

**PURCHASE AND SALE AGREEMENT
(SITES 9 and 10)**

by and
between

CITY OF TACOMA,
a Washington First Class City as “Seller”
and
FOSS HARBOR LLC,
a Washington limited liability company, as “Buyer”

Dated: _____, 2021

PURCHASE AND SALE AGREEMENT

(SITES 9 and 10)

THIS PURCHASE AND SALE AGREEMENT (SITES 9 and 10) (this "Agreement"), dated as of _____, 2021 (the "Effective Date"), is by and between the CITY OF TACOMA, a Washington First Class City ("City") as "Seller", and FOSS HARBOR LLC, a Washington limited liability company ("Buyer").

RECITALS

A. The Thea Foss Waterway ("Waterway") has suffered environmental contamination and fallen into disuse. The City took measures to assist in redeveloping certain property along the Waterway for private and public uses that will contribute to the economic, cultural and recreational revitalization of the Waterway.

B. In 2001, Buyer purchased development Site 11 ("Site 11") from and secured a lease and option to purchase development Site 10 ("Site 10"). Both properties were subject to a development agreement providing for sequential development of the two sites.

C. Foss Harbor LLC, ("FH LLC) with the same members as Buyer, owns a 416 slip marina spanning the Foss Waterway waterfront from Site 8 through Site 11. FWD LLC currently leases Site 9, and 921 Dock Street commonly called the "Municipal Dock" ("Muni Dock"), , and Site 10 for marina-related parking.

D. In 2004, with both Site 10 and 11 still undeveloped, Buyer commenced a multi-year process seeking to amend the City's Comprehensive Plan ("Plan") to provide for increased height of potential development on Site 10 and Site 11. The Plan was formally amended in 2008, generally consistent with Buyer's request.

E. In 2013, Buyer renewed discussions regarding potential development of Sites 10 and 11, advancing several concepts balancing development potential with the continuing need to provide parking to support the adjacent marinas owned by FH LLC.

F. In those discussions Buyer was clear that it required simultaneous resolution of all marina-related issues involving all the undeveloped sites that were the subject of a request for qualifications and proposals process with respect to Sites 8, 9, 10 and the Muni Dock. Buyer's principal concern was preservation of sufficient surface parking for marina-related purposes.

G. It was recognized that any development of Sites 8 and 9 would be challenging without addressing Buyer's continuing concern that any development of Sites 8 and 9 would harmfully impact operation of its marina through loss of parking currently available to marina

tenants and satisfying the requirements of the Site 9 Development Covenant recorded under Pierce County Auditor's No. 200107190196 (the Site 9 Covenant").

H. Owner and Buyer continued to work toward a mutually acceptable solution to these issues that generally involve realignment of three public properties: specifically, Sites 8 and 9, and the proposed waterway central park immediately south of Sites 8 and 9. Owner and Buyer developed a solution involving capturing some land from the unimproved central park property to be incorporated within the redefined boundaries of Site 8. One required feature of that transaction is Buyer's agreement to fully release the marina support facility covenant and not oppose future development of the newly reconfigured Site 8 (The "Amended Site 9 Covenant Agreement" which is attached as Exhibit E to this Agreement"). In addition, the property is to be sold to Buyer at fair market value.

I. The sale of Site 9 and Site 10 to Buyer provided for in this Agreement is for their fair market value and accomplishes the public purpose of providing for meaningful development of Sites 9, 10 and 11.

J. Based on these facts and circumstances, Seller has determined that the fair market value sale of Site 10 to Buyer is appropriate given FWD LLC's ownership of Site 11 and the public's substantial interest in securing meaningful and enforceable commitments for the redevelopment of Site 11 and Sites 9 and 10, as well as removing marina-related obstacles to the development of the reconfigured Site 8, enabling that site again to be taken to market for sale for development.

K. As additional consideration, upon its acquisition of Site 10, Buyer will develop Sites 9, 10 and 11 in accordance with the Development Agreement with certain on-site and off-site improvements, including, but not limited to, development of the portion of the Esplanade abutting Sites 9 and 10 and access to the Esplanade, as more fully described in the Development and Amended Site 9 Covenant Agreements. "Esplanade" means the landscaping, public walkways, improvements and open space continuing along the Foss Waterway, which is owned by the City and reserved as a public area.

L. Accordingly, Seller desires to convey Sites 9 and 10 to Buyer and Buyer desires to acquire the same, all pursuant to the terms hereof.

Agreement

NOW, THEREFORE, in consideration of the foregoing promises, and for other good and valuable consideration, receipt of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

Section 1. Purchase and Sale.

1.1 The Property. In consideration of their mutual covenants set forth in this Agreement, Seller agrees to sell to Buyer, and Buyer agrees to purchase and accept from Seller, for the Purchase Price (as defined in Section 2.1) and on the terms and conditions set forth in this Agreement, the following:

(i) Sites 9 and 10 located in the City of Tacoma, Pierce County, Washington and legally described on Exhibit A attached hereto, and (the "Real Estate");

(ii) all buildings, fixtures, structures and other improvements located on the Real Estate (the "Improvements"); and

(iii) all hereditaments, privileges, reversions, benefiting easements, tenements, all rights (including mineral, development, air and water rights) and appurtenances belonging to the Real Estate ("Appurtenances").

The Real Estate, Improvements and Appurtenances are sometimes collectively referred to as the "Property." No personal property is included in the sale.

Section 2. Purchase Price.

2.1 Purchase Price. The purchase price for the Site 9 Property is Nine Hundred Forty-Five Thousand and No/100 Dollars (\$945,000.00) (the "Site 9 Purchase Price"). The purchase price for the Site 10 Property is One Million Thirty-Four Thousand and No/100 Dollars (\$1,034,000.00) (the "Site 10 Purchase Price"). The sum of both the Site 9 and Site 10 Purchase Prices shall be the "Purchase Price". Not later than 10:00 a.m. on the Closing Date (as defined in Section 4.2), Buyer shall deposit with the Escrow Holder (as defined in Section 4.1), via federal wire transfer, the sum necessary to make the total monetary consideration paid to Seller at Closing equal to the Purchase Price, plus or minus prorations and credits as herein provided.

2.2 Deposit. Within two (2) Business Days after the Effective Date, Buyer shall deposit with Escrow Holder as earnest money the amount of One Hundred Ninety Eight Thousand Dollars (\$198,000.00) (the "Deposit"). The Deposit shall be refundable to Buyer if Buyer terminates this Agreement under Section 5.1.1 before the end of the Contingency Period. Following the end of the Contingency Period, unless Buyer has given notice to terminate this Agreement before the end thereof, (a) the Deposit shall be nonrefundable to Buyer except as expressly provided herein for Seller's default. The Deposit shall be applied as a credit toward payment of the Purchase Price at Closing.

2.3 Severable Purchase Rights. Notwithstanding any other provision of this Agreement, Buyer's rights to purchase Sites 9 and 10 are severable, and Buyer may, following its due diligence investigation, elect to purchase either or both Sites 9 and 10. The various provisions of this Agreement shall be interpreted consistent with this right so the "Property" will mean Sites 9

and/or 10 Buyer purchases, the Purchase Price shall be that designated for the Site or Sites purchased and so forth.

Section 3. Development Approvals; Covenant; Parking.

3.1 Generally. Following Closing, Buyer shall develop the Property and Site 11 as provided in the Development Agreement to be entered into by the parties at Closing substantially in the form of Exhibit B attached hereto (the "Development Agreement"). The Development Agreement will provide for the construction of certain "Improvements" as defined therein (including the Improvements to the Esplanade). Plan submissions and permit applications shall be completed in accordance with the plans and permit application schedule attached hereto as Exhibit C (the "Application Schedule").

3.1.1 Government Approvals and Permits. Seller's approvals of the items described in this Section 3 shall not constitute a representation or warranty that such item complies with the Tacoma Waterfront Design Guidelines or applicable Legal Requirements, and shall not constitute or guarantee approval of any permits, licenses, permissions, consents or approvals that may be required by the City or any other any Governmental Authorities or third parties. Buyer shall be solely responsible for applying for, pursuing and obtaining from the appropriate Governmental Authorities or third parties all permits, licenses, permissions, consents or approvals as may be required in connection with the construction of any Improvements. Seller in its Economic Development capacity will cooperate with Buyer to obtain all such permits, licenses, permissions, consents and approvals, but without liability, cost, or expense to Seller. Seller's cooperation, in its Economic Development capacity, shall not influence or otherwise affect Seller's work in its governmental regulatory permitting capacity which shall not be affected by any commitments made in this Agreement.

3.2 Repurchase Right and Transfer by Seller Prior to Completion of Construction. If Buyer fails to commence construction of the Project under the Development Agreement by the "Construction Start Date" (as defined therein) for one or both of the two sites, Seller may exercise its right to repurchase that site on which construction has not timely commenced on the terms set forth in the Development Agreement.

3.3 Parking. The month to month parking lease currently in existence with respect to Sites 9 and 10 shall continue, on a month to month basis, through the Closing Date.

Section 4. Escrow; Closing.

4.1 Escrow. Buyer and Seller have established an escrow ("Escrow") with Chicago Title Company in Tacoma ("Escrow Holder" or the "Title Company"), by and through the escrow department, with an address of _4717 S 19th St. Buyer and Seller shall execute and deliver to Escrow Holder such instructions as may be necessary or convenient to implement the terms of this Agreement and close the transaction contemplated by this Agreement, provided that they are not inconsistent with the terms of this Agreement.

4.2 Closing. The consummation of the purchase and sale of the Property ("Closing") shall take place within 30 days following Waiver by Buyer of Feasibility (the "Closing Date").

4.3 Buyer's Deliveries. At or before Closing, Buyer shall deposit into Escrow the following items:

4.3.1 funds transmitted by wire transfer in the amount of the balance of the Purchase Price, together with Buyer's share of closing costs and prorations, minus a credit for the Deposit, as provided in this Agreement;

4.3.2 duplicate original executed counterparts of the Development Agreement;

4.3.3 executed real estate excise tax affidavit;

4.3.4 executed Memorandum of Development Agreement with specific reference to Seller's right to repurchase the Property ("Memorandum");

4.3.5 Termination of the Existing Development Agreement (as defined herein) by full execution of the new Site 10 and 11 Development Agreement, and Amended Covenant Agreement by all parties ("Existing Development Agreement Termination") including a complete waiver of all obligations of both parties, including any claims for monies due.

4.3.6 an executed Amended Site 9 Covenant Agreement.

4.4 Seller's Deliveries. At or before Closing, Seller shall cause to be delivered into Escrow the following documents:

4.4.1 a Quit Claim Deed (the "Deed") to the Property in recordable form properly executed and acknowledged on behalf of Seller, and an accompanying excise tax affidavit;

4.4.2 an executed affidavit by Seller to the effect that Seller is not a foreign person as defined in Section 1445 of the Internal Revenue Code of 1986, as amended;

4.4.3 executed counterparts of the Development Agreement;

4.4.5 an executed Memorandum of Development Agreement;

4.4.7 an executed Amended Site 9 Covenant Agreement.

4.4.8 an executed Seawall Agreement in a form acceptable to Buyer in which the Seller commits to replace the seawall adjacent to Site 10 on or before a date certain.

4.5 Proof of Authority. Buyer and Seller each shall deliver such proof of authority and authorization to enter into this Agreement and consummate the transaction contemplated by this Agreement, and such proof of power and authority of the individuals executing and delivering any

instruments, documents or certificates to act for and bind such party, as reasonably may be required by the Title Company.

4.6 Other Documents. Buyer and Seller shall deliver such other documents or instruments as are reasonably required to consummate this transaction in accordance with this Agreement.

4.7 Possession. Seller shall deliver possession of the Property to Buyer at Closing.

4.8 Disbursement and Other Actions. At the Closing, Escrow Holder promptly shall undertake all of the following in the manner indicated:

4.8.1 Funds. Disburse all funds deposited with Escrow Holder by Buyer as follows:

(A) Disburse the Purchase Price to Seller, net the total amount chargeable to Seller, if any, as the result of prorations and credits pursuant to Section 11.

(B) Disburse the remaining balance of the funds, if any, to Buyer promptly following the Closing.

4.8.2 Recording. Cause the Deed, the Development Agreement, the Memorandum and any other documents that the parties may direct to be recorded in the Official Records of Pierce County, Washington, and obtain conformed copies thereof for distribution to Buyer and Seller.

4.8.3 Title Policy. Direct the Title Company to issue the Title Policy to Buyer as defined in and in accordance with Section 6.

4.8.4 Disbursement of Documents to Buyer. Disburse to Buyer any documents (or copies thereof) deposited into Escrow by Seller to be delivered to Buyer.

4.8.5 Disbursement of Documents to Seller. Disburse to Seller any documents (or copies thereof) deposited into Escrow by Buyer to be delivered to Seller.

Section 5. Conditions Precedent to Closing.

5.1 Buyer's Conditions. For Buyer's benefit (and waivable by Buyer, and only Buyer, at any time), the following are conditions precedent to Buyer's obligation to consummate this transaction described in this Agreement ("Buyer's Conditions Precedent") and must be satisfied or waived by Buyer by the date or within the time period indicated:

5.1.1 Due Diligence.

(a) Contingency Period. From the date hereof and until 5:00 p.m. on _120 days plus a 30 day extension and a second 30 day extension for payment of \$5000._____, 2021 (the "Contingency Period"), Buyer, in its sole discretion and at its sole expense, has the opportunity to inspect and approve the physical condition and use of the Property and any other matters relating to the Property as Buyer desires, including without limitation, the feasibility of the Project, availability of financing, access, utility services, zoning, engineering, soils and environmental conditions, status of neighboring projects and a survey (collectively, "Inspections"). Because the regulations applicable to the Property are complex, the Seller agrees to work diligently and in good faith with the Buyer so that Buyer fully understands the various options and requirements. Buyer understands that this is not a guarantee that permits will be issued but merely a promise to assist Buyer in understanding the City's interpretations of the rules. If Buyer is for any reason dissatisfied with the results of its Inspections, then at any time before the expiration of the Contingency Period it may deliver a written notice of termination of this Agreement to Seller, in which case Escrow Holder shall promptly return the entire Deposit to Buyer and the parties shall have no further obligations hereunder (except those that expressly survive termination of this Agreement.) If Buyer does not provide such written notice of termination to Seller by the end of the Contingency Period, Buyer's inspection contingency set forth in this section shall be deemed to have been waived, this Agreement shall remain in full force and effect, and the Deposit shall be nonrefundable except to the extent otherwise expressly set forth in this Agreement. Based on its review of Sites 9 and 10 during this Contingency Period, Buyer may elect to close on both Sites, or only one, or neither of the Sites. Buyer is not obligated to Close on both Sites.

(b) Access to Property. Buyer and its authorized contractors, consultants and agents shall have access to the Property at all reasonable times during the Contingency Period. Upon request by Seller, Buyer shall provide Seller with a list of the contractors, consultants and agents, including contact information for each, that Buyer has engaged to perform any Inspections. Before undertaking any borings or sampling of soils or building components or other invasive testing, Buyer shall submit a plan for such sampling for Seller's approval, which will not be unreasonably withheld, conditioned or delayed. Buyer shall arrange and pay for the proper disposal of all samples containing Hazardous Material recovered as a result of Buyer's Inspections in accordance with all applicable law. All invasive testing on the Property must be in accordance with applicable law. Buyer shall restore the Property, including filling test holes, to eliminate any damage to the Property caused by Buyer, its contractors, consultants or agents in the conduct of the Inspections; provided, however, Buyer shall have no obligation to remediate any prior-existing defects or other conditions in or on the Property, including, without limitation, remediation of any existing Hazardous Materials. If Buyer discovers any defects or conditions in or on the Property that create a dangerous condition that was previously unknown to Seller, including the discovery of any Hazardous Materials, Buyer shall promptly notify Seller of such defect or condition.

Buyer agrees to indemnify Seller and to hold Seller, and its agents and employees (collectively, "Seller Parties") harmless from and against any and all losses, costs, damages, claims or liabilities including, but not limited to, construction, mechanic's and materialmen's liens and attorneys' fees, to the extent caused by Buyer's entry upon the Property, including the conduct of Buyer's Inspections, by Buyer or its contractors, consultants or agents under this Section 5.1.1. Notwithstanding the foregoing, such indemnity obligations shall not apply to (i) claims arising out of the negligence or intentional misconduct of any Seller Party; or (ii) any losses, costs, damages, claims or liabilities to the extent caused by any pre-existing environmental contamination in or on the Property that may be discovered by Buyer's conduct of its Inspections, including, without limitation, the conduct of any invasive testing, so long as Buyer conducts such invasive testing strictly in accordance with a testing and physical inspection plan that has been reviewed and approved by Seller in advance of such testing and complies with applicable law requirements in all respects. In connection with this indemnity, Buyer waives any immunity it may have under the workers' compensation laws of the State of Washington, Title 51 RCW. This indemnity shall survive Closing or termination of this Agreement.

(c) Reports and Disclosure Statement. Seller has provided or made available to Buyer or its representatives copies of all reports about the physical condition of the Property that have been prepared at the request of Seller and any other reports about the physical condition of the Property that are in Seller's possession, which reports are listed on Exhibit G hereto (the "Reports"). Seller disclaims any responsibility for the accuracy of any information contained in the Reports, and Buyer acknowledges that it uses the Reports at its own risk. If this Agreement terminates or the purchase and sale transaction provided for in this Agreement fails to close, Buyer promptly shall return the Reports (and all copies thereof) to Seller.

To the maximum extent permitted by RCW 64.06, Buyer expressly waives its right to receive from Seller a seller disclosure statement as provided for in RCW 64.06 (the "Seller Disclosure Statement"). Seller and Buyer acknowledge that Buyer cannot waive its right to receive the environmental section of the Seller Disclosure Statement (which is contained in Section 6 of the form). Seller will provide the same, with only such environmental section completed by Seller, to Buyer within five (5) days after the Effective Date. Nothing in the Seller Disclosure Statement creates a representation or warranty by Seller, nor does it create any rights or obligations in the parties except as set forth in RCW 64.06, as amended. Buyer is advised to use due diligence to inspect the Property to Buyer's satisfaction, subject to the terms of this Agreement, and Seller may not have Knowledge (defined below) of defects that careful inspection might reveal. Buyer specifically acknowledges and agrees that the Seller Disclosure Statement is not part of this Agreement, Seller has no duties to Buyer other than those set forth in this Agreement, including delivery of the completed environmental section of the Seller Disclosure Statement, Buyer has no independent cause of action under the Seller Disclosure Statement and specifically and without limitation, Buyer will not have a remedy for economic loss resulting from negligent errors, inaccuracies or omissions on the Seller Disclosure Statement.

5.1.2 Title Policy. On the Closing Date, the Title Company shall be prepared to issue the Title Policy to Buyer as of the Closing Date in accordance with Section 6 of this Agreement.

5.1.3 Representations and Warranties. On the Closing Date, Seller's representations and warranties contained in Section 7.1 are true and correct in all material respects, as if made as of the Closing Date, except for immaterial variations described in a certificate delivered by Seller pursuant to Section 7.1 and except as provided in Section 7.3.

5.1.4 Seller's Performance. Seller has duly and timely performed each and every other material obligation to be performed by Seller under this Agreement before Closing.

5.2 Seller's Conditions. For Seller's benefit (and waivable by Seller, and only Seller, at any time), the following are conditions precedent to Seller's obligation to consummate this transaction ("Seller's Conditions Precedent") and must be satisfied or waived by the date or within the time period indicated:

5.2.1 Buyer's Performance. Buyer has duly and timely performed each and every material obligation to be performed by Buyer under this Agreement prior to Closing.

5.2.2 Buyer's Representations and Warranties. Buyer's representations and warranties set forth in Section 7.2 are true and correct in all material respects as if made as of the Closing Date, except as provided in Section 7.3.

5.3 Termination for Failure of Condition. If any of the conditions set forth herein are not satisfied or waived by the date provided in such condition or in the event all conditions are not satisfied by _____, 202__, the party entitled to benefit of such condition shall have the right to terminate this Agreement and the escrow provided for herein by giving written notice of such termination to the other party and to Escrow Holder. In the event of such termination, all escrow and title charges shall be divided equally between the parties and this Agreement will be of no further force and effect and the parties shall have no further liability except as expressly set forth in this Agreement for matters expressly stated to survive termination of this Agreement. All documents delivered to Escrow Holder shall be returned to the depositing party and Buyer shall return to Seller all due diligence items delivered by Seller to Buyer. In addition, Escrow Holder shall promptly disburse the Deposit to the parties entitled thereto as provided in Section 2.2.

Section 6. Evidence of Title.

6.1 Commitment. Buyer has obtained a preliminary title commitment for an extended coverage ALTA owner's policy of title insurance ("Commitment"), together with the underlying documents forming the basis of the exceptions, issued by the Title Company. Buyer may also obtain at its expense an ALTA/NSPS survey of the Property (the "Survey"). Buyer shall have until thirty (30) days after the Effective Date to object to any matter disclosed in the Commitment or the Survey by giving written notice (the "Title Objection Notice") of the objection to Seller. If, after

the initial issuance of the Commitment and giving of the initial Title Objection Notice, the Title Company amends the Commitment by adding a new exception thereto, or an update to the Survey reveals any new matters affecting title, Buyer shall be entitled to give a Title Objection Notice to such exception within five (5) Business Days after receipt of the amendment. Any matters not referenced in a timely Title Objection Notice shall be deemed approved by Buyer and are referred to herein as "Permitted Exceptions."

Within five (5) Business Days after receiving a Title Objection Notice, Seller shall notify Buyer in writing of any disapproved exception(s) that Seller declines to cure ("Seller's Title Defect Cure Notice"). If Seller fails to timely give the Seller's Title Defect Cure Notice, then Seller shall be deemed to have given a Seller's Title Defect Cure Notice in which Seller declines to cure any matters set forth in the applicable Title Objection Notice on the last day of such 5-Business Day period. Thereafter Buyer shall have three (3) Business Days after receipt (or deemed receipt) of Seller's Title Defect Cure Notice to provide written notice to Seller that Buyer either waives the exception that Seller has declined to cure (which thereafter shall constitute a Permitted Exception) or elects to terminate this Agreement. If Buyer fails to provide such notice within such 3-Business Day period, Buyer shall be deemed to have waived the right to object to the exception (which shall thereafter constitute a Permitted Exception) and waived its right to terminate this Agreement by reason thereof.

Anything to the contrary in this Agreement notwithstanding, Seller shall have no affirmative obligation to expend any funds or incur any liabilities to cause any title exceptions to be removed from the Commitment (or any update thereto) or insured over, except that Seller shall pay or discharge any lien or encumbrance voluntarily created, permitted or assumed by Seller (except current taxes and assessments) and not created by or resulting from the acts of Buyer or other parties not related to Seller.

6.2 Issuance of Title Policy. At Closing, the Title Company shall be prepared to issue an extended coverage 2006 ALTA owner's policy ("Title Policy") in the amount of the Purchase Price insuring Buyer and subject only to (a) a lien for real property taxes, not then delinquent; (b) Permitted Exceptions approved or deemed approved by Buyer and as determined in accordance with Section 6.1; (c) matters affecting the condition of title to the Property created by or with the written consent of Buyer; (d) the recorded CCRs for the Thea Foss Waterway Neighborhood (described in Exhibit G); (e) a public utilities easement reserved in favor of the Seller; and (f) the Development Agreement. Seller shall execute a standard owner's affidavit in favor of the title company to the extent necessary for the Title Company to issue the extended coverage Title Policy.

Section 7. Representations and Warranties.

7.1 Seller. Seller represents and warrants that as of the date it executes this Agreement and as of Closing (subject to Section 7.3):

7.1.1 Subject to satisfaction of Seller's Condition Precedent contained in Section 5.2.6, Seller has the legal power, right and authority to enter into this Agreement and all documents required to be executed by Seller under this Agreement and to consummate the transaction contemplated by this Agreement.

7.1.2 Except as described or provided in the Reports or as disclosed in writing by Seller to Buyer before the Effective Date, there is no pending, or to Seller's actual knowledge threatened (in writing) actions, suits, arbitrations, claims or proceedings, at law or in equity, adversely affecting the Property or in which Seller is a party by reason of Seller's ownership of the Property, including any eminent domain proceeding.

7.1.3 Except as hereafter provided, Seller has not entered into any oral or written leases, subleases, rental agreements with respect to the Property or any portion thereof that would encumber the Property or bind Buyer after Closing.

7.1.4 To Seller's actual knowledge, Seller has not received any notices from any governmental authority with respect to any violation of any statute, ordinance or regulation with which the Property must comply.

The term "actual knowledge" as used herein means the knowledge of Jeffrey Robinson.

7.2 Buyer. Buyer represents and warrants that as of the date it executes this Agreement and as of Closing:

7.2.1 Buyer has the legal power, right and authority to enter into this Agreement and the documents required to be executed by Buyer under this Agreement, and to consummate the transactions contemplated by this Agreement.

7.2.2 All requisite action (corporate, partnership, limited liability company or otherwise) has been taken by Buyer in connection with entering into this Agreement and the documents required hereby to be executed by Buyer, and the consummation of the transactions contemplated hereby.

7.3 Changes in Representations and Warranties; Survival. The foregoing representations and warranties are to be made by Seller as of the date hereof and, except as hereafter provided, as of the Closing Date. If after the Effective Date and before the Closing Date Seller becomes aware of facts that would cause such representation and warranty to be untrue or incomplete, Seller shall notify Buyer in writing within five (5) Business Days after discovery of the new facts, and include copies of documents or materials, if any, related to such new facts. If a representation and warranty can no longer be accurately made by Seller and this is (i) due to a state of facts first arising after the Effective Date, (ii) not intentionally caused by Seller, (iii) such new state of facts materially and adversely affects a right, remedy or obligation of Buyer under this Agreement, prevents a party from performing as required herein, or materially increases the costs associated with Buyer's intended use of the Property or materially decreases value of the

Property, then Buyer may by written notice to Seller elect to terminate this Agreement. In such event, Escrow Holder shall promptly return the Deposit to Buyer and neither party shall have any further obligations hereunder (except as provided in Section 5.1.1, 28 and 30). Such election must be exercised within five (5) Business Days after Buyer receives the written notice of the new facts from Seller as provided above (and in any event before the Closing Date). During such 5-day period, however, the parties shall negotiate in good faith about possible solutions to address the change in facts. If Buyer elects to proceed to Closing notwithstanding the new facts affecting a representation and warranty, it shall have no claim against Seller by reason of the affected representation and warranty and the affected representation and warranty shall be deemed modified to reflect the new state of facts.

The representations and warranties of the parties made in Section 7 shall survive Closing as provided in Section 25.

Section 8. As Is. Buyer acknowledges that the purchase price has been negotiated to reflect the current condition of the Property, as is, where is and with all faults. Buyer represents and warrants to and agrees with Seller that:

(A) Buyer will have diligently examined and investigated to Buyer's full satisfaction the physical condition of the Property, the Reports and all other matters that in Buyer's judgment affect Buyer's use of the Property and Buyer's willingness to enter into this Agreement during the contingency period.

(B) Except as set forth in this Agreement and any exhibits attached, neither Seller, nor any real estate broker, agent or other representative of seller has made any representations or warranties whatsoever regarding this transaction or any fact relating thereto, including, without limitation, any representations or warranties concerning the physical condition of the Property, access, zoning laws, environmental matters, utilities, or any other matter affecting the Property or the use thereof. Buyer is relying and will rely solely on Seller's representations in Section 7.1 and Buyer's own inspections, tests, audits, studies and investigations.

(C) BUYER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, ITS USE, COMPLIANCE WITH LAW OR OTHERWISE RELATING THERETO MADE OR FURNISHED BY SELLER, OR ANY REAL ESTATE BROKER OR AGENT REPRESENTING OR PURPORTING TO REPRESENT SELLER, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, VERBALLY OR IN WRITING, EXCEPT THE REPRESENTATIONS AND WARRANTIES OF SELLER AS SPECIFICALLY SET FORTH IN THIS AGREEMENT.

(D) IF BUYER HAS NOT EXERCISED ITS RIGHT TO TERMINATE THIS AGREEMENT AS PROVIDED HEREIN, BUYER SHALL ACCEPT THE PROPERTY "AS IS" AND "WHERE IS" WITH ALL FAULTS AT CLOSING AND, EXCEPT AS SET FORTH IN

SECTION 7.1, WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED OR STATUTORY OF ANY KIND WHATSOEVER BY SELLER, , ANY REAL ESTATE BROKER, AGENT OR OTHER REPRESENTATIVES OF SELLER. IF BUYER PURCHASES THE PROPERTY UNDER THIS AGREEMENT, THEN BUYER SHALL BE DEEMED TO HAVE AGREED TO ACCEPT TITLE TO THE PROPERTY SUBJECT TO ANY ENVIRONMENTAL CONTAMINATION DISCOVERED ON THE PROPERTY BEFORE OR AFTER CLOSING AND TO HAVE WAIVED AND RELEASED ITS RIGHT TO RECOVER OR CLAIM (EXCEPT AS OTHERWISE PROVIDED IN THE INDEMNITY AGREEMENT) FROM SELLER, , AND THEIR AFFILIATES, DIRECTORS, OFFICERS, ATTORNEYS, EMPLOYEES, AND AGENTS OF SELLER AND , AND FROM ANY REAL ESTATE BROKERS OR AGENTS REPRESENTING OR PURPORTING TO REPRESENT SELLER, ANY AND ALL DAMAGES, LOSSES, LIABILITIES, COSTS, OR EXPENSES WHATSOEVER (INCLUDING ATTORNEYS' FEES AND COSTS) AND CLAIMS THEREFOR, WHETHER DIRECT OR INDIRECT, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THAT MAY ARISE ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF OR CONNECTED WITH THE ENVIRONMENTAL, PHYSICAL OR OTHER CONDITION OF THE PROPERTY OR ANY LAW, ORDINANCE, OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED (42 U.S.C. SECTIONS 9601 ET SEQ.), THE RESOURCES CONSERVATION AND RECOVERY ACT OF 1976 (42 U.S.C. SECTIONS 6901 ET SEQ.), THE CLEAN WATER ACT (33 U.S.C. SECTIONS 466 ET SEQ.), THE SAFE DRINKING WATER ACT (14 U.S.C. SECTIONS 1401-1450), THE HAZARDOUS MATERIALS TRANSPORTATION ACT (49 U.S.C. SECTIONS 1801 ET SEQ.), THE TOXIC SUBSTANCE CONTROL ACT (15 U.S.C. SECTIONS 2601-2629), AND THE MODEL TOXICS CONTROL ACT, RCW 70.105D. THIS SECTION 8 SHALL SURVIVE CLOSING.

Section 9. Buyer's Pre-Closing Covenants. Seller and Buyer acknowledge that from and after the date of this Agreement through the earlier to occur of the termination of this Agreement or Closing, Buyer shall diligently pursue the Permits at Buyer's sole cost and expense. Seller agrees to reasonably cooperate with Buyer in connection with the Permits and Plans. Such cooperation shall include, without limitation, the prompt execution by Seller of all necessary documents to the extent necessary for such Permits, including, without limitation, applications for such Permits. Buyer will promptly deliver to Seller copies of any submittals and written correspondence between Buyer and governmental entities or their respective consultants with respect to the Permits. Seller's duty to cooperate under this section shall not require Seller to incur liability, costs or expenses.

Section 10. Environmental Issues. The Property may have hazardous substances within its boundaries and/or emanating from the Property, including contamination that has not yet been discovered or is otherwise unknown as to nature and extent (the "Contamination"). Pursuant to Section 5.1.1, Buyer will be conducting investigations to determine whether it is satisfied with the environmental condition and prior remediation of the Property.

Effective as of Closing, Buyer shall be deemed to have released and forever discharged Seller, Seller's employees, officers, council members, agents, successors and assigns from any claim or cause of action that Buyer has or may have that is related to the Contamination or the presence or alleged presence of Contamination at, below, or emanating from the Property.

Section 11. Costs and Expenses. Seller shall pay (a) the premium for the standard coverage portion of the Title Policy, (b) one-half (1/2) of all Escrow fees and costs, and (c) Seller's share of prorations. Buyer shall pay for (d) the premiums for any additional title insurance coverage, including without limitation extended coverage title insurance, or endorsements, (e) all costs of the Survey, (f) any document recording charges, (g) one-half (1/2) of all Escrow fees and costs, and (h) Buyer's share of prorations. Because Seller is a public entity, no excise tax will be due on the sale. Buyer and Seller shall each pay their own legal and professional fees and fees of other consultants. All other costs and expenses shall be allocated between Buyer and Seller in accordance with the customary practice in the City of Tacoma, County of Pierce, State of Washington. If the transaction is terminated by either party on account of default by the other, the defaulting party shall pay all escrow and title costs billed by the Escrow Holder.

The Property is currently exempt from property taxes and assessments, which will not be prorated at Closing. All property taxes and assessments arising from and after Closing shall be the sole responsibility of Buyer.

Section 12. Condemnation and Casualty.

(a) Condemnation. If before the Closing Date any condemnation or eminent domain proceedings are initiated that (i) would result in the taking of any part of the Property with a value in excess of \$100,000, (ii) would adversely and materially affect the operation or feasibility of the Project, or (iii) that take or close any right of access to the Property, (a "Material Taking"), Buyer may either:

(i) terminate this Agreement by written notice to Seller whereupon the parties shall proceed in accordance with Section 14 for a termination that is not the fault of either party; or

(ii) proceed with the Closing, in which event Seller shall assign to Buyer all of Seller's right, title and interest in and to any award made in connection with such condemnation or eminent domain proceedings.

Seller shall promptly notify Buyer in writing of the commencement or occurrence of any condemnation or eminent domain proceedings. If such proceedings would result in a Material Taking of any of the Property, Buyer shall then notify Seller, within five (5) Business Days after Buyer's receipt of Seller's notice, whether Buyer elects to exercise its rights under clause (a) or clause (b) of this Section 12. Closing shall be delayed, if necessary, until the later to occur of (i) the Closing Date or (ii) five (5) Business Days after the expiration of the 5-day period. If Buyer fails to timely elect to proceed under this Section 12, then this Agreement shall terminate,

whereupon the parties shall proceed in accordance with the provisions of Section 14 for a termination that is not the fault of either party. If a taking is not a Material Taking, the parties shall proceed in accordance with clause (b) above.

(b) Casualty. The Closing shall take place in accordance with this Agreement regardless of damage to or destruction of the Property.

Section 13. Legal and Equitable Enforcement of this Agreement.

13.1 Default by Seller. This Agreement pertains to the conveyance of real property, the unique nature of which is hereby acknowledged by the parties. Consequently, if Seller refuses or fails without legal excuse to convey the Property to Buyer as required by this Agreement, or otherwise defaults in its obligations hereunder, and provided that Buyer is not in default of its obligations hereunder, Buyer shall have the right to elect one of the following remedies: (a) specific performance of this Agreement; or, alternatively, (b) to terminate this Agreement upon written notice to Seller and receive a return of the Deposit paid, in which case neither party shall have any further obligations to the other hereunder, except for the indemnities expressly stated to survive hereunder and Section 30 concerning attorney's fees. In no event shall Seller be liable to Buyer for any damages to Buyer, other than the return of the Deposit if Buyer elects to proceed under (b) above. If Buyer elects to proceed under (a) above, it must commence an action for specific performance within sixty (60) days after Seller's failure to convey the Property in accordance with this Agreement or will be deemed to have waived such remedy.

13.2 Default by Buyer. If Buyer fails without legal excuse to complete the purchase of the Property, the Deposit shall be forfeited to Seller as liquidated damages as the sole and exclusive remedy available to Seller. If the Closing fails to occur by reason of Buyer's default, the parties agree that the damages that Seller would suffer thereby are difficult or impossible to determine. The parties agree that the Deposit is a reasonable sum, considering all circumstances that exist on the date of this Agreement, including: (1) the relationship of the foregoing sum to the range of harm to Seller that could reasonably be anticipated; and (2) the anticipation that proof of actual damages would be impracticable or extremely difficult to determine. This provision is not intended to apply to obligations that survive a termination of this Agreement, including but not limited to the provisions of Section 5.1.1, Section 28, Section 30, and Seller shall be entitled to receive amounts due thereunder in addition to the Deposit.

Section 14. Termination. If any of the conditions set forth herein are not satisfied or waived by the date provided in such condition, the party entitled to the benefit of such condition shall have the right to terminate this Agreement and the Escrow by giving written notice of such termination to the other party and to Escrow Holder. In the event of such termination, all escrow and title charges shall be divided equally between the parties (unless one party is in default, in which case, the party which is in default shall be responsible for payment of all escrow and title charges) and this Agreement will be of no further force and effect and the parties shall have no further liability except as expressly set forth in this Agreement for matters that survive termination.

All documents delivered to Escrow Holder shall be returned to the depositing party, and Buyer shall return to Seller all due diligence items delivered by Seller to Buyer.

Section 15. Notice. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following addresses:

If to Seller: City of Tacoma
747 Market Street, Suite 900
Tacoma, WA 98402
Attention: Jeff Robinson, Community and Economic
Development Director
Email: jrobinson@cityoftacoma.org

With a Copy to:

If to Buyer: Foss Harbor LLC
P.O. Box 1316
Tacoma, Washington 98401
Attn: Ted Johnson
Email: tedj@simonjohnsonllc.com

Any such notices shall be either (a) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) days after deposit, postage prepaid in the U.S. mail, (b) sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered when actually delivered pursuant to the records of such courier, (c) sent by email transmission to the party and its counsel, receipt of which has been confirmed by telephone, and by regular mail, in which case notice shall be deemed delivered on the next Business Day following confirmed receipt, or (d) hand delivered, in which case notice shall be deemed delivered on the date of the hand delivery. The above addresses and email addresses may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

Section 16. Time of Essence. Time is of the essence of this Agreement.

Section 17. Governing Law. The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Washington.

Section 18. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 19. Captions. The captions in this Agreement are inserted for convenience of reference and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

19.1 Resale or Other Transfers of Sites 9 and/or 10 Before Commencement of Construction and before Certificate of Completion.

19.1.1 During the term of this Agreement, Developer will not transfer the Sites 9 and/or 10 Property or any part thereof without the prior written consent of City to the proposed transfer and transferee, which consent shall not be unreasonably withheld. City shall not unreasonably withhold its consent if the proposed transferee is a real estate developer with demonstrated expertise, excellent reputation, not less than ten (10) years of experience in the ownership and construction of similar projects and a net worth sufficient, in City's reasonable judgment, to perform all of Developer's obligations hereunder and to operate the Project and so long as the transferee assumes in writing all obligations of Developer hereunder by and through an assumption agreement acceptable to City in its reasonable discretion.. Transfer by Developer to a wholly owned subsidiary of Developer, or to an affiliate of Developer that is greater than 10% under common ownership with Developer and controlled by Developer, shall not require City approval so long as persons administering this Agreement and managing the development of the Project on behalf of Developer do not change as a result of such transfer and so long as the transferee assumes in writing all obligations of Developer hereunder by and through an assumption agreement acceptable to City in its reasonable discretion.

"Transfer" as used herein includes any sale, conveyance, transfer, ground lease or assignment, whether voluntary or involuntary, of any interest in the Property and includes transfer to a trustee in bankruptcy, receiver or assignee for the benefit of creditors, any merger, consolidation, liquidation or dissolution of Developer. In addition, "Transfer" includes any sale or any transfer of direct or indirect interests in Developer or any of its constituent entities, other than transfers of minority interest that do not individually or in the aggregate result in the change of control or management of Developer, the Property or the Project.

19.1.2 If City approves of a transfer, Developer shall deliver to City (a) a copy of the document evidencing such transfer, including a suitable estoppel agreement(s), and (b) an assumption of all obligations of Developer under this Agreement in form reasonably satisfactory to City.

19.1.3 The transferee (and all successor transferees) shall succeed to all rights and obligations of Developer under this Agreement, including any unperformed obligations of Developer as of the date of such transfer. No transfer by Developer, or any successor, shall release Developer, or such successor, from any such unperformed obligations without the written consent and release of City.

19.1.4 If Developer transfers the Property during the term of this Agreement without the prior written consent of City (other than transfers that do not require the consent of City hereunder), such a transfer shall constitute an event of default and in addition to any other available remedies, Buyer shall be required to recover title to the unlawfully transferred Property, and shall pay Seller liquidated damages in the amount of \$2,000 per day until the Property is recovered by Seller. The Parties agree that Seller's damages in the event of such delay are

difficult to measure and such liquidated damages are a reasonable estimate of the damages that Seller will suffer for Buyer's delay in recovering title to the Property as provided herein (but are not intended as a measure of damages if Buyer fails to recover title to the Property).

19.1.5 Regardless of whether a transferee is permitted or approved by City or assumes Developer's obligations hereunder, all transferees shall be deemed to have assumed Developer's obligations hereunder. Notwithstanding the foregoing, if a Mortgagee takes title to the Property following a default under a Mortgage, and transfers the Property to a successor developer approved by City, Mortgagee shall be released from all obligations under this Agreement arising from and after the date of such transfer. In addition, a Mortgagee shall not be liable to City for damages that City may claim against Developer to the extent the same arose out of the acts or omissions of Developer before, and are attributable to the time period before, Mortgagee acquired title to the Property. Nothing herein shall affect any rights or remedies of City as against Developer or limit City's rights or remedies under this Agreement as and to the extent provided herein.

Section 20. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns.

Section 21. Modifications; Waiver. No waiver, modification amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is sought occurs.

Section 22. Entire Agreement. This Agreement contains the entire agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations or statements, oral or written, are superseded hereby.

Section 23. Partial Invalidity. Any provision of this Agreement that is unenforceable or invalid or the inclusion of which would adversely affect the validity, legality or enforcement of this Agreement shall be of no effect, but all the remaining provisions of this Agreement shall remain in full force and effect.

Section 24. Survival. The representations and warranties in this Agreement shall survive the Closing of this transaction for a period of six (6) months following Closing, and written notice of any claim by a party for a breach thereof must be delivered to the other party within such time period. In addition, the indemnities contained in Sections 5.1.1 and 28 and the agreements in Sections 3.1, 8 and 30 shall survive the termination or expiration of this Agreement and shall survive the Closing. Except for the foregoing provisions, all other agreements of the parties contained in this Agreement shall terminate upon Closing.

Section 25. No Personal Liability of Officers or Directors.

(a) Seller. Buyer acknowledges that this Agreement is entered into by Seller as a public development authority and Buyer agrees that no individual officer, director, board member or employee or representative of Seller shall have any personal liability under this Agreement or any document executed in connection with the transactions contemplated by this Agreement.

(b) Buyer. Seller acknowledges that this Agreement is entered into by Buyer as a Limited Liability Corporation and Seller agrees that no individual officer, director, member or representative of Buyer shall have any personal liability under this Agreement.

Section 26. No Third Party Rights. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.

Section 27. Broker. Seller and Buyer represent each to the other that each has had no dealings with any broker, finder or other party concerning Buyer's purchase of the Property. Seller agrees to indemnify and hold Buyer harmless from all loss, cost, damage or expense (including reasonable attorney's fees) incurred by Buyer as a result of any claim arising out of the acts of Seller for a commission, finder's fee or similar compensation made by any broker, finder or any party who claims to have dealt with Seller. Buyer agrees to indemnify and hold Seller harmless from all loss, cost, damage or expense (including reasonable attorney's fees) incurred by Seller as a result of any claim arising out of the acts of Buyer for a commission, finder's fee or similar compensation or made by any broker, finder or any party who claims to have dealt with Buyer. The indemnities contained in this Section 28 shall survive the Closing or the termination of this Agreement.

Section 28. Business Days. "Business Days" as used herein means any day on which banks in Tacoma, Washington are required to be open for business, excluding Saturdays and Sundays. If any deadline hereunder falls on a day that is not a Business Day, then the deadline will be deemed extended to the next following Business Day. All times reference herein are to Pacific Time.

Section 29. Attorneys' Fees. If any legal action or other proceeding is brought for the enforcement of this Agreement (including, without limitation, enforcement of any obligation to indemnify, defend or hold harmless), or because of an alleged dispute, default or misrepresentation in connection with any of the provisions of this Agreement, each party shall bear its own attorneys' fees, charges and other costs incurred in connection with that action or proceeding. This provision shall survive Closing or termination of this Agreement.

Section 30. Limitation of Seller's Liability. Notwithstanding any provision in this Agreement to the contrary, Buyer agrees that it shall look solely to the estate and interest of Seller in its assets and properties for the collection of any judgment requiring the payment of money by Seller or for the enforcement of any other judgment or remedy against Seller and no other assets

of Seller shall be subject to levy, execution or other procedure for the satisfaction of Buyer's remedies.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

BUYER:

SELLER:

FOSS HARBOR LLC,
a Washington limited liability company

CITY OF TACOMA, a Washington first class
charter city

By: _____
Name: _____
Its: _____

By: _____
Name: Elizabeth Pauli
Its: City Manager

EXHIBIT A

Legal Descriptions

Site 9:

West 90 feet of Lots 1 through 5, Block 62, Section 04, Township 20, Range 03, according to the official map of the Tacoma Tide Lands, filed in the office of the Commissioner of Public Lands at Olympia, Washington, 3 September 1895.

Site 10:

West 120 feet of Lots 1 through 6, Less the South 40 feet of Lot 6, Block 63, Section 04, Township 20, Range 03, according to the official map of the Tacoma Tide Lands, filed in the office of the Commissioner of Public Lands at Olympia, Washington, 3 September 1895.

Site 11:

West 120 feet of Lots 39 through 42, and Lot 38, Less the North 40 feet of Lot 38, Block 66, Section 04, Township 20, Range 03, according to the official map of the Tacoma Tide Lands, filed in the office of the Commissioner of Public Lands at Olympia, Washington, 3 September 1895.

EXHIBIT B

Form of Development Agreement

EXHIBIT C

Application Schedule

The Buyer shall meet the following schedule for sequential development on the 3 sites:

Site 9

Submit complete applications for needed shoreline permits within 270 days after the effective date of the Development Agreement;

Submit complete site development and building permit applications within 90 days after the needed shoreline permits are approved; and

Start construction within 60 days after the building permits are issued.

Site 10

Submit complete applications for needed shoreline permits within 270 days after the Site 9 shoreline permits are approved;

Submit complete site development and building permit applications within 90 days after the Site 10 shoreline permits are approved; and

Start construction within 60 days after the Site 10 building permits are issued.

Site 11

Submit complete applications for needed shoreline permits within 270 days after the Site 10 shoreline permits are approved;

Submit complete site development and building permit applications within 90 days after the Site 11 shoreline permits are approved; and

Start construction within 60 days after Site 11 building permits are issued.

Additional provisions regarding the schedule and allowed activity:

1) Permits are “approved” for purposes of the schedule when applicable appeal periods have expired without the commencement of an appeal;

2) The City has committed to complete the Site 10 Seawall replacement before the end of 2022. The Site 10 and 11 schedule shall be extended day for day by any delay by City in completing Site 10 Seawall project beyond the end of 2022, plus additional time if the extension would move the start date for any construction to a time when the activity is prohibited or impractical (such as fish closings or inclement weather periods)

3) The Buyer and City are both obligated to pursue and respond to permit submittals in good faith after application

4) The Buyer can maintain the current uses on Sites 9 and 10 until construction is required under the schedule.

5) All dates are “no later than” and Buyer may take any step before scheduled date.

6) The Buyer may divide permitting as it deems appropriate so long as the overall schedule is not delayed. For example, a Site 10 demolition permit may be requested prior to application submittal or permit issuance for other Site 10 activities.

EXHIBIT D

LIST OF REPORTS

THE FOSS WATERWAY DEVELOPMENT AUTHORITY MASTER REDEVELOPMENT STRATEGY

TACOMA WATERFRONT DESIGN GUIDELINES

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THEA FOSS WATERWAY NEIGHBORHOOD – Pierce County recording number 200111151078 (the “CCRs”)

BYLAWS OF THE FOSS WATERWAY OWNERS ASSOCIATION

FOSS WATER PARKING DEVELOPMENT POTENTIAL (2015)

ENVIRONMENTAL DOCUMENTS

Muni Dock Site:

Dock Street Row (north of 15th) SSRI Work Plan (2001)

Muni Dock Feasibility Report (2015)

Muni Dock Environmental Memorandum (2014)

Municipal Dock Geotechnical Site Evaluation Report (2014)

Muni Dock Department of Ecology Data Report (1998)

Parcel 3 to Muni Dock SSRI Work Plan (1997)

Combined Sites 8 & 9:

Thea Foss Uplands Site-Specific Remedial Investigation Work Plan May 25, 2000

Thea Foss Upland Properties June 25, 2001

Site-Specific Remedial Investigation Thea Foss Upland Properties Hick-Bull, Coast Iron Works, and Steam Plant Properties, Tacoma, Washington Feb. 26, 2002

Site-Specific Cleanup Action Plan (SCAP) Development Sites 8 & 9 - Tacoma, Washington June 26, 2014

Site 10:

Site 10 Phase I ESA (2015)

EXHIBIT E

AMENDED SITE 9 COVENANT AGREEMENT

After Recording Return To:
City of Tacoma
747 Market Street, Suite 900
Tacoma, WA 98402
Attn: Community and Economic Development Director

DEVELOPMENT AGREEMENT
(SITES 9, 10 AND 11)

GRANTOR: FOSS HARBOR LLC
a Washington limited liability company, as "Developer"

GRANTEE: CITY OF TACOMA
a Washington First Class City.

LEGAL DESCRIPTION:
Abbreviated form:
Additional legal on Exhibit A

**DEVELOPMENT AGREEMENT
(SITES 9, 10 AND 11)**

THIS DEVELOPMENT AGREEMENT (SITES 9, 10 AND 11) (this "Agreement") is dated as of _____, 2021, is by and between the CITY OF TACOMA, a Washington First Class City ("City"), FOSS HARBOR LLC, a Washington limited liability company ("Developer").

RECITALS

A. The Thea Foss Waterway ("Waterway") has suffered environmental contamination and fallen into disuse. The City undertook efforts to assist in redeveloping certain property along the Waterway for private and public uses that will contribute to the economic, cultural and recreational revitalization of the Waterway.

B. In 2001, Developer purchased Foss Waterway development Site 11 ("Site 11") and secured a lease and option to purchase Foss Waterway development Site 10 ("Site 10"). Both properties were subject to a development agreement providing for sequential development of the two sites.

C. Foss Waterway Development LLC ("FWD LLC"), an entity with the same ownership as Developer, owns a 416 slip marina spanning the Foss Waterway waterfront from Site 8 through Site 11. FWD LLC currently leases Site 9, and 921 Dock Street commonly called the "Municipal Dock" ("Muni Dock"), and Site 10 for marina-related parking.

D. In 2004, with both Site 10 and 11 still undeveloped, Developer commenced a multi-year process seeking to amend the City's Comprehensive Plan ("Plan") to provide for increased height of potential development on Site 10 and Site 11. The Plan was formally amended in 2008, generally consistent with Developer's request.

E. In 2013, Developer renewed discussions regarding potential development of Sites 10 and 11, advancing several concepts balancing development potential with the continuing need to provide parking to support the adjacent marinas owned by FWD LLC.

F. In those discussions Developer was clear that it required simultaneous resolution of all marina-related issues involving all the undeveloped sites that were the subject of a request for qualifications and proposals process with respect to Sites 8, 9, 10 and the Muni Dock. Developer's principal concern was preservation of sufficient surface parking for marina-related purposes.

G. It is recognized that any development of Sites 8 and 9 would be challenging without addressing the continuing concern that any development of Sites 8 and 9 would harmfully impact operation of the marina through loss of parking currently available to marina tenants and satisfying the requirements of the Site 9 Development Covenant recorded under Pierce County Auditor's No. 200107190196 (the Site 9 Covenant").

H. Owner and Developer continued to work toward a mutually acceptable solution to these issues that generally involve realignment of three public properties: specifically, Site 8, Site 9, and the proposed waterway central park immediately south of Sites 8 and 9. Owner and Developer developed a solution involving capturing some land from the unimproved central park property to be incorporated within the redefined boundaries of Site 8. One required feature of that transaction is FWD LLC's agreement to fully release the marina support facility covenant and not oppose future development of the reconfigured Site 8 as set forth in the "Amended Site 9 Covenant Agreement" which is attached as Exhibit E to the Purchase and Sale Agreement. In an additional part of the solution, the Site 9 property was to be sold to Developer at fair market value.

I. The sale of Sites 9 and 10 to Developer provided for in the Purchase and Sale Agreement approved the same date as this Agreement is for its fair market value and accomplishes the public purpose of providing for meaningful development of Site 11 and Sites 9 and 10.

J. Under this Agreement, Developer has committed to a development involving Sites 9, 10 and 11, which are legally described in Exhibit A attached hereto (the "Property"). This Agreement encompasses and memorializes Developer's obligations with respect to development of all sites.

K. The Parties intend by this Agreement to set forth their mutual agreement and undertakings for Developer's permitting, financing, design and construction of the Site 9, Site 10 and Site 11 Projects.

L. The Project is a private undertaking to be contracted, constructed and operated by Developer with Developer's resources and will provide a significant redevelopment of the Property with accompanying public benefits. The Parties intend by this Agreement to set forth their mutual agreement and undertakings with regard to the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual undertaking and promises contained herein, and the benefits to be realized by each party and in future consideration of the benefit to the general public by the creation and operation of the Project upon the Property, and as a direct benefit to the City and other valuable consideration, the adequacy of which is hereby acknowledged, the Parties agree as follows:

Section 1. Definitions. In addition to the terms defined in the Recitals above, the following terms shall have the meanings set forth below:

"Business Days" means any day on which banks in Tacoma, Washington are required to be open for business, excluding Saturdays and Sundays. If any deadline hereunder falls on a day that is not a Business Day, then the deadline will be deemed extended to the next following Business Day.

"CCRs" means that certain Declarations of Covenants, Conditions & Restrictions dated November 15, 2001, and recorded against the Property in the Official Records of Pierce County, Washington under Recording No. 200111151078.

“Certificate of Completion” means a certificate issued by City to Developer pursuant to Section 8 of this Agreement.

“Closing” means the close of the acquisition of Sites 9 and 10 by Developer pursuant to the Sale Agreement.

“Commence Construction” or “Commencement of Construction” means the commencement of work on the foundation pursuant to the building permit issued for the Individual Project. Site preparation, grading, excavation and mobilization alone are not sufficient to “Commence Construction.” Once Commencement of Construction has occurred, Developer shall diligently and continuously (except due to Force Majeure events), complete the Individual Project.

“Construction Start Date” means the date set forth for each Individual Project and the Schedule attached as Exhibit _____. subject to extension for Force Majeure.

“Design Guidelines” means, collectively, the City of Tacoma Municipal Code, the City of Tacoma Land Use Regulatory Code, the City of Tacoma Master Program for Shoreline Development, the Protective Covenants, the Foss Plan and other Legal Requirements and Environmental Standards that affect the Project and the Property.

“Effective Date” means the date set forth in the first paragraph of this Agreement.

“Environmental Standards” means all federal, state and local environmental laws and ordinances and all regulations promulgated thereunder, whether currently in effect or enacted or amended from time to time in the future (to the extent that compliance with future laws or amendments is legally required) including, but not limited, to the Endangered Species Act, the Resource Conservation and Recovery Act at 42 U.S.C. § 6921 et seq., the Comprehensive Environmental Response, Compensation, and Liability Act at 42 U.S.C. § 9601 et seq., the Clean Air Act at 42 U.S.C. § 7401 et seq., the Federal Water Pollution Control Act, as amended at 33 U.S.C. 1318, the Toxic Substances Control Act at 15 U.S.C. § 2601 et seq., the Shoreline Management Act, Ch. 90.58 RCW, the Hazardous Waste Management Act, Ch. 70.105 RCW, the Clear Air Act, Ch. 70.94 RCW, the Water Pollution Control Act, Ch. 90.48 RCW, and the Model Toxic Substances Control Act at RCW 70.105.D, et seq., and also including but not limited to any guidelines, levels and standards currently in effect or enacted or amended from time to time in the future (to the extent that compliance with future laws or amendments is legally required) by the applicable federal, state or local regulatory authority for addressing any contamination of any sort.

“Esplanade” means the Propertyscaping, public walkways, improvements and open space located along the Waterway, which is owned by the City and reserved as a public area.

“Esplanade Improvements” means the Improvements to be constructed by Developer at Developer’s expense in the Esplanade on the Property pursuant to this Agreement.

“Event(s) of Default” has the meaning given in Section 11.

“Force Majeure” has the meaning given in Section 14.

“Foss Plan” means the Foss Waterway Development Authority (FWDA) Master Redevelopment Strategy (including the Urban Design Review Process) and the Tacoma Waterfront Design Guidelines, which are the City’s and FWDA’s framework for redeveloping the western edge of the Waterway.

“FWOA” means the Foss Waterway Owners’ Association.

“Governmental Authorities” means any board, bureau, commission, authority, department or body of any local, municipal, county, state or federal governmental or quasi-governmental unit, or any subdivision thereof, or any utility provider serving the Property, having, asserting, or acquiring jurisdiction over or providing utility service to the Project, the Property and/or the management, operation, use, environmental cleanup or improvement thereof.

“Improvements” means all buildings, structures, improvements and fixtures now or hereafter placed or constructed in, under, upon or adjacent to the Property, including the to-be-constructed buildings as part of any and all Phases the Project, together with all additions to or replacements thereof made from time to time, and all accessways, pedestrian areas, Parking, Esplanade Improvements, fences, paved areas, utility distribution facilities, lighting, signage and other infrastructure improvements to be built by Developer, including the Onsite and Offsite Improvements.

“Indemnitees” has the meaning given in Section 5.4.

“Legal Requirements” means all local, county, state and federal laws, ordinances and regulations and other rules and orders of any Governmental Authorities now or hereafter in effect, whether or not presently contemplated, having jurisdiction over and applicable to the Property, the Project or their ownership, operation or possession, including (without limitation) all those relating to parking restrictions, building codes, zoning or other land use matters, The Americans With Disabilities Act of 1990, as amended, the Protective Covenants, the Plans, the Consent Decree, the Foss Plan, the City of Tacoma Land Use Regulatory Code, the City of Tacoma Master Program for Shoreline Development, life safety requirements and environmental laws with respect to the handling, treatment, storage, disposal, discharge, use and transportation of hazardous substances.

“Mortgagee” means the holder (including a bond trustee) of a first mortgage or deed of trust (“Mortgage”) encumbering Developer’s interest in any portion of the Property, securing a loan or bond financing, the proceeds of which are used for construction of Improvements, and its successors and assigns.

“Offsite Improvements” means the Improvements to be constructed, installed and completed on property other than the Property, including those described in Section 4.3.2.

“Onsite Improvements” means the Improvements to be constructed, installed and completed on the Property, including those described in Section 4.3.1.

“Project” means the development of the Sites 9, 10, and 11 properties, including construction of all Improvements, and all related obligations of Developer with respect to the Offsite Improvements and Protective Covenants. The term “Individual Project” refers to a particular project on a specific site. The term “Project” may include phases for development of Sites 9, 10 and 11 by written agreement of the parties. The Project also includes construction of

an esplanade on the Property and construction of all other Offsite Improvements and Onsite Improvements.

“Project Documents” means this Agreement, the Purchase and Sale Agreement, the CCRs and such other agreements identified as such by the Parties.

“Propertyscape” means the landscaping of all above-ground or outdoor public or private Improvements on the Property, including, without limitation, lighting, furniture and artwork.

“Protective Covenants” means, collectively, the CCRs and the other easements, covenants and restrictions now or hereafter recorded against or benefitting any part of the Property in the official records of Pierce County, Washington.

“Repurchase Option” has the meaning given in Section 4.6

“Sale Agreement” means the Purchase and Sale Agreement (Sites 9 and 10) dated _____, 2021 between City and Developer.

“Substantial Completion” or “Substantially Complete” means the date on which all of the following have occurred: (i) the Improvements required to be developed by this Agreement are complete, except for punchlist items that do not substantially prevent the use of the Improvements for their intended purposes; and (ii) the City has issued a temporary or final certificate of occupancy for the building portions of the Improvements.

“Waterway” means the Thea Foss Waterway in Tacoma, Washington, which is circumscribed by approximately 3.5 miles of continuous shoreline, located adjacent to Commencement Bay and the City’s central business district.

Section 2. Intent and Relations.

2.1 Generally. Pursuant to this Agreement, Developer will construct the Project. This Agreement is intended by the Parties to establish the design, development and performance criteria for the Project. The Parties agree that Developer has sole responsibility for construction, obtaining all necessary permits and approvals and complying with all Legal Requirements and Environmental Standards as they relate to ownership, construction and operation of the Project. Developer shall at its own cost furnish all plans, engineering, supervision, labor, material, supplies and equipment necessary for completion of the Project. City has entered into this Agreement relying on Developer’s covenants that it will timely design and construct the Project.

2.2 Standards. Developer shall perform the terms of this Agreement according to the following standards:

(i) All construction hereunder shall comply with, and be performed in accordance with, the Design Guidelines, this Agreement and all Legal Requirements and Environmental Standards, free and clear of all liens (other than those being contested by Developer in good faith, and those contemplated by this Agreement).

(ii) Developer shall cause a copy of this Agreement to be delivered to its architects, engineers, design professionals and general contractor.

(iii) Developer shall encourage its contractors and subcontractors to participate in the City's Local Employment Apprenticeship Program, with a goal of at least ten percent (15%) of the labor hours for construction of the Project.

Section 3. General Terms of Conveyance. Conveyance and ownership of the Property shall remain subject to the provisions of this Agreement during the term hereof.

Section 4. Development.

4.1 Generally. Construction of the Project shall occur and be Substantially Completed in accordance with Schedule set forth in Exhibit C to the Purchase and Sale Agreement, subject only to extension provisions in the Schedule, Force Majeure or as such schedule is extended by written agreement of City. Developer agrees that once construction has begun on the Improvements, Developer will proceed diligently (subject only to delays for Force Majeure) with such construction until the Improvements have been completed.

4.2 Conditions Precedent to Commencement of Construction. The following conditions shall have been satisfied before starting construction on the Property:

4.2.1 Compliance with Agreement. Developer is in material compliance with this Agreement, including, without limitation, all contracting requirements and receipt of all necessary permits for construction.

4.2.2 Local Employment Apprenticeship Program (LEAP). Developer will participate in the City's Local Employment Apprenticeship Program (LEAP) during construction of the Site 9, 10, and 11 projects.

4.3 Onsite and Offsite Improvements.

4.3.1 Onsite Improvements.

(i) Developer is responsible for all excavation and disposal of soils and other materials removed from the Property.

(ii) Construction design shall not collect and convey ground water off-site.

(iii) Waterproofing system for portions of building components of the Project affected by the ground water table shall be required and shall include a minimum 10-year warranty.

(iv) Such other public improvements including but not limited to utility and street improvements as may be required as a condition for regulatory approval of the project.

(v) Developer will complete the upland Esplanade Improvements on Sites 9 and 10, with a continuous transition to the existing portions of the Esplanade. The Developer is not obligated to extend the Esplanade between Site 9 and Site 10 but is only to extend a path as described in Exhibit C to the Purchase and Sale Agreement. The design of the Esplanade Improvements will be consistent with the connecting portions of the Esplanade and

the Tacoma Waterfront Design Guidelines, as further determined through the design review process. Developer is not required to construct any portion of the Esplanade over water

4.3.2 Offsite Improvements.

(i) Developer will repair the Dock Street sidewalk along the Property abutting Dock Street to the extent damaged in the construction of the Project.

(ii) Developer is responsible for ascertaining utility connections and capacities and ensuring that the roof drains do not overload existing storm stubouts.

(iii) Developer shall make such other public improvements including but not limited to utility and street improvements as may be required as a condition for regulatory approval of the project.

4.3.3 Other Improvements. The preceding descriptions of the Offsite Improvements and Onsite Improvements is not intended to quantify or describe all development requirements of the Property but rather describes many of the requirements known at the time of this Agreement. Other requirements may apply based on the specific use and development of the Property.

4.4 Non-Discrimination. In the implementation of this Agreement, including construction of all Improvements and any leasing of the Project, neither party shall discriminate against any person or entity by reason of race, color, creed, national origin or ancestry, age, handicap, marital status, sex, gender identify, sexual orientation, familial status, honorably discharged veteran or military status, disability or religion. In the event of a breach of any of these nondiscrimination covenants, subject to the cure provisions of Section 14 hereof, City shall have the right to exercise all of its remedies for an Event of Default hereunder.

4.5 Governmental Approvals and Permits. Developer shall apply, at its sole cost, to the appropriate Governmental Authorities or third parties for, and shall diligently pursue and obtain, all permits, licenses, permissions, consents or approvals required in connection with the construction of the Improvements.

4.6 Repurchase Option For Site 9 and Site 10. If Developer fails to submit complete applications for Shoreline and Building Permits for an Individual Project on Site 9 or Site 10 in accordance with the Schedule attached Exhibit C to the Purchase and Sale Agreement or fails to Commence Construction of such an Individual Project on such site in accordance with the Schedule , then City shall have the option to repurchase the Sites on which the Individual Project is proposed (the "Repurchase Option") for the purchase price paid by Developer for the Property under the Sale Agreement. If City has not exercised the Repurchase Option in writing by the 180th day after the Construction Start Date, then City shall be deemed to have waived its right to exercise the Repurchase Option as of such 180th day.

The closing of the repurchase shall be not later than sixty (60) days following City's exercise of the Repurchase Option on a Business Day selected by City allowing for not less than fifteen (15) days written notice to Developer.

If Developer fails to reconvey the Property to City as provided in this section, then Developer shall pay to City liquidated damages in the amount of \$2,000 per day until the damages in the event of such delay are difficult to measure and such liquidated damages are a reasonable estimate of the damages that City will suffer for Developer's delay in reconveying the Property as provided herein (but are not intended as a measure of damages for Developer's failure to reconvey the Property).

Developer shall pay all transfer and excise taxes in connection with such transfer. The deed will be in the same form as used to convey the Property to Developer. Upon such reconveyance to City, no encumbrances shall exist on title other than those that existed when title transferred to Developer, those consented to by City in writing (except any Mortgage, which shall not be a permitted encumbrance) and those that were recorded as part of the closing of the acquisition of the Property. Developer shall be responsible for obtaining the release of any Mortgage. If City exercises the Repurchase Option, Developer shall be released from further obligations under this Agreement, except those that by their terms expressly survive termination. If Developer Commences Construction prior to the Construction Start Date and/or prior to City's exercise of the Repurchase Option, the Repurchase Option shall automatically terminate. At Developer's request, upon Commencement of Construction, City shall provide written confirmation to a Mortgagee that Commencement of Construction has occurred and/or that the Repurchase Option has terminated to satisfy a condition of a Mortgagee to advance funds under a construction loan.

Section 5. Disclaimer of Liability, Indemnity.

5.1 Preparation of Site; Utilities. The City shall not be responsible for any demolition or site preparation in connection with the Project or any existing improvements on the Property. The City makes no representations as to the availability or suitability of utility connections to the Property. Developer shall make arrangements for utility services directly with utility service providers. Any costs of installation, connection, relocating or upgrading shall be paid by Developer, including but not limited to, water, sanitary sewer and storm and sewer mains, streetlights, traffic lights, electric utilities, telecommunications and fire hydrants.

5.2 AS IS. The City makes no warranties or representations as to the environmental condition of the Property or the suitability of the soil conditions or any other conditions of the Property for any improvements to be constructed by Developer. Developer agrees that it has not relied on representations or warranties made by City or any other City-related entity as to the physical or environmental condition of the Property or its suitability for any Improvements to be constructed by the Developer.

5.3 Approvals. Approval by City of any item pursuant to the Purchase and Sale Agreement or this Agreement shall not constitute a representation or warranty by City that such item complies with Legal Requirements and Environmental Standards or Design Guidelines and City assumes no liability with respect thereto. Approval by City of any item pursuant to the Sale Agreement or as described in this Agreement shall not constitute or guarantee issuance of any permit, license, permission, consent or approval required by any Governmental Authority or third party and City assumes no liability with respect thereto. Approval by City pursuant to this Agreement does not constitute approval by the City in its governmental regulatory capacity. Notwithstanding any provision of this Agreement to the contrary, City is under no obligation or duty to supervise the design or construction of the Improvements. City is under no obligation or

duty, and disclaims any responsibility, to pay for the cost of construction of the Improvements, the cost of which shall at all times remain the sole liability of Developer.

5.4 Indemnification. Developer shall indemnify, defend and hold City and its employees, officers, board and council members (collectively, "Indemnitees") harmless from and against all claim, liability, loss, damage, cost, or expense (including reasonable attorneys' fees, court costs, and amounts paid in settlements and judgment) incurred in connection with Developer's predevelopment activity with respect to the Property before purchase thereof, Developer's ownership of the Property or the construction of the Improvements, including any act or omission of Developer or its members, agents, employees, representatives, contractors, subcontractors, successors, assigns or invitees, on or with respect to the Property. The City shall not be entitled to such indemnification to the extent that such claim, liability, loss, damage, cost or expense is caused by the gross negligence or willful misconduct of the City, each respectively as to its own conduct. With respect to any contractual matters that Developer establishes are within the scope of RCW 4.24.115, the scope of this indemnity shall be limited with regard to damages for bodily injury to persons or damage to property resulting from the concurrent negligence of Developer or its agents or employees and the City or their agents or employees, as to which Developer agrees to indemnify the City under this Section to the extent of the negligence of Developer, its agents and employees. This indemnification shall survive expiration or termination of this Agreement.

Promptly following receipt of notice, an Indemnitee shall give Developer written notice of any claim for which Developer has indemnified it hereunder, and Developer shall thereafter vigorously defend such claim, at its sole cost, on behalf of such Indemnitee. Failure to give prompt notice to Developer shall not constitute a bar to the indemnification hereunder unless such delay has prejudiced Developer in the defense of such claim. If Developer is required to defend any action or proceeding pursuant to this Section to which action or proceeding an Indemnitee is made a party, Indemnitee shall be entitled to appear, defend or otherwise take part in the matter involved, at its election, by counsel of its own choosing, and to the extent Indemnitee is indemnified under this Section, Developer shall bear the cost of Indemnitee's defense, including reasonable attorneys' fees and costs. No settlement of any non-monetary claim shall be made without Indemnitee's written approval, not to be unreasonably withheld, conditioned or delayed.

5.5 Permits. Developer acknowledges that the City has not made any representation or warranty with respect to Developer's ability to obtain any permit or approval, or to meet any other requirements for development of the Property or Project. Nothing in this Agreement is intended or shall be construed to require that the City exercise its discretionary authority under its regulatory ordinances to further the Project nor binds the City to do so. Developer understands that the City will process applications for permits and approvals in accordance with its normal processes.

Section 6. Certificate of Completion.

6.1 When Developer Entitled to Certificate of Completion. Upon Substantial Completion of the Project in accordance with this Agreement and satisfaction of the other conditions of this section, City will furnish Developer with a recordable Certificate of Completion, substantially in the form attached hereto as Exhibit B hereto. Notwithstanding the foregoing, City shall not be required to issue the Certificate of Completion if Developer is not then in material compliance with the terms of this Agreement. In addition, if punchlist items remain when Developer requests the Certificate of Completion, City may require as a condition to the issuance

thereof that Developer post a bond or provide other financial assurance reasonably satisfactory to City (which could include assurances provided to the City for the same items) to ensure completion of the punchlist items, and Developer agrees to proceed with all reasonable diligence to complete the punchlist items.

6.2 Meaning and Effect of Certificate of Completion; Termination of Agreement. Issuance by City of Tacoma of a Certificate of Completion shall terminate this Agreement and each of its provisions except for the provisions that expressly survive termination of this Agreement. Any party thereafter acquiring or leasing any portion of the Improvements shall not (because of such purchase or lease) have any obligation whatsoever under this Agreement.

6.3 Form of Certificate of Completion. If City refuses or fails to provide a Certificate of Completion in accordance with the provisions of this section, City, within fifteen business (15) days after written request by Developer for such Certificate of Completion, shall provide Developer with a detailed statement indicating in what respects Developer has failed to complete the Improvements in accordance with the provisions of this Agreement or is otherwise in default and what measures or acts must be taken, in the opinion of City, to obtain such Certificate of Completion. Upon receipt of such detailed statement, Developer shall complete the Improvements and cure the alleged default in a manner responsive to the stated reasons for disapproval. Failure by City to furnish Developer with such detailed statement within such fifteen (15) day period shall be deemed an approval by City of Developer's request for Certificate of Completion.

Section 7. Indemnity From Liens. In no event shall Developer cause any lien to attach to the Esplanade or any property owned by the City, including but not limited to mortgages, deeds of trust, mechanic's liens, attachment liens, judgment liens, execution liens, utility liens, security interests or encumbrances. Developer shall indemnify and hold harmless the City from and against all mechanics', materialmen's and laborers' liens and all costs, expenses and liabilities arising from construction of Improvements upon any property owned by City, including the Esplanade, except to the extent arising out of labor or materials contracted for by the City. Nothing contained in this Agreement shall be construed as the consent or request of City, express or implied, for the performance of any labor or services or for the furnishing of any materials or equipment to the Project (or any part thereof). NOTICE IS HEREBY GIVEN THAT THE CITY WILL NOT BE LIABLE FOR ANY LABOR, SERVICES, MATERIALS OR EQUIPMENT FURNISHED OR TO BE FURNISHED TO DEVELOPER, OR ANYONE HOLDING AN INTEREST IN THE PROPERTY (OR ANY PART THEREOF) THROUGH OR UNDER DEVELOPER.

Section 8. Insurance. The requirements of this section shall apply only until the Certificate of Completion is recorded. Thereafter, the CCRs will provide the governing insurance requirements.

8.1 Insurance Requirements. Developer shall maintain and keep in force insurance covering all aspects of the construction activity on the Project, including but not limited to the following requirements or, in the alternative, maintain such insurance as required by a Mortgagee.

8.1.1 Builders All Risk Comprehensive Coverage. Developer shall keep, or shall require its general contractor to keep, all Project components insured for Builders All Risk Comprehensive Coverage including earthquake, fire, and flood and to include amounts sufficient to prevent Developer from becoming a co-insurer under the terms of the applicable policies but in

any event in an amount not less than 100% of the then full "Replacement Cost," being the cost of replacing the Project components, and all fixtures, equipment, improvements and betterments thereto.

8.1.2 Commercial General Liability. Developer shall carry, and shall require its construction contractor to carry, Commercial General Liability insurance providing coverage against claims for bodily injury, death or property damage in connection with the Project with broad form liability and property damage endorsement, such insurance to afford minimum protection, during the term of the construction phase, and written for combined single limits of liability of no less than Two Million Dollars (\$2,000,000), per occurrence, with umbrella coverage of no less than Five Million Dollars (\$5,000,000), said amounts to be adjusted from time to time with coverage deemed customary under like conditions.

8.1.3 Property Insurance. Upon Completion of Construction of the Improvements and until the Certificate of Completion is recorded (and thereafter as provided in the CCRs), Developer shall carry property insurance covering the Project including all Improvements, including earthquake, flood, boiler and machinery insurance, in an amount equal to at least one hundred percent (100%) of the replacement cost of all Improvements. Such insurance shall contain coverage against loss or damage by perils no less broad than the current edition of the ISO Special Form policy. Developer shall be responsible for payment of any deductibles under said insurance policies and any costs of restoration resulting from any uninsured or underinsured losses.

8.2 Insurance Policies. Insurance policies required herein:

8.2.1 Shall be issued by companies authorized to do business in the State of Washington with the following qualifications:

8.2.1.1 The companies must be rated no less than "A," as to general policy holders rating and no less than "VII" as to financial category in accordance with the latest edition of Best's Key Rating Guide, published by A.M. Best Company, Incorporated.

8.2.1.2 The policies shall name the City as additional insureds for liability purposes and as a loss payee.

8.2.1.3 The policies shall be issued as primary policies.

8.2.2 Each such policy or certificate of insurance mentioned and required in this Section 8 shall have attached thereto (1) an endorsement that such policy shall not be canceled without at least ten (10) days prior written notice to Developer and the City (unless the same can no longer be obtained from a nationally recognized insurance company); (2) an endorsement to the effect that the insurance as to any one insured shall not be invalidated by any act or neglect of any other insured (unless the same can no longer be obtained from a nationally recognized insurance company); (3) an endorsement pursuant to which the insurance carrier waives all rights of subrogation against the Parties hereto; and (4) an endorsement pursuant to which this insurance is primary and noncontributory.

8.2.3 The certificates of insurance and insurance policies shall be furnished to Developer and the City prior to Commencement of Construction under this Agreement. The

certificate(s) shall clearly indicate the insurance and the type, amount and classification, as required for strict compliance with this Section 8.

8.2.4 Cancellation or lapse of any policies required by this Agreement shall constitute an immediate Event of Default under Section 11 of this Agreement, without cure or grace period. In addition to any other legal remedies, City at its sole option after written notice may obtain such insurance and pay such premiums for which, together with costs and attorneys' fees, Developer shall be liable to City.

8.3 Adjustments. The types of policies, risks insured, coverage amounts, deductibles and endorsements may be adjusted from time to time as Developer and City may mutually determine.

Section 9. Destruction or Condemnation.

9.1 Total or Partial Destruction. If the Improvements are totally or partially destroyed at any time during the term of this Agreement, Developer shall reconstruct or repair the damage consistent with the terms of this Agreement, with such repair or reconstruction to commence within ninety (90) days of the destruction. Such destruction shall be considered a Force Majeure event and the Completion Date extended accordingly.

9.2 Condemnation. If during the term of this Agreement the whole or any substantial part of the Property is taken or condemned in the exercise of eminent domain powers (or by conveyance in lieu thereof), such that Developer can no longer materially meet its obligations under this Agreement, this Agreement shall terminate upon the date when possession of the Property or portion thereof so taken shall be acquired by the condemning authority. As used herein, "substantial" shall be defined as reasonably preventing the conduct of Developer's activities as contemplated hereby. If a taking occurs that is not substantial, this Agreement shall continue in full force and effect as to the part of the Property not taken.

Section 10. Right to Assign or Otherwise Transfer. Developer represents that its purchase of the Property is for development and not for speculation. During the term of this Agreement, any transfers of the Property shall be made expressly subject to the terms, covenants and conditions of this Agreement and the Purchase and Sale Agreement.

10.1 Resale or Other Transfers of Sites 9 and 10 Before Commencement of Construction and before Certificate of Completion.

10.1.1 During the term of this Agreement, Developer will not transfer the Sites 9 and/or 10 Property or any part thereof without the prior written consent of City to the proposed transfer and transferee, which consent shall not be unreasonably withheld. City shall not unreasonably withhold its consent if the proposed transferee is a real estate developer with demonstrated expertise, excellent reputation, not less than ten (10) years of experience in the ownership and construction of similar projects and a net worth sufficient, in City's reasonable judgment, to perform all of Developer's obligations hereunder and to operate the Project and so long as the transferee assumes in writing all obligations of Developer hereunder by and through an assumption agreement acceptable to City in its reasonable discretion.. Transfer by Developer to a wholly owned subsidiary of Developer, or to an affiliate of Developer that is greater than 50% under common ownership with Developer and controlled by Developer, shall not require City approval so long as persons administering this Agreement and managing the development of the

Project on behalf of Developer do not change as a result of such transfer and so long as the transferee assumes in writing all obligations of Developer hereunder by and through an assumption agreement acceptable to City in its reasonable discretion.

“Transfer” as used herein includes any sale, conveyance, transfer, ground lease or assignment, whether voluntary or involuntary, of any interest in the Property and includes transfer to a trustee in bankruptcy, receiver or assignee for the benefit of creditors, any merger, consolidation, liquidation or dissolution of Developer. In addition, “Transfer” includes any sale or any transfer of direct or indirect interests in Developer or any of its constituent entities, other than transfers of minority interest that do not individually or in the aggregate result in the change of control or management of Developer, the Property or the Project.

10.1.2 If City approves of a transfer, Developer shall deliver to City (a) a copy of the document evidencing such transfer, including a suitable estoppel agreement(s), and (b) an assumption of all obligations of Developer under this Agreement in form reasonably satisfactory to City.

10.1.3 The transferee (and all successor transferees) shall succeed to all rights and obligations of Developer under this Agreement, including any unperformed obligations of Developer as of the date of such transfer. No transfer by Developer, or any successor, shall release Developer, or such successor, from any such unperformed obligations without the written consent and release of City.

10.1.4 If Developer transfers the Property during the term of this Agreement without the prior written consent of City (other than transfers that do not require the consent of City hereunder), such a transfer shall constitute an event of default and in addition to any other available remedies, Buyer shall be required to recover title to the unlawfully transferred Property, and shall pay Seller liquidated damages in the amount of \$2,000 per day until the Property is recovered by Seller. The Parties agree that Seller’s damages in the event of such delay are difficult to measure and such liquidated damages are a reasonable estimate of the damages that Seller will suffer for Buyer’s delay in recovering title to the Property as provided herein (but are not intended as a measure of damages if Buyer fails to recover title to the Property).

10.1.5 Regardless of whether a transferee is permitted or approved by City or assumes Developer’s obligations hereunder, all transferees shall be deemed to have assumed Developer’s obligations hereunder. Notwithstanding the foregoing, if a Mortgagee takes title to the Property following a default under a Mortgage, and transfers the Property to a successor developer approved by City, Mortgagee shall be released from all obligations under this Agreement arising from and after the date of such transfer. In addition, a Mortgagee shall not be liable to City for damages that City may claim against Developer to the extent the same arose out of the acts or omissions of Developer before, and are attributable to the time period before, Mortgagee acquired title to the Property. Nothing herein shall affect any rights or remedies of City as against Developer or limit City’s rights or remedies under this Agreement as and to the extent provided herein.

Section 11. Default. Developer’s failure to keep, observe, or perform any of its duties or obligations under this Agreement shall be a default hereunder, including, without limitation, any of the following specific events:

11.1 The failure of Developer to substantially comply with the standards of performance for the Project.

11.2 The failure of Developer to diligently complete construction and complete the Project in accordance with the Schedule attached as Exhibit C to the Purchase and Sale Agreement, subject to Force Majeure.

11.3 The failure of Developer to comply with or to satisfy the indemnities set out in this Agreement.

11.4 The making by Developer of an assignment for the benefit of creditors, contrary to the terms of this Agreement, or filing a petition in bankruptcy or of reorganization under any bankruptcy or insolvency law or filing a petition to effect a composition or extension of time to pay its debts.

11.5 The appointment of a receiver or trustee of the property of Developer, which appointment is not vacated or stayed within sixty (60) days, or the filing of a petition in bankruptcy against Developer or for its reorganization under any bankruptcy or insolvency law which is not dismissed or stayed by the court within sixty (60) days after such filing.

11.6 Any Transfer of Sites 9 or 10 in violation of this Agreement.

11.7 The failure by Developer or a transferee to reconvey the Property to City if and when required to do so.

11.8 Any default in the performance of any other obligations of Developer hereunder.

Upon the happening of any of the above described events, City shall notify Developer in writing of its purported breach, failure or act above described. An "Event of Default" shall occur hereunder if such breach, failure or act is not cured within thirty (30) days from receipt of such notice (or if such failure cannot reasonably be cured within thirty (30) days, such cure is promptly commenced and diligently pursued to completion within ninety (90) days after notice of default from City).

Section 12. Remedies.

12.1 Remedies Upon Default. If an Event of Default shall occur, City shall have all cumulative rights and remedies under law or in equity, including but not limited to the following:

12.1.1 Damages. Developer shall be liable for any and all damages incurred by City, except that Developer shall not be liable for consequential damages incurred by City.

12.1.2 Specific Performance. City shall be entitled to specific performance of each and every obligation of Developer under this Agreement without any requirement to prove or establish that City does not have an adequate remedy at law. Developer hereby waives the requirement of any such proof and acknowledges that City would not have an adequate remedy at law for Developer's commission of an Event of Default hereunder.

12.1.3 Injunction. City shall be entitled to restrain, by injunction, the actual or threatened commission or attempt of an Event of Default and to obtain a judgment or order

specifically prohibiting a violation or breach of this Agreement without, in either case, being required to prove or establish that City does not have an adequate remedy at law. Developer hereby waives the requirement of any such proof and acknowledges that City would not have an adequate remedy at law for the occurrence of an Event of Default hereunder.

12.1.4 Equitable Relief. City shall be entitled to draw upon or foreclose all or any part of the bonds or security provided to City under this Agreement, commence an action for equitable or other relief, and/or proceed against Developer for all direct monetary damages, costs and expenses arising from the Event of Default and to recover all such damages, costs and expenses, including reasonable attorneys' fees.

12.1.5 Repurchase. If an Event of Default occurs as to Site 9 or Site 10 before Commencement of Construction has occurred on such site and such Event of Default is not cured within any applicable cure period for such Event of Default, City shall have the right to repurchase that site for the purchase price paid by Developer for the site under the Sale Agreement. Notwithstanding the foregoing, if Developer cures such Event of Default prior to City notifying Developer that City will repurchase the site on account of such Event of Default, City will have no right to repurchase the site on account of such Event of Default.

12.2 Provisions Surviving Termination. The following provisions of this Agreement shall survive any termination of this Agreement: Indemnification, Conflicts of Interest, Attorneys' Fees, and City Notice.

Section 13. Representations and Warranties. Each party hereby represents and warrants to the other that (a) it has full statutory right, power and authority to enter into this Agreement and perform in accordance with its terms and provisions; (b) the individuals signing this Agreement on its behalf have the authority to bind and to enter into this transaction; and (c) it has taken all requisite action to legally authorize the execution, delivery, and performance of this Agreement.

Section 14. Miscellaneous.

14.1 Estoppel Certificates. City and Developer shall at any time and from time to time, within fifteen (15) days after written request by the other, execute, acknowledge and deliver, to the party requesting same or to any prospective mortgagee, assignee or subtenant designated by Developer, a certificate stating that (i) this Agreement is in full force and effect and has not been modified, supplemented or amended in any way, or if there have been modifications, identifying such modifications; and if this Agreement is not in force and effect, the certificate shall so state; and (ii) to its knowledge, all conditions under the Agreement have been satisfied by City or Developer, as the case may be, and that no defenses or offsets exist against the enforcement of this Agreement by the other party, or, to the extent untrue, the certificate shall so state. The party to whom any such certificate shall be issued may rely on the matters therein set forth and thereafter the party issuing the same shall be estopped from denying the veracity or accuracy of the same.

14.2 Entire Agreement. This Agreement, the Project Documents and any documents attached as exhibits thereto contain the entire agreement between the Parties as to the subject matter hereof and supersedes all prior discussions and understandings between them with reference to such subject matter.

14.3 Modification. This Agreement may not be amended or rescinded in any manner except by an instrument in writing signed by a duly authorized representative of each party hereto in the same manner as such party has authorized this Agreement.

14.4 Good Faith and Reasonableness. The Parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inference be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is explicitly permitted, such as in the case of a party being allowed to make a decision in its “sole judgment” or “sole discretion.”

14.5 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties hereto (except that there shall be no transfer of any interest by Developer except pursuant to the express terms of this Agreement). Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired its interest in compliance with the terms of this Agreement, or under law. This Agreement and the covenants, restrictions and servitudes set forth herein touch and concern the land, shall run with the land, shall be binding on all owners of the Property or any interest therein and shall inure to the benefit of, and be enforceable by, City, its successors and assigns, all until a Certificate of Completion is recorded.

14.6 Notices. All notices which may be or are required to be given pursuant to this Agreement shall be in writing and delivered to the Parties at the following addresses:

If to Seller: City of Tacoma
747 Market Street, Suite 900
Tacoma, WA 98402
Attention: Jeff Robinson, Community and Economic
Development Director
Email: jrobinson@cityoftacoma.org

If to Developer: Foss Harbor LLC
P.O. Box 1316
Tacoma, Washington 98401
Attn: Ted Johnson
Email: tedj@simonjohnsonllc.com

Any such notices shall be either (a) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) days after deposit, postage prepaid in the U.S. mail, (b) sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered when actually delivered pursuant to the records of such courier, (c) sent by email transmission to the party and its counsel, receipt of which has been confirmed by telephone, and by regular mail, in which case notice shall be deemed delivered on the next Business Day following confirmed receipt, or (d) hand delivered, in which case notice shall be deemed delivered on the date of the hand delivery. The above addresses and email addresses may be changed by written notice to the other party; provided, however, that no notice of a change of address shall

be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

14.7 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement.

14.8 Waiver. No waiver by any party of any provision of this Agreement or any breach thereof shall be of any force or effect unless in writing by the party granting the waiver; and no such waiver shall be construed to be a continuing waiver. The waiver by one party of the performance of any covenant, condition, or promise shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition, or promise hereunder. The waiver by either or both Parties of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time.

14.9 Rights and Remedies Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by either party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default by the other party.

14.10 Applicable Law; Jurisdiction. This Agreement shall be interpreted under and pursuant to the laws of the State of Washington. In the event any action is brought to enforce any of the provisions of this Agreement, the Parties agree to be subject to the jurisdiction in the Pierce County Superior Court for the State of Washington or in the United States District Court for the Western District of Washington.

14.11 No Joint Venture. Nothing contained in this Agreement shall create any partnership, joint venture or other arrangement between City and Developer. The Parties intend that the rights, obligations, and covenants in this Agreement and the collateral instruments shall be exclusively enforceable by City and Developer, their successors and assigns. No term or provision of this Agreement shall be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder, except as may be otherwise expressly provided herein.

14.12 Calculation of Time. If the last day of any period falls on a day that is not a Business Day, the period shall be extended to the next following Business Day.

14.13 Conflict of Interest. No member, official, or employee of City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his personal interests or the interest of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official, or employee of City shall be personally liable to Developer or any successor in interest upon the occurrence of any default or breach by City or for any amount which may become due to Developer or its successor or on any obligations under the terms of this Agreement.

14.14 Discrimination. Developer, for itself and its successors and assigns, agrees that during the construction of the Project, Developer will not discriminate against any employee or applicant for employment by reason of race, color, creed, national origin or ancestry, age, marital status, sex, gender identify, sexual orientation, familial status, honorably discharged veteran or military status, disability or religion.

14.15 Attorneys' Fees. If any legal action or other proceeding is brought for the enforcement of this Agreement (including, without limitation, enforcement of any obligation to indemnify, defend or hold harmless), or because of an alleged dispute, default or misrepresentation in connection with any of the provisions of this Agreement, each party shall bear its own attorneys' fees, charges and other costs incurred in connection with that action or proceeding. This provision shall survive Closing or termination of this Agreement.

14.16 Captions; Exhibits. The headings and captions of this Agreement and the Table of Contents preceding the body of this Agreement are for convenience of reference only and shall be disregarded in constructing or interpreting any part of the Agreement. All exhibits and appendices annexed hereto at the time of execution of this Agreement or in the future as contemplated herein, are hereby incorporated by reference as though fully set forth herein.

14.17 No Third Party Rights. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.

14.18 Force Majeure. Whenever a period of time for performance of an action to be performed by either party is prescribed in this Agreement, the period of time for performance shall be extended by the number of days that the performance is actually delayed due to war, acts of terrorism, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation not initiated by the Developer or City, or weather or soils conditions unusual for the local climate, weather or soils conditions which necessitate delays, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or supplier, acts of the other party, acts or failure to act or delay in acting of any public or governmental entity, including to issue permits or approvals for the Project (provided that all submissions by Developer are timely, substantially complete and in accordance with applicable submittal requirements) or any other causes beyond the control or without the fault of the party claiming an extension of time to perform; provided that the lack of funds or financing of Developer is not a cause beyond the control or without the fault of Developer (such events are called "Force Majeure"). For any Force Majeure event that will cause Commencement of Construction or Substantial Completion of the Project by the Completion Date to be delayed more than ten (10) days, Developer will keep City informed about the cause and nature of such delay and the progress in achieving such Substantial Completion and such deadlines or time for performance will be extended for a period of time equal to the duration of the Force Majeure. Times of performance under this Agreement may also be extended in writing by City and Developer.

14.19 Fair Construction; Severability. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the context may require. The Parties hereby acknowledge and agree that each was properly represented by counsel and this Agreement was negotiated and drafted at arms' length so that the judicial rule of construction to the effect that any ambiguities are to be construed against the drafting party shall

be inapplicable in the interpretation of this Agreement. The provisions of this Agreement shall be construed as a whole according to their common meaning and consistent with the other provisions contained herein in order to achieve the objectives and purposes of this Agreement. If any term, provision, covenant, clause, sentence or any other portion of the terms and conditions of this Agreement or the application thereof to any person or circumstances shall apply, to any extent, become invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect, unless rights and obligations of the Parties have been materially altered or abridged by such invalidation or unenforceability.

14.20 Time of the Essence. In all matters under this Agreement, the Parties agree that time is of the essence.

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

CITY OF TACOMA, a Washington first class charter city

FOSS HARBOR LLC, a Washington limited liability company

By: _____
Name: Elizabeth Pauli
Its: City Manager

By: _____
Name: _____
Its: _____

EXHIBIT A

Legal Description of Sites 9, 10 and 11

Site 9:

West 90 feet of Lots 1 through 5, Block 62, Section 04, Township 20, Range 03, according to the official map of the Tacoma Tide Lands, filed in the office of the Commissioner of Public Lands at Olympia, Washington, 3 September 1895.

Site 10:

West 120 feet of Lots 1 through 6, Less the South 40 feet of Lot 6, Block 63, Section 04, Township 20, Range 03, according to the official map of the Tacoma Tide Lands, filed in the office of the Commissioner of Public Lands at Olympia, Washington, 3 September 1895.

Site 11:

West 120 feet of Lots 39 through 42, and Lot 38, Less the North 40 feet of Lot 38, Block 66, Section 04, Township 20, Range 03, according to the official map of the Tacoma Tide Lands, filed in the office of the Commissioner of Public Lands at Olympia, Washington, 3 September 1895.

EXHIBIT B

Form of Certification of Completion

After recording return to:

**CERTIFICATE OF COMPLETION
Sites 9, 10 and 11**

GRANTOR: CITY OF TACOMA

GRANTEE: FOSS HARBOR LLC

LEGAL DESCRIPTION:

ASSESSOR'S TAX PARCEL NO.:

RELATED DOCUMENT: Development Agreement (Rec. No. _____)

The CITY OF TACOMA, a Washington first class charter city ("City"), hereby certifies that FOSS HARBOR LLC, a Washington limited liability company ("Developer"), has satisfactorily completed construction of the Improvements on the Property described above (the "Property"), as such Improvements are described in the Development Agreement dated _____, 20__ (the "Agreement"), which was recorded in the records of the Pierce County Auditor, Washington, as Document No. _____, on _____, 20__.

This Certificate of Completion is and shall be a conclusive determination that the Developer has satisfied, or City has waived, each of the agreements, covenants and conditions contained in the Agreement as to the development of the Improvements pursuant to the Agreement.

Notwithstanding this Certificate of Completion, the Agreement provides for the survival of certain covenants as between City and Developer, and nothing in this Certificate of Completion affects such survival.

The Agreement is hereby terminated to the extent it is an encumbrance on the Property and is released from title to the Property.

IN WITNESS WHEREOF, City has caused this instrument to be executed this ____ day
of _____, _____.

CITY OF TACOMA, a Washington first class
charter city

By _____
_____, City Manager

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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

Dated: _____, 20__.

Notary Public
Print/Type Name _____
My commission expires _____

(Use this space for notarial seal)

After recording return to:

City of Tacoma Real Property Services
747 Market Street
Tacoma, WA 98402
Attn: Real Property Services Manager

WASHINGTON STATE RECORDER'S COVER SHEET (RCW 65.04)

DOCUMENT TITLE: Site 9 Project Covenant
GRANTOR: Foss Harbor LLC, a Washington limited liability company
GRANTEE: City of Tacoma, a Washington municipal corporation
LEGAL DESCRIPTION: <i>[Abbreviated legal description(s) to be inserted after completion of the boundary line adjustment]</i>
ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER: <i>[Tax parcel number(s) to be inserted after completion of the boundary line adjustment]</i>

SITE 9 PROJECT COVENANT

This Site 9 Project Covenant (“**Agreement**”) is entered into this ___ day of _____, 2021 (“**Effective Date**”), by and among Foss Harbor LLC, a Washington limited liability company (“**Owner**”), and the City of Tacoma, a municipal corporation (“**City**”). As used in this Agreement, “**Grantee**” means the City.

RECITALS

A. Owner and Grantee are parties to the Purchase and Sale Agreement (“**Site 9**”) dated _____, 2021 (“**Purchase and Sale Agreement**”), under which Owner purchased from Grantee certain real property located at the Foss Waterway in Tacoma, Washington, as legally described in the attached **Exhibit A** (“**Burdened Property**”).

B. The City owns certain real property commonly known as Site 8 and legally described on the attached **Exhibit B** (“**Site 8**”), which is located south of and adjacent to the Burdened Property. The City also owns certain real property commonly known as the Shorelands and legally described on the attached **Exhibit C** (“**City Shorelands**”), which is located east of and adjacent to the Burdened Property. The City also owns the right-of-way under the Murray Morgan Bridge, which is legally described on the attached **Exhibit D** (“**Bridge Right-of-Way**”) and is located north of and adjacent to the Burdened Property.

C. Under the Purchase and Sale Agreement and as additional consideration for the sale of the Burdened Property from Grantee to Owner, Owner agreed to establish a covenant in favor of Grantee concerning the development of a public esplanade, public path, Site 8 and other certain matters, on the following terms and conditions.

AGREEMENT

In furtherance of the Recitals set forth above, which are incorporated herein by reference, and in consideration of the mutual promises and covenants set forth below, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties acknowledge and agree to the following:

1. **Esplanade.**

1.1 **Upland Esplanade.** Owner shall, at its sole cost and expense, construct and complete an Upland Esplanade along the eastern property line of the Burdened Property, immediately adjacent to City waterfront land. As used in this Agreement, “**Upland Esplanade**” means a public esplanade on uplands that is at least twenty (20) feet wide with associated improvements of like kind and quality as are present on the existing esplanade adjacent to the property commonly known as Thea Foss Waterway Site 11, including without limitation lighting, benches, railings, and waste bins, as applicable, all in accordance with City standards and Legal Requirements (as defined in Section 3 below). A sketch of the required esplanade is attached as Exhibit _____. Owner shall complete

construction of the Upland Esplanade simultaneously with Owner's development of the Burdened Property. The precise location of the Upland Esplanade on the Burdened Property and the plans and specifications for the same shall be subject to Grantee's prior written approval, which approval shall not be unreasonably withheld. If Owner constructs an Upland Esplanade across the Burdened Property before the development of Site 8, then the owner and/or developer of Site 8 shall be responsible for coordinating the connection of an Upland Esplanade or other improvements on Site 8 to the Upland Esplanade on the Burdened Property. Similarly, if the owner and/or developer of Site 8 constructs an Upland Esplanade or other improvements across Site 8 before the construction of the Upland Esplanade on the Burdened Property, then Owner shall be responsible for coordinating the connection of its Upland Esplanade to the Upland Esplanade or other improvements on Site 8.

1.2 **2001 Esplanade Agreement.** Grantee and Owner's affiliates, Foss Waterway Marine LLC and Foss Waterway Development LLC, are parties to the Esplanade Easement Agreement dated July 10, 2001 and recorded July 19, 2001 in the official records of Pierce County, Washington under No. 200107190198 ("**2001 Esplanade Agreement**"). For avoidance of doubt, Owner and Grantee agree that this Agreement does not modify the 2001 Easement Agreement. Notwithstanding anything to the contrary in this Agreement, if Grantee elects to construct an Esplanade (as defined in the 2001 Esplanade Agreement) on the City Shorelands in front of the Burdened Property, then from and after the completion of such Esplanade Owner shall no longer be required to maintain the Upland Esplanade on the Burdened Property.

2. **Public Path.** Simultaneously with the development of the Burdened Property, Owner will construct and complete, at its sole cost and expense, a Public Path within the Bridge Right-of-Way that provides pedestrian access to and from the Burdened Property and the real property commonly known as Municipal Dock located north of the Bridge Right-of-Way. As used in this Agreement, "**Public Path**" means a public path at least six (6) feet in width and associated improvements constructed to City standards and applicable Legal Requirements. A sketch generally depicting the required path is attached as Exhibit _____. Without limiting the foregoing, Owner agrees to construct the Public Path using asphalt, if requested by Grantee.

3. **General Provisions.** All installation, construction, maintenance, repair and replacement activities performed in connection with this Agreement shall be done in full compliance with Legal Requirements (as defined below), and in a good and workmanlike manner. All such work shall be paid for promptly, free and clear of liens (provided nothing herein shall purport to authorize the filing of any such liens). Any party performing installation, construction, maintenance, repair, replacement, or removal work shall promptly repair any damage resulting from such activities so as to return the damaged property to as good a condition as existed prior to such damage. Each party shall have a reasonable right of access into the property of the other party to exercise the installation, construction, maintenance, repair, replacement and removal activities and obligations provided for herein, including without limitation with respect to the initial construction of the Public Path and the Upland Esplanade on the Burdened Property and Site 8. As used in this Agreement, "**Legal Requirements**" means all applicable local, county, state and federal laws, ordinances, rules, regulations and orders now or hereafter in effect, including without limitation the Americans With Disabilities Act of 1990 (as amended), the

CC&Rs (as defined in Section 4 below), the Foss Plan (as defined in Section 6 below), the City of Tacoma Master Program for Shoreline Development, the Thea Foss Waterway Design Guidelines and the City of Tacoma Shoreline Master Program.

4. **Public Access.** The parties agree that the Upland Esplanade, Waterfront Esplanade and Public Path will be open public space as described in the CC&Rs and are intended for the use and enjoyment of the public. Owner hereby grants and conveys to Grantee a perpetual, non-exclusive easement over, across and through the designated pedestrian facilities within the Burdened Property for purposes of public access to the Upland Esplanade, Waterfront Esplanade and Public Path. As used in this paragraph, “**CC&Rs**” means the Declaration of Covenants, Conditions & Restrictions dated November 15, 2001, and recorded against the Property in the Official Records of Pierce County, Washington under Recording No. 200111151078.

5. **Maintenance Obligations.** The Upland Esplanade, Waterfront Esplanade and Public Path shall be deemed to be “Public Areas” under the CC&Rs, and the maintenance of, and on-going capital repairs to, the same shall be performed and the cost thereof shall be divided in accordance with and subject to the terms of the CC&Rs.

6. **Use and Improvements.** Except as expressly set forth in this Agreement, Owner may use the Burdened Property for any purpose and may construct any improvements on the Burdened Property allowed by applicable Legal Requirements and any existing encumbrances on the Burdened Property. Grantee shall not be responsible for any costs and expenses related to such improvements, if any.

7. **No Protest.** In consideration of Grantee selling the entirety of Site 9 to Owner in a direct non-competitive sale, Owner, for itself and on behalf of its parent(s), affiliate(s), member(s) and manager(s), agrees not to oppose, incite or otherwise encourage the opposition of, nor provide support or funding to others for the opposition of, the sale of Site 8 or the development of any project proposed for development on Site 8 that is consistent with the Foss Plan (as defined below) on any basis. If Grantee (or any successor owner) elects to develop Site 8, before the submittal of permit applications for such development, Owner will have a reasonable opportunity (such period not to exceed ten (10) business days) to review applicable plans and specifications and provide comment to Grantee (or any successor owner) as to specific impacts of the proposal on the marina or Burdened Property, if any. Grantee will include this review opportunity as a condition of development in any sale of Site 8. Owner and Grantee (or any successor owner) shall work diligently and in good faith to consider Owner’s concerns. Such efforts are not a guarantee that Owner’s concerns will be addressed to Owner’s satisfaction. Owner agrees that the opportunity to review the plans and discuss the concerns in good faith is in lieu of the right to express its objections in a formal review of the proposal by decision makers. As used in this paragraph, “**Foss Plan**” means the FWDA Master Redevelopment Strategy (including without limitation the Urban Design Review Process) and the Tacoma Waterfront Design Guidelines (as the same may be amended).

8. **Indemnity.** Owner hereby releases, indemnifies and promises to defend and hold the City harmless from and against any and all liability, loss, damage, expense, action or claim (collectively “**Claims**”), including without limitation costs and reasonable attorney fees, asserted against the City and arising out of (a) the construction of the Upland Esplanade and/or Public Path

or (b) the acts or omissions of Owner or its employees, agents or contractors in the exercise of Grantee's rights and obligations under this Agreement; except, however, that this provision does not purport to indemnify the City against liability for Claims arising out of bodily injury to persons or damage to property to the extent caused by or resulting from the negligence of the City or its agents, employees or contractors. The foregoing indemnity shall survive the termination of this Agreement.

9. **Runs with the Land.** This Agreement constitutes a covenant running with the land and affecting the Burdened Property and Site 8, and shall be binding upon and inure to the benefit of the respective owners, their heirs, successors, assigns, transferees and personal representatives.

10. **Enforcement.** In the event of a breach of any of the covenants or agreements set forth in this Agreement, the non-breaching party or parties shall be entitled to any and all remedies available at law or in equity, including without limitation the equitable remedies of specific performance or mandatory or prohibitory injunction issued by a court of appropriate jurisdiction. In the event of litigation between the parties, declaratory or otherwise, in connection with this Agreement, the substantially prevailing party shall be entitled to recover its costs and attorney fees actually incurred, which shall be determined and fixed by the court as part of the judgment.

Neither the public nor any party making claims on behalf of the public shall have any rights or remedies under this Agreement, it being solely the province of the City and its successors and assigns, to enforce this Agreement on behalf of the public.

11. **Amendment.** This Agreement may not be modified, amended or terminated without the prior written approval of (i) the Owner and (ii) the Grantee.

12. **Waiver.** No waiver of any of the provisions of this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

13. **Captions.** The captions and paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement, nor the intent of any provision hereof.

14. **Governing Law.** This Agreement shall be governed by and constructed in accordance with the laws of Washington.

15. **Limitation of Liability.** Notwithstanding any provision in this Agreement to the contrary, Owner agrees that it shall look solely to the estate and interest of the Grantee in Site 8 for the collection of any judgment requiring the payment of money by Grantee or for the enforcement of any other judgment or remedy against Grantee and no other assets of Grantee shall be subject to levy, execution or other procedure for the satisfaction of Owner's remedies.

16. **Third Party Consent.** Owner represents and warrants to Grantee that the consent or approval of no third party, including without limitation a lender, is required with respect to the execution of this Agreement, or if any such consent or approval is required, that Owner has obtained all such consents or approvals as of the Effective Date.

17. **Authority.** Each party represents and warrants to the other that the person signing below on its behalf has the full power, capacity, authority and legal right to execute and deliver this Agreement and to fully bind it to the terms hereof.

18. **Counterparts.** This Agreement may be executed in one or more facsimile or PDF counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

19. **Authority Notice.** Authority is organized pursuant to City of Tacoma Municipal Code Ch. 160 and RCW 35.21.660, 35.21.670, and 35.21.730-755. RCW 35.21.750 provides:

All liabilities incurred by such public corporation, commission or authority shall be satisfied exclusively from the assets and properties of such public corporation, commission or authority and no other creditor or other person shall have any right of action against the city, town, or county creating such public corporation, commission or authority on account of any debts, obligations or liabilities of such public corporation, commission or authority.

IN WITNESS WHEREOF, this Agreement is executed as of the Effective Date.

OWNER:

FOSS HARBOR LLC,
a Washington limited liability company

By: _____
Name: _____
Its: _____

GRANTEE:

CITY OF TACOMA, a Washington municipal
corporation

By: _____
Name: _____
Its: _____

APPROVED AS TO FORM:

By: _____
Name: _____
Its: _____

STATE OF WASHINGTON)

COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of FOSS HARBOR LLC, a Washington limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this ____ day of _____, 2021.

[Signature of Notary]

[Print Name of Notary]

Notary Public in and for the State of _____, residing at _____.

My commission expires: _____.

STATE OF WASHINGTON)

COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of the CITY OF TACOMA, a Washington municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this ____ day of _____, 2019.

[Signature of Notary]

[Print Name of Notary]

Notary Public in and for the State of _____, residing at _____.

My commission expires: _____.

EXHIBIT A
LEGAL DESCRIPTION OF THE BURDENED PROPERTY

[Legal description of the Property to be inserted after completion of the boundary line adjustment]

EXHIBIT B
LEGAL DESCRIPTION OF SITE 8

[Legal description of Site 8 to be inserted after completion of the boundary line adjustment]

EXHIBIT C
LEGAL DESCRIPTION OF CITY SHORELANDS

[Legal description of City Shorelands to be inserted]

EXHIBIT D
LEGAL DESCRIPTION OF BRIDGE RIGHT-OF-WAY

[Legal description of Bridge Right-of-Way to be inserted]