

OPTION AGREEMENT

EFFECTIVE DATE:

NOVEMBER 8, 2005

PARTIES:

Optionor:
RIVERWALK ON THE COLUMBIA, LLC, a
Washington limited liability company
(hereinafter referred to as "Riverwalk")

Optionee:
THE PORT OF CAMAS-WASHOUGAL, a
Washington municipal corporation (hereinafter
referred to as "Port")

RECITALS

A. Port owns fee simple title to the real property described in Exhibit "A" attached hereto and incorporated herein by reference, together with all improvements situated thereon. Such real property and improvements are collectively referred to herein as the "Property."

B. Riverwalk proposes to enter into a transaction with Port that will include a long-term ground lease for certain parcels located within the Property of Port and a Development Agreement for the purposes identified below.

C. Port has agreed to grant Riverwalk an exclusive option to long-term ground lease of the Property and the parties desire to evidence their agreement regarding the options.

The parties therefore agree as follows:

AGREEMENT

1. **Project.** Riverwalk proposes a mixed use project that may include a marina, hotel, offices, restaurants, retail, recreational, and residential development which would: (a) redevelop the City of Washougal and Port's Columbia River waterfront with a signature project; (b) redevelop any Brownfield Sites ; (c) fulfill the City of Washougal's Shoreline Master Program Policies which favor high density land use including residential, commercial, and industrial development in the urban shoreline environment, particularly policies giving priority to water dependent uses, emphasis to visual and physical access to the shoreline, encouragement of multi-purpose use of the shoreline; and (d) generate sales tax, property tax, and other revenues for the City of Washougal and Port.

The project would be developed on Property already owned by Port as well as property currently owned by others.

2. **Grant of Option.** Port hereby grants to Riverwalk the exclusive option to long-term ground lease from Port certain parcels of the Property located in Clark County, Washington all

within the property described in Exhibit A, as mutually agreed to by the parties during the option period, for the payments and upon the terms and conditions and within the time period provided for in this Option Agreement. The exercise of this option shall be within the sole and absolute discretion of Riverwalk.

In the sole event that a long-term ground lease is not feasible, then Port agrees to negotiate in good faith for sale of the Property. Any sale of Port Property would be subject to the notice and hearing requirements of RCW Chapter 53 to amend Port's Comprehensive Plan and any Purchase and Sale Agreement shall clearly state this condition.

3. Option Period.

3.1 Initial Term. The initial term of this option shall end at midnight on the date preceding the first anniversary of the effective date of this Option Agreement.

3.2 Extension. Riverwalk may unilaterally extend the option for two (2) additional one hundred eighty (180) day periods as calculated from the first day following the last day of the previous period. These extensions shall be allowed only so long as Riverwalk continues to negotiate in good faith for Port and the City of Washougal for the long-term ground lease and/or purchase certain parcels located within the Property, as well as the Master Development Agreement for the Property to be leased and/or acquired under this Option Agreement, all as hereinbelow more specifically described.

4. Consideration for the Option. Consideration for this option shall be the payment of \$1,000 for the initial twelve (12) month option period and \$1,000 for each additional one hundred eighty (180) day option period if Riverwalk elects to extend the option period. All consideration paid for the option shall be nonrefundable and shall not apply against any future payments due to Port under any agreements entered into by Riverwalk and Port should the option be exercised. In the event Riverwalk exercises its option hereunder, Port shall (a) execute a long-term ground lease as well as any and all other ancillary agreements agreed to by the parties during the period of negotiation under this Option Agreement. In the event of any actual conveyance of property to Riverwalk by Port shall be by Washington Statutory Warranty Deed, free and clear of all encumbrances, liens, and defects disapproved by Riverwalk except those encumbrances, liens, and assessments specifically accepted in the pre-printed exceptions to the title policy to be provided as more particularly described herein.

5. Possession. From and after the effective date of this Option Agreement until either the exercise or termination hereof, Riverwalk and its agents, employees, consultants, and contractors shall be allowed full access to the Property, for the purposes of conducting surveys, tests, and inspections on the Property, and other investigations as Riverwalk deems necessary, including but not limited to digging test holes to determine the existence of any artifacts of historical or cultural significance or the presence of hazardous or toxic substances, or the suitability of the soil for building and construction. Such activities shall be conducted with at least three (3) business days prior notice to Port and without interfering with normal operations of facilities located on the Property. Should Riverwalk fail to exercise this option, Riverwalk shall be responsible for leaving the Property in a condition as close as reasonably possible to the condition in which Riverwalk found it on the date of this Option Agreement.

Riverwalk shall ensure that costs and expenses for activities described under this section shall be reasonable and shall share proposals and scopes of work for such due diligence not less than seven (7) days prior to the commencement of such work. Riverwalk shall bear the costs and expenses of any activity provided for in this section with the proviso that Port shall match dollar for dollar up to \$200,000 towards the cost thereof.

Upon receipt of a billing for expenses related to due diligence, Riverwalk will forward such billing to Port. Each party shall pay one-half (1/2) of the bill directly to the service provider within twenty (20) days of receipt of the invoice.

The due diligence contemplated by Riverwalk shall include but is not necessarily limited to environmental testing and review, soils testing and review, bankline testing and review, appraisal, environmental assessment, environmental inspection, archaeology, wetlands review, survey, and others.

Riverwalk shall indemnify and hold Port harmless from any claim, liability, or damage resulting from or arising out of Riverwalk's or its agents', employees', consultants', or contractors' activities on the Property pursuant to this section. In the event that Riverwalk elects not to exercise this option, the results of all studies and investigations conducted by Riverwalk shall be released and assigned to Port so long as Port has paid its share of such costs as hereinabove provided for.

Throughout the development process, Riverwalk and Port shall cooperate in holding periodic open houses and public meetings designed to obtain public input on the project.

6. Notice of Exercise. If Riverwalk elects to exercise this option, it shall do so by giving written notice pursuant to Section 17.

7. Escrow and Closing Agent. In the event that Riverwalk exercises its option hereunder, Port hereby authorizes Riverwalk to establish an escrow with Fidelity National Title Insurance Company, 1001 SW 5th Avenue, Suite 400, Portland, OR 97204 ("Title Company") for the closing of the long-term ground lease and/or real estate purchase and sale transaction contemplated herein, to deliver to said escrow and closing agent an original of this Option Agreement and any and all other documents necessary for closing.

8. Closing. In the event that Riverwalk exercises its option hereunder, the transaction as contemplated herein shall be closed in escrow not more than thirty (30) days after the exercise of this option. Closing shall be in the office of the Title Company. The parties shall on demand, deposit in escrow, with the closing agent all instruments and monies necessary to complete the transaction in accordance with this Option Agreement. Closing shall mean the date upon which all instruments, monies, and other documents reasonably required to complete the closing of the transaction in accordance with the terms of this Option Agreement have been deposited into escrow at the Title Company.

9. **Closing Costs.** In the event that Riverwalk exercises its option hereunder:

9.1 Riverwalk will pay the premium for an ALTA extended coverage owner/lessee's policy of title insurance in favor of Riverwalk in the amount of the value as contained in such agreements; one-half (1/2) of closing agent's escrow fees; and its own attorney fees.

9.2 Port shall pay State of Washington real estate excise tax or other excise tax, if any, cost of recording any and all necessary documents; and one-half (1/2) of closing agent's escrow fees.

10. **Disclosure of Representation.** It is understood and acknowledged that this Option Agreement has been prepared by Stephen W. Horenstein of Miller Nash LLP for the benefit of Riverwalk and that Port shall be represented by Shawn MacPherson of Knapp, O'Dell, Lewis, MacPherson in regard to the rights and obligations under this Option Agreement and the transactions contemplated herein.

11. **Waiver.** Any waiver by Riverwalk or Port of any breach of any covenant herein contained to be performed shall not be deemed as a continuing waiver and shall not operate to bar or prevent the non-defaulting party from declaring default for any further breach, either of the same condition or covenant or otherwise.

12. **Severability.** If any term or provision of this Option Agreement or the application thereof to any person or circumstance, to any extent, be invalid or unenforceable, the remainder of this Option Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

13. **Entire Agreement.** This Option Agreement constitutes the entire agreement between the parties.

14. **Non-merger.** The provisions of this Option Agreement shall not be deemed merged into the deed but shall survive the closing and shall continue in full force and effect.

15. **Escrow or Closing Instructions.** This Option Agreement shall serve as and/or be incorporated into Port's and Riverwalk's escrow or closing instructions for the closing of this transaction. Any inconsistencies between this Option Agreement and the escrow or closing instructions provided by the parties shall be resolved in favor of this Option Agreement.

16. **Purchase of Additional Property.** In the event the parties desire to purchase additional property, not now owned by either party, the parties agree as follows:

16.1 Such property shall be owned by the parties.

16.2 Such property shall be submitted to the Master Development Agreement.

determine the condition of title, and whether or not incurred in trial court or on appeal, or in any proceedings under the Federal Bankruptcy Code or State Receivership Statutes.

21. Time of the Essence. Time is of the essence of this Option Agreement.

22. Notice of Violations. All notices and/or orders of violations of law or ordinances (hereinafter referred to as "violations" issued to Port by any state, local, or municipal departments having jurisdiction against or affecting the Property at the date hereof shall be forwarded to Riverwalk. The parties shall evaluate the violations and determine whether each party believes that they should be corrected. Neither Port nor Riverwalk is obligated to correct such violations. Riverwalk shall not be required to close in the event that Port elects not to correct the violations.

23. Miscellaneous.

23.1 Gender and Number. As used in this Option Agreement, the masculine, feminine, or neuter gender, and the singular or plural number shall be deemed to include the others whenever the context so indicates.

23.2 Interpretation/Construction. Paragraph headings have been included for the convenience of the parties and shall not be considered a part of this Option Agreement for any purpose relating to construction or interpretation of the terms of this Option Agreement and shall in no way limit any of the provisions of this Option Agreement.

23.3 Closing Agent. For purposes of this Option Agreement, "closing agent" shall be defined as a person authorized to perform escrow or closing services who is designated by the parties hereto.

23.4 Date of Closing. For purposes of this Option Agreement, "date of closing" shall be construed as the date subsequent to the exercise of the option upon which all appropriate documents are recorded and proceeds of this sale are available for disbursement to Port.

24. Best and Continuous Efforts. Riverwalk and Port shall use their continuous best efforts during the term of this Option Agreement to negotiate and document the transaction contemplated herein between Port and Riverwalk as well as the actions and transactions with the City of Washougal as herein provided.

25. Documentation Contemplated by this Transaction. The following documents contemplated for completion prior to the exercise of this Option Agreement include but are not necessarily limited to the following:

25.1 Master Development Agreement. The Master Development Agreement between the City of Washougal, Port, and Riverwalk providing for the redevelopment of the Property.

25.2 Ground Lease. Riverwalk and Port contemplate entering into a fifty (50) year ground lease with a thirty (30) year option to extend for that Property which development can

occur under existing zoning designations for the Property (for example: marina, boat launch, boat storage, office space).

25.3 Appropriate Covenants, Conditions, Restrictions, Easements, Shared Parking Agreement, and any and all other necessary documentation necessary for the redevelopment of the Property and creation of the project.

25.4 Real Estate Purchase and Sale Agreement. Riverwalk shall assume responsibility for negotiating the acquisition of additional property necessary for the project and cost sharing for the acquisition price thereof shall be set forth in the Real Estate Purchase and Sale Agreement and other ancillary necessary documents.

26. Involvement of the City of Washougal. For portions of the Property currently owned by another party proposed to be developed with retail and residential uses, Port and Riverwalk shall request that the City of Washougal form a Community Renewal Area pursuant to RCW 35.81, including compliance with all the requirements for forming such Community Renewal Area. In forming the Community Renewal Area, the City of Washougal will be requested to form a Community Renewal Authority that includes all three Port Commissioners as members of the Board of the Authority. The City of Washougal will be requested to amend its Comprehensive Plan and Zoning Ordinances for the portion of the Property controlled by the Community Renewal Authority to permit the mix of uses proposed for the project. The City of Washougal and Port shall enter into Interlocal Agreements to share additional sales and property tax revenues generated by the proposed project in a form that is to be agreed to by Port and the City of Washougal. A more detailed outline of the Community Renewal Area process proposed to be undertaken by this Option Agreement, is attached hereto and incorporated herein by reference as Exhibit "B."

27. Revenue Distribution. Upon exercising the option and execution of the Ground Lease, Master Development Agreement and any other Agreement mutually agreed to by the parties as contemplated herein, payment under a long-term ground lease shall be as follows:

27.1 The base monthly payment will be \$100 per month. Port will retain all existing tenants and revenues and (agrees that all renewals shall be with consent of Riverwalk LLC) until each tenant's land is deeded for redevelopment under the ground lease.

27.2 In addition to the base rent, the parties will divide net rent received (to be defined in the ground lease) on an equal basis at the point that such Property is generating net revenue from redevelopment.

Riverwalk shall use its best efforts to develop the property and obtain tenants and users of the development in order to maximize the return on investment to the parties at the earliest reasonably possible date.

Upon development of the Property or any parcel therein, the baseline calculation for revenue distribution for payment to the Port shall be calculated by determining the average annual rent over the 10-year period immediately preceding the effective date of the closing of the transaction contemplated herein for those properties within the jurisdiction of the Port and redevelop

pursuant to the provisions of this Option Agreement and Agreements executed at closing upon exercise of this Option Agreement. This amount shall be the base annual rent received by the Port under the Ground Lease contemplated herein for redeveloped parcels on the Property. In addition the Port and Riverwalk shall each receive an equal percentage of net revenue from the tenants located within the redeveloped areas in areas owned by the Port in a fashion to be determined, calculated, and documented in the Master Development Agreement, Ground Lease, and/or other Documents to be executed at closing upon exercise of this Option Agreement as provided for herein.

28. Alternative Dispute Resolution. This Section sets out the exclusive means and forum for resolution of any controversy, dispute or claim which arises out of or relates to this Option Agreement, including but not limited to determination of necessary documentation not already identified herein and the negotiation of any and all documents necessary to consummate the transaction and proceed with the development contemplated herein and/or breach of this Option Agreement (collectively "Dispute") and which by the provisions of this Option Agreement is to be resolved by Alternative Dispute Resolution. If there is a Dispute, the parties to the Dispute shall first make efforts to resolve the Dispute through good faith negotiation. If the Dispute is not settled through negotiation within fifteen (15) days after either party to the Dispute demands negotiation; then upon the demand of either party to the Dispute, the parties to the Dispute shall make efforts to resolve the Dispute in good faith by mediation administered by JAMS. If the Dispute is not resolved by mediation within sixty (60) days after either party to the Dispute demands mediation; then upon the demand of either party to the Dispute, the Dispute shall be resolved by binding arbitration administered by JAMS pursuant to its most appropriate arbitration rules and procedures. Each party shall pay an equal portion of the mediation and arbitration fees and expenses, subject to the right of the prevailing party to an award of the fees and expenses pursuant to Section 20 above. After the arbitration award is confirmed by any court of competent jurisdiction, the award of the arbitrator shall be enforceable in the same manner and have the same effect as the judgment of any court of competent jurisdiction. Restraining orders, preliminary injunctions and permanent injunctions should be freely granted by the arbitrator(s) in the case of any breach of this Option Agreement. The arbitrator(s) shall have no authority to award punitive damages. However, nothing contained in this paragraph shall limit the right of any party to the Dispute to seek and obtain any interim relief in the Courts pending an order confirming the arbitrator's award, including without limitation intended, a temporary restraining order, preliminary injunction or receiver.

29. Assignment. This Option Agreement and the referenced Ground Lease may not be assigned or subleased without the prior written consent of Port, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, such assignment or sublease may occur without consent:

29.1 To the extent necessary to obtain construction and/or permanent financing to develop the Property as herein referenced. Port shall review and approve the assignment documentation. Failure of the Port to do so within 30 days of receipt of such documentation shall be deemed approval thereof.

29.2 To an entity or entities in which Riverwalk or its members hold a majority interest.

29.3 To a tenant or user of improvements on the Property developed as provided for herein so long as the tenant or user is occupying space that has been approved as part of the master plan.

In addition, to the extent that residential condominiums are constructed on the Property, Port hereby consents to the lease, sublease, or sale of Property in connection with the sale of condominium units to individual buyers and/or common and limited common areas to a Condominium Homeowners Association.

DATED this 8TH day of NOVEMBER, 2005.

RIVERWALK ON THE COLUMBIA LLC,
a Washington limited liability company

By: *Rick Bowler*
Rick Bowler

Its: MANAGER/MEMBER

By: *Marilee J. Thompson*
Marilee J. Thompson

Its: Member/Manager

By: *Mark Benson*
Mark Benson

Its: Manager/Member

By: *Mary C. Benson*
Mary Benson

Its: Manager/Member

PORT OF CAMAS-WASHOUGAL, a
Washington municipal corporation

By: *Alan F. Hargrave*
Name: Alan F. Hargrave

Its: Port Commissioner

By: *Richard Anderson*
Name: Richard Anderson

Its: Port Commissioner

By: *Jim Carroll*
Name: Jim Carroll

Its: Port Commissioner

EXHIBIT "A"



EXHIBIT B

PROCESS FOR FORMING COMMUNITY RENEWAL AREA

For portions of the Riverwalk site area currently owned by a party other than the Port of Camas-Washougal (the "Port") or proposed to be developed with retail and residential uses, the City of Washougal (the "City") may form a community renewal area under RCW 35.81. These statutes permit a flexible approach to the acquisition, planning, and disposition of property within the renewal area. As the municipality authorized to create a community renewal area, the City would take the lead in forming the area, but the management and administration of the area may be performed by either the City or the Port, or some combination thereof.

1. Community Renewal Area

The proposed community renewal area includes all of the area within the proposed Riverwalk on the Columbia site. This area may be designated through an ordinance or resolution passed by the City. RCW 35.81.050.

In support of its formation of the renewal area, the City must make a finding of "blight" under RCW 35.81.050(1). Among other things, "blighted areas" include areas with physical dilapidation of buildings or improvements; areas with inappropriate uses of land or buildings; areas of deterioration; areas with hazardous soils, substances, or materials; and areas with a diversity of ownership, obsolete platting, defective street layout, or faulty lot layout. RCW 35.81.015(2). At the same time, the City must find that the rehabilitation and/or redevelopment of the area is necessary in the interest of the public health, safety, morals, or welfare of the residents of the City. RCW 35.81.050(1).

The City then approves a community renewal plan, which may be developed by the City or by the Port and/or another person such as the LLC, for the City's approval. RCW 35.81.060(2).

2. Exercise of Community Renewal Agency Powers

After the City makes the findings of blight and that redevelopment of the area is in the public interest, the Community Renewal Law provides that the powers of the community renewal agency may be exercised by:

- a. An appointed board or commission;
- b. The City Council directly; or
- c. The Board of a public port district or other similar entity.¹

¹ RCW 35.81.050(2); see also RCW 35.81.150(1).

Similarly, the Port has the authority under RCW 53.08.400 to enter into a contract with the City for exercising the powers of a community renewal agency.

Therefore, in this case the Port might manage the community renewal plan on behalf of the City.

B. *City Concurrently Amends Comprehensive Plan*

Concurrent with the formation of the renewal area, the City may amend its comprehensive plan to permit the proposed mix of uses. The Community Renewal Law provides that if the community renewal plan is not consistent with the existing comprehensive plan, the City may amend its comprehensive plan. RCW 35.81.060(2).

We understand that the City is now considering amendments to its "no net loss" policy for industrial lands, so this appears to be an appropriate time to consider how the proposed Riverwalk development will be consistent with the City's comprehensive plan. Presumably, the City's plan policy providing for the protection of industrial land within the Port of Camas/Washougal from conversion to non-industrial uses is intended to protect the Port's interests, so with the Port's support of the Riverwalk development plan the City has reason to revisit this plan policy.

C. *Interlocal Agreement Between City and Port*

Through an interlocal agreement² or other contract between the City and the Port, the two municipalities can provide for revenue sharing of the additional sales tax and property tax generated by the proposed Riverwalk project. The Community Renewal Law authorizes the City to make payments for consideration for the Port's commitments to develop, expand, or retain land uses that contribute to the success of the project or plan.³

And generally, the City and the Port may enter into an interlocal agreement to jointly provide services that they each have authority to provide in connection with the Community Renewal Area.⁴

D. *Selection of Person to Undertake Development*

The Community Renewal Law provides a specific process for the selection of the party to undertake the redevelopment of real property in RCW 35.81.095, which includes either a request for qualifications or a request for proposals. This process may occur either before or after the City's acquisition of real property in the renewal area.⁵

² Chapter 39.34 RCW.

³ RCW 35.81.070(4).

⁴ Chapter 39.34 RCW.

⁵ RCW 35.81.095(1).

E. *LLC Leases Community Renewal Area for Development of Residential, Retail, and Related Uses*

As noted above, properties located in the potential community renewal area include parcels owned by the Port as well as parcels owned by other parties.

1. Property Currently Owned by the Port

For property currently owned by the Port that is proposed to be developed with residential and retail uses, the property may be leased as follows.

a. Lease from Port to City or Renewal Agency

The Port has the general authority to lease real property for such purposes and upon such terms as the port commission deems proper,⁶ and under the Community Renewal Act, the Port has the authority to sell or lease its property to a municipality or other public body.⁷

Under this authority, the Port may lease its property located within the renewal area to the City or a Community Renewal Agency organized under Chapter 35.81.

The Port's lease of real property may be for a term of up to 50 years, with options to extend up to an additional 30 years.⁸

b. Lease from City or Renewal Agency to LLC

The City may sell or lease real property acquired by it for a community renewal project in a community renewal area, for residential, recreational, commercial, industrial, or other uses.⁹

Thus, the City may sublease the Port's property to Riverwalk, LLC, for residential and retail development consistent with the community renewal plan.

2. Property Currently Owned by Other Parties

Those parcels within the community renewal area that are now owned by other parties (and not owned by the Port) may be condemned¹⁰ or otherwise acquired¹¹ by the City consistent with the approved community renewal plan.

Then, the City may sell or lease the property¹² to the LLC under the requirements of the Community Renewal Law.

⁶ RCW 53.08.080.

⁷ RCW 35.81.130(1).

⁸ RCW 53.08.080.

⁹ RCW 35.81.090(2).

¹⁰ RCW 35.81.080.

¹¹ RCW 35.81.090(1).

F. *Options for Project Funding*

The Community Renewal Law and other statutory authority provide various options for funding elements of the Riverwalk on the Columbia project, such as the infrastructure and park improvements.

For instance, the City has authority under RCW 35.81.070(4) to make payments, loans or grants for consideration for commitments to develop, expand, or retain land uses that contribute to the success of the project or plan; under RCW 35.81.070(8) to borrow money and accept grants or any other form of financial assistance from the federal government, the state or other public body, or a private source; and under RCW 35.81.070(11) to levy taxes and assessments.

The City also has the authority under RCW 35.81.100 to issue bonds to finance the undertaking of a community renewal project.

Similarly, the Port has authority under RCW 35.81.130 to lend, grant, or contribute funds, including funds derived from bonds issued, to the City or a private person, subject only to applicable constitutional limits.

¹² RCW 35.81.090(2).