exhibit F of the PSA.

The purpose of this MOU is to allow the Port to manage the WRBP for economic development purposes during the feasibility period of the PSA.

This MOU is an interlocal agreement entered into pursuant to RCW Ch. 39.34.

This MOU is intended to convey authority from Skamania County (County) to the Port to manage the WRBP. The parties intend this MOU to be a work in progress, subject to periodic review and amendment as necessary to achieve its purposes.

B. Organization and Responsibilities:

The County hereby authorizes the Port to operate the WRBP property under the authority conferred to it by RCW Ch. 53. The Port agrees to create separate general ledger accounts for receipts and disbursement relating to the management of the WRBP.

The Port will collect all rents and proceeds and apply them to ordinary maintenance of the property and administration. The Port will report financial activities on a quarterly basis to the County.

The Port will develop and present to the County a list of needed capital improvement and deferred maintenance projects that are larger in scope than ordinary maintenance. The County and the Port shall prioritize and negotiate funding of these projects.

The Port and County agree to work together to implement this MOU. The County agrees to give deference to the Port as to potential tenants, but the County shall sign leases as owner and the Port shall sign leases as Property Manager.

Duties of Property Manager During the term of this MOU the Port shall: 1) manage existing and new leases; 2) collect leasehold tax and process it with Washington State; 3) market

properties to prospective tenants; 4) negotiate new leases and make leasing recommendations to the County; 5) perform all public works contracts according to state and federal public works contracting requirements; 6) present capital improvement and deferred maintenance projects including projects to make properties marketable.

Duties of the County During the term of this MOU the County shall: 1) insure all facilities for fire and casualty loss at no cost to the Port during this MOU; 2) provide water to buildings and grounds at no cost to the Port; 3) provide electricity to vacant buildings and grounds at no cost to the Port; 4) provide funding for capital improvement and deferred maintenance projects approved by the County.

Indemnification and liability insurance The Port agrees to indemnify and hold harmless the County and its respective employees, agents, licensees and representatives, from and against any and all suites, claims, actions, losses, costs, penalties, damages, attorneys' fees and all other costs of defense of whatever kind or nature arising out of injuries of or death of any and all persons (including Subcontractors, agents, licensees or representatives, and any of their employees) or damage of or destruction of any property (including, without limitation, County's property, Port's property, or any Subcontractor's property) in any manner caused by, resulting from, incident to, connected with or arising out of Port's performance of its work, unless such injury, death or damage is caused by the sole negligence of the County.

In any situation where the damage, loss or injury is caused by the concurrent negligence of the Port or its agents and employees and the County or its agents or employees, then the Port expressly and specifically agrees to hold the County harmless to the extent of the Port or its agents' and employees' concurrent negligence.

The Port specifically waives its immunity as against Skamania County under Title 51 RCW (Industrial Insurance Statute), and acknowledges that this waiver of immunity was mutually and expressly negotiated by the parties, and expressly agrees that this promise to indemnify and hold harmless applies to all claims filed by and/or injuries to the Port's own employees against the County. This provision is not intended to benefit any third parties.

If a Subcontractor is used, then the Port shall ensure that all Subcontracts also provide that the Port or Subcontractor will waive its immunity under Title 51 RCW.

Environmental contamination The County shall indemnify the Port from all environmental contamination existing on the property as of the date of the MOU. The Port shall be responsible for contamination occurring after the date of the MOU, provided the contamination was not caused by the County.

C. Additional Terms:

Term The term of this MOU shall be the duration of the PSA and all extensions or as otherwise negotiated between the parties.

Termination This MOU shall terminate only in the event the PSA terminates. The parties shall cooperate to address any reasonable concerns regarding this MOU.

Separate Entity The parties do not contemplate that a separate entity will be created to administer this MOU. The Port's Executive Director shall be the administrator of this agreement.

SELLER:

**SKAMANIA COUNTY, a Political
Subdivision of the State of Washington**

By: [Signature]
Chairman
Date: 5/3/11

By: [Signature]
Commissioner
Date: 5/3/11

By: [Signature]
Commissioner
Date: 5/3/11

APPROVED AS TO FORM:

[Signature]
Adam Kick, Prosecuting Attorney

BUYER:

**PORT OF SKAMANIA COUNTY, a
Washington Municipal Corporation,**

By: [Signature]
Chairman, Tony Bolstad, District 1
Date: April 27, 2011

By: [Signature]
Commissioner, WD Truitt, District 2
Date: April 27, 2011

By: [Signature]
Commissioner, Kevin Waters, District 3
Date: 4/27/11

APPROVED AS TO FORM:

[Signature]
Kenneth B. Woodrich, Port Attorney

ATTEST:

[Signature]
Clerk of the Board

