#8

STAFF REPORT NO. 113-15

TO: Mayor and City Council **DATE:** 7/27/2015
FROM: Eric Holmes, City Manager

Subject: Ordinance to enter into a second Amendment to the Development Agreement with Columbia Waterfront, LLC

Key Points:

- Amendment would extend the agreement by five years in recognition of the recession when market conditions delayed the project;
- Amendment would formalize the amount and timing of developer's contribution to the waterfront park construction;
- Amendment would allow for public restrooms to be built by developer in a separate building instead of in one of the mixed use buildings;
- Amendment would provide for annual payments by developer for the waterfront access project by at least three years and as much as 14 years, in exchange for commencement of construction of at least four buildings on three blocks to minimum densities within two years;
- Amendment would provide greater flexibility in meeting building sustainability goals by allowing alternative sustainability programs including Earth Advantage and Green Globes to be used, in addition to Leadership in Energy Efficient Design (LEED) and would exempt the first two restaurant buildings from attaining a LEED or other sustainability equivalency;
- Amendment would ensure that the cost of the park maintenance would be shared equitably between the developer and City in perpetuity through future owner association agreements;
- Amendment would ensure that Block 15, which is approved in the master plan as an internal park for the development, would be developed when three of the residential blocks west of Grant Street are developed but could be used as interim surface parking up until that time;
- Amendment would add a requirement for every building to be reviewed by the City Center Redevelopment Authority (CCRA) for consistency with the development agreement and approved master plan, which shall make recommendations to the Planning Official.

Objective: Amend the Development Agreement between City and Columbia Waterfront, LLC to provide certainty regarding the timing and amount of developer contributions, adjust design standards to increase flexibility in design and sustainability requirements, and to provide certainty regarding the timing and scope of park improvements and private construction.

Present Situation: City and Columbia Waterfront entered into a Development Agreement for the Waterfront Project on October 19, 2009, which described the scope of improvements and development, and the roles and responsibilities of both parties. This agreement was amended on June 6, 2011 to adjust the timing of an annual developer contribution to the access project because of delays to that project. In 2013, the City received a state grant for construction of Columbia Way through the site which is almost complete. Now, as the economy has recovered, the developer is in the design process for remaining streets, utilities and the first phase of buildings, and the City is finalizing construction plans for the 7 acre public waterfront park. As

more detailed plans have been prepared, both parties recognize that additional changes to the development agreement are needed in order to: 1) facilitate vertical construction, 2) formalize developer commitments regarding financial contributions to the park construction, and 3) clarify and adjust design standards as needed.

Advantage(s):

1. City will obtain certainty regarding the amount and timing of developer contributions to the waterfront park construction;
2. The option for the developer to construct public restrooms in a stand-alone building instead of within a building with other tenants allows them to be designed and sited in the optimal location;
3. Allows for increased flexibility in achieving City design and sustainability goals, while ensuring that the originally-approved mix of uses and minimum development densities are maintained;
4. City and Developer will share in the cost to maintain the public waterfront park.

Disadvantage(s):

1. City would receive the remaining developer contribution in the amount of $5.8M over a period of two to fifteen years instead of in one lump sum, however this extension would be in exchange for certainty that substantial private construction will commence within two years;
2. Restaurant buildings on Blocks 9 and 12 would be exempted from the minimum sustainability standard due to other design issues; however such buildings would be designed to maximize the amount of windows that face toward the river.

Budget Impact: No adverse impact. The extension of payments by the developer for the access project will still allow the City to meet its obligation to repay the HUD Section 108 loan, which has also been extended over a similar period of time.

Prior Council Review:

- Council Workshop 3/2/2015
- Council Workshop 5/11/2015
- Memo to Council 6/13/2015
- Council Workshop 7/13/2015

Action Requested:

1. On July 27, following first reading, approve ordinance scheduling a public hearing for approval of the attached Amendment #2 to the Development Agreement between the City of Vancouver and Columbia Waterfront, LLC.
2. On August 3, 2015, following a public hearing, adopt the ordinance approving the amendments to the development agreement.

Attachment(s):

- Draft Ordinance Amending Waterfront Development Agreement
- Draft Amendment #2 of Waterfront Development Agreement, with attachments

- Memo to Richard Keller, CCRA Chair, from Chad Eiken dated July 17, 2015

.

To request other formats, please contact:
City Manager's Office
(360) 487-8600 | WA Relay: 711
Amanda.Delapena@cityofvancouver.us

07/27/15
08/03/15

ORDINANCE NO. M- [Ordinance Number]

AN ORDINANCE approving the Second Amendment to the Downtown Waterfront Agreement and authorizing the City Manager to execute the same.

WHEREAS, the City of Vancouver ("City"), and the Columbia Waterfront, LLC, a Washington Limited Liability Company ("CWLLC") entered into the Development Agreement to the Downtown Waterfront Agreement ("Development Agreement") on October 19, 2009, setting forth the terms and conditions for the development of the Columbia Waterfront; and

WHEREAS, the City and CWLLC, entered into a First Amendment of the Development Agreement on June 6, 2011, which extended the time for the construction of certain off-site street improvements by the City and the time for CWLLC's payment of contributions for those improvements; and

WHEREAS, the City and CWLLC desire to enter into the Second Amendment to the Downtown Waterfront Development Agreement to extend its duration; restructure CWLLC's contributions for the offsite improvements; provide for additional CWLLC contributions; provide for the City's development of the Waterfront Park; modify certain design standards; and modify other terms as described therein, and

WHEREAS, the City Council held a duly noticed public hearing on August 3, 2015, at which the Second Amendment to the Downtown Waterfront Agreement was considered and approved;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF VANCOUVER:

Section 1. The Second Amendment to the Downtown Waterfront Agreement is approved and the City Manager is authorized to execute the same upon the condition that the guarantees called for therein are executed by the Guarantors.

Section 2. The effective date of The Second Amendment to the Downtown Waterfront Agreement shall be the date on which it is fully executed by the parties.

Read first time:

Ayes: Councilmembers

Nays: Councilmembers

Absent: Councilmembers

Read second time:

PASSED by the following vote:

Ayes: Councilmembers

Nays: Councilmembers

Absent: Councilmembers

SIGNED this _____ day of _____, 2015.

_____
Timothy D. Leavitt, Mayor

Attest:

_____
R. Lloyd Tyler, City Clerk
By: Carrie Lewellen, Deputy City Clerk

Approved as to form:

_____
E. Bronson Potter, City Attorney

SUMMARY

ORDINANCE NO. _____

AN ORDINANCE approving the Second Amendment to the Downtown Waterfront Agreement and authorizing the City Manager to execute the same.

The full text of this ordinance will be mailed upon request. Contact Raelyn McJilton, Records Officer at 487-8711, or via www.cityofvancouver.us (Go to City Government and Public Records).

SECOND AMENDMENT TO
DOWNTOWN WATERFRONT DEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO DOWNTOWN WATERFRONT DEVELOPMENT AGREEMENT ("**Second Amendment**") is made and entered into effective _____, 2015 ("**Effective Date**), by and between the CITY OF VANCOUVER, a Washington municipal corporation (the "**City**"), and COLUMBIA WATERFRONT LLC, a Washington limited liability company (the "**Developer**").

RECITALS

A. City and Developer entered into a Downtown Waterfront Development Agreement ("**Agreement**") dated October 19, 2009, addressing a number of development issues relating to the development of a project known as the Waterfront and to be located on the shoreline of the Columbia River in downtown Vancouver, Washington.

B. On June 6, 2011, City and Developer entered into a First Amendment to the Downtown Waterfront Development Agreement ("**First Amendment**") making certain changes to the Agreement. For the purpose of this Second Amendment, all references to "**Agreement**" shall mean the original Agreement as modified by the First Amendment. Terms using initial capital letters herein that are not otherwise defined shall have the meanings given to them in the Agreement.

C. City and Developer now desire to make further changes and modifications to the Agreement as detailed below. To the extent of an express conflict between the terms and provisions of this Second Amendment and the terms and provisions of the Agreement, the terms and provisions of this Second Amendment shall prevail.

D. Exhibit B to the Agreement is the Master Development Plan ("**Master Development Plan**") approved by the City by Ordinance No. M-3936. Concurrently with the Second Amendment, Developer is pursuing an amendment to the Master Development Plan and any design element changes in the Master Development Plan that would constitute land use decisions under the Vancouver Municipal Code ("**VMC**") and that are addressed in this Second Amendment are subject to the required City approval of those changes to the Master Development Plan under the land use process.

AGREEMENT

NOW, THEREFORE, based upon the foregoing Recitals and the mutual covenants hereinafter set forth, City and Developer agree as follows:

1. **Updated Exhibits**. Attached to this Second Amendment are the following updated Exhibits which replace the corresponding Exhibits in the Agreement:

Exhibit Letter	Title	Status
I	Design Standards	Replaced by attached Exhibit I
K	Form of Guaranty	Replaced by attached Exhibit K
Q	Public Restroom Location	See attached Exhibit Q although final location subject to approval of City and Developer if not located within one of Developer's buildings.
R	Park Plan showing Phase I of the Park and Phase II of the Park	New Exhibit.

2. **Master Development Plan**. Developer is proposing modifications to the Master Development Plan that was attached as Exhibit B to the Agreement.

3. **Restrooms and Exhibit Q**. Section 9.6 of the Agreement obligates Developer to provide "shell space" within a building to be developed by Developer served by water, sewer, HVAC, and electricity stubbed to interior walls for public bathrooms in a location designated in Exhibit Q in the first phase of its development. The City is obligated to pay the cost of restroom fixtures and improvements within the shell space. Developer and City agree that Developer shall have the option to either locate the public bathrooms in separate stand-alone restrooms located as shown in the attached amended Exhibit Q or provide the "shell space" as provided in the Agreement. Developer shall at its expense construct the restrooms served by water, sewer, HVAC, and electricity stubbed to interior walls and sufficient to accommodate men's side: 2 sinks, 2 urinals, 1 regular toilet, 1 ADA compliant toilet; women's side: 2 sinks, 3 regular toilets, 1 ADA compliant toilet. The City is obligated to pay the cost of restroom fixtures and improvements within the restrooms. Developer shall have the shell construction completed to a point to allow the park electrical connection to an electrical panel by December 31, 2016. The City shall be responsible for the cost of the installation of the electrical panel. All the terms and conditions of Section 9.6 of the Agreement not expressly modified by this Section shall remain in full force and effect.

4. **Review of Design Changes.**

(a) If Developer, as it refines its plans and constructs the Project, requests further changes to its designs for the Project and if those changes are not land use decisions requiring planning commission and/or City Council approval under the VMC, then City agrees to review those changes for approval or denial. If any of the design changes in Exhibit I, or elsewhere in the Agreement, including this Second Amendment, or in the City approved amendment to the Master Development Plan, conflict with any provision of the VMC, then the Agreement as modified by this Second Amendment and the approved amendments to the Master Development Plan, shall control.

(b) Concurrently with submitting applications for site plan approval, all development proposals shall be reviewed by the City Center Redevelopment Authority ("**CCRA**") for

consistency with the approved Master Plan and the Agreement, and its recommendations shall be made to the Planning Official. The Planning Official shall incorporate CCRA recommendations as appropriate in the site plan decision.

5. **Nature of the Agreement.** As addressed in Section 2.1 of the Agreement, the person executing and delivering this Second Amendment on behalf of the City represents that any required City Council approval has been obtained for this Second Amendment.

6. **Duration.** The duration of the Agreement under Section 2.3 is hereby changed to 25 years from the Effective Date of the original Agreement and the vesting date of 2029 in Section 8.3.1 of the Agreement is hereby changed to 2034.

7. **Sustainability Standards.** Section 4.2.6 of the Agreement is hereby deleted and replaced by the following:

> All vertical development within the Project, other than the two restaurant buildings on Blocks 9 and 12 and the two retail buildings to be located behind them on Blocks 8(A) and 11(A), shall meet, at a minimum, one of the following standards: (a) the equivalent of a Leadership in Energy Efficiency and Design (LEED) silver standard or better, as published by the U. S. Green Building Council on or before October 19, 2009 (LEED v2.0), (b) Earth Advantage Commercial Certificate, (c) Green Globes Certification, or (d) other equivalent sustainable design standard reasonably acceptable to the City that complies with the then currently adopted IBC, or as approved by the CCRA. Notwithstanding the above, the CCRA shall on a case-by-case basis reasonably consider requests to partially exempt buildings from the applicable standard when it is demonstrated that, due to unique design limitations including views, building sizes, relationship to the park, etc., strict adherence to such applicable standard would result in a building that (i) cannot meet adopted design guidelines or standards, (ii) creates a significant hardship for Developer (defined as an increase of construction and design costs of more than 5%), or (iii) results in an undesirable building design. The CCRA shall make a recommendation to the City Planning Official (as Planning Official is designated in the VMC), who shall make the final reasonable determination as part of the site plan approval.

8. **Developer Contribution**. Under Section 7.3.1 of the original Agreement, as modified by Section 7.3.1.2 of the First Amendment, Developer is required to make a contribution ("**Contribution**") to the cost of the Access Project and other transportation mitigation measures by June 30, 2015. City and Developer agree that in lieu of paying that Contribution by June 30, 2015, Developer will make payments as follows:

a. A payment of Three Hundred Fifty Thousand and No/100 Dollars ($350,000.00) shall be paid on or before August 31, 2015, and a second payment of Three Hundred Fifty Thousand and No/100 Dollars ($350,000.00) shall be paid on or before June 30, 2016.

b. The Contribution shall not bear interest.

c. For the purpose of this Section, "**Commencement of Construction**" shall mean (a) obtaining a building permit for the buildings, rough site grading;(b) an initial pour of building footings and/or foundations and (c) delivery of evidence satisfactory to the City's reasonable discretion that (i) Developer has secured the needed funding (equity and/or financing) to complete the construction of the buildings described in the following Section 8(d); and (ii) recording of the construction mortgage, if any.

d. If there has been Commencement of Construction on at least four (4) buildings (on not fewer than three [3] blocks) by July 1, 2017 ("**Commencement Date**"), then the $5,100,000.00 unpaid balance of the Contribution shall be amortized and paid in equal annual installments of Three Hundred Ninety-Two Thousand Three Hundred Seven and 70/100 Dollars ($392,307.70), with the first payment due September 1, 2017, and a like payment due on or before the same day of each of the following twelve (12) calendar years.

e. If Commencement of Construction has not commenced by the Commencement Date, then Developer shall have the option to extend the Commencement Date for an additional twelve (12) months (to July 1, 2018) by making an annual payment of Three Hundred Fifty Thousand and No/100 Dollars ($350,000.00) on July 1, 2017, plus an additional prepayment of Three Hundred Fifty Thousand and No/100 Dollars ($350,000.00) on that same date (for a total of $700,000.00). This will leave an unpaid balance of the Contribution of $4,400,000.00. Subject to 8.f, the $4,400,000.00 unpaid balance of the Contribution shall then be paid over a period of twelve (12) years in equal annual payments of Three Hundred Sixty-Six Thousand Six Hundred Sixty-Seven and No/100 Dollars ($366,667.00), with the first payment due September 1, 2018, and a like payment due on or before the same day of each of the following eleven (11) calendar years.

f. If the payments have not been made when due or if the Commencement of Construction has not occurred by the Commencement Date, as such Commencement Date may be extended pursuant to Section 8(e), then the then-unpaid balance of the Contribution shall be due and payable in full at that time.

g. If Developer is delayed in the Commencement of Construction due to events of *Force Majeure*, then the Commencement Date shall be delayed one (1) day for each day in which the *Force Majeure* event continues. For the purpose of this proposal, "***Force Majeure***" means any of the following events or circumstances: (a) acts of God, including wind, ice and other storms, lightning, floods, earthquakes, volcanic eruptions and landslides; (b) strikes, lockouts, picketing and other labor disturbances, disputes or work stoppages; (c) epidemics, war (whether or not declared), blockades, acts of public enemies, acts of sabotage, civil insurrection, riots and civil disobedience; (d) explosions and fires; or (e) extraordinary mechanical breakdowns, transportation disruptions, or lack or shortage of raw materials or supplies. "***Force Majeure* Event**" means an event caused in whole or in material part by the occurrence of an event or circumstance of *Force Majeure.*

9. Developer's Contribution to Park. Under Section 9.3 of the Agreement and the August 23, 2013, Memorandum of Understanding ("**MOU**") between Developer and the City, Developer agreed to dedicate land for the park and make the Core Park Improvements. In addition, in consideration of the City's construction of Columbia Way, which was the responsibility of Developer, Developer agreed to contribute **$2,000,000** towards the cost of the improvements to the park.

a. For the purpose of this Section, "**Phase I of the Park**" means the construction of the trail up to the west property line of Block 20 and the construction of the balance of the park up to the west boundary of Block 12 and "**Phase II of the Park**" means the construction of the balance of the park. For the purpose of this Section 9, Developer's contributions are not contingent upon including in Phase I of the Park or Phase II of the Park the Columbia River water feature (although such water feature shall eventually be installed) or any planned, designed public art or future art installation. A map of Phase I of the Park and Phase II of the Park is attached hereto as Exhibit R.

b. City and Developer now agree that in lieu of Developer making the Core Park Improvements, that Developer will make a cash contribution to the park construction in the sum of $1,000,000 and City will assume the responsibility for designing and constructing the Core Park Improvements and completing Phase I of the Park by no later than March 30, 2017, and Phase II of the Park by no later than December 31, 2017, in each case subject to the same *Force Majeure* Events defined in Section 8(g) above other than item (f) thereof. Developer shall pay **$1,000,000** upon the later of (i) December 31, 2015, or (ii) the date the City enters into one or more binding contracts (and provides Developer with copies thereof) contracting to build the entire park with a completion date for Phase I of the Park of no later than March 30, 2017, and Phase II of the Park by no later than December 31, 2017. The date of that first $1,000,000 payment is hereinafter referred to as the "**Initial Payment Date**." If the contractor is constructing the park in material conformance with the binding contract (including the construction schedule) then the second **$1,000,000** payment shall be due 11 months following the Initial Payment Date and the third **$1,000,000** payment shall be due 23 months following the Initial Payment Date. For each day of delay in the construction schedule for completion of the park, including delays resulting from *Force Majeure* Events, there shall be a corresponding delay of one day in Developer's obligation to make each **$1,000,000** payment.

10. **Maintenance Agreement--Park**. In lieu of the park maintenance provisions in Sections 9.3 and 9.4 of the Agreement, upon substantial completion of the park, the City and Developer agree to jointly maintain the park according to the following terms and standards (hereinafter the "**Maintenance Agreement**"):

a. Developer and City will jointly develop and agree (which agreement shall not be unreasonably withheld, conditioned or delayed) upon specifications for the maintenance of the park including standards and frequency of service (following approval, the "**Maintenance Standards**"). Both parties also agree not to unreasonably withhold their approval to reasonable modifications to the approved Maintenance Standards from time to time provided that such modifications do not downgrade the standard of maintenance.

b. The City will solicit bids from up to three (3) maintenance contractors (who must be properly licensed and, if required by law, bonded) to perform the work and must have had not less than five (5) years' experience in performing that work. The bids shall be based on the Maintenance Standards. The low bid shall be selected.

c. The City shall then enter into a contract for such work (which may have a term of up to five (5) years if there is a cost savings for a longer term contract or if it otherwise makes sense to do so). City shall pay the contractor as and when invoiced for the work and Developer shall reimburse City within thirty (30) days after having received a copy of the invoice for 30% of the invoiced amount ("**Project Share**"). Developer shall not be responsible to contribute towards (and shall not be included in the general maintenance budget in which Developer shares in the cost) (a) capital improvements, replacements or repairs or (b) any added costs resulting from City sponsored (or City sanctioned) events at the park. The items in (a) and (b) shall either be paid by the City exclusively or passed along by the City to the event coordinators. If City receives permit fees and revenues and if the portion allocated by the City for maintenance exceeds the amount necessary to cover the added maintenance costs from those events, then 30% of those excess maintenance revenues shall be credited back to Developer towards its Project Share.

d. City may reasonably replace the contractor if the contractor is not performing the contract as required.

e. The Developer shall form a master association for the Project pursuant to a Master Declaration of Covenants, Conditions and Restrictions (the "**Master Declaration**"). The master association shall be formed by a date no later than the completion of Phase II of the Park not including the Columbia River water feature (although such water feature shall eventually be installed) or any planned, designed public art or future art installation. The Master Declaration shall contain provisions requiring the master association to assess all property within the Project, based on a formula set forth in the Master Declaration, for each property's pro rata share of the Project Share. Until the Master Declaration is prepared and recorded against the Project, and the master association formed and organized pursuant to the requirements of the Master Declaration then, following the date of the completion of the construction of the park by the City (but not before), any unpaid amount of the Developer's Project Share shall constitute a lien against the entire Project to secure payment of the unpaid amount of the Project Share and may be foreclosed if the Project Share is not paid when due in the same manner in which other assessment liens may be foreclosed in the state of Washington. Each lien shall have priority from the date a statement is issued by the City for the Developer's Project Share and each lien shall be automatically extinguished upon payment. When the Master Declaration is recorded then, this general lien right shall expire and shall be replaced by the assessment liens provided for in the Master Declaration. The City shall have the right to reasonably approve the Master Declaration to ensure that the Master Declaration creates enforceable assessment lien rights to ensure payment of the Project Share on a pro rata basis by the properties within the Project and upon such approval, the City agrees to execute and cause to be acknowledged and recorded an instrument confirming the extinguishment of the general lien as a result of the assessment lien

rights under the Master Declaration. The Master Declaration shall not be terminated so long as the park is open and operated as a public park.

f. This Maintenance Agreement touches and concerns the land and runs with the land and following the date of the completion of the construction of the park by the City either party may record a memorandum of this Maintenance Agreement in the real property records of Clark County, Washington and the other party agrees to join therein and include legal descriptions of the park and the Project.

g. The Developer's obligation and the master association's obligation to contribute to the park maintenance as provided herein shall continue so long as the park remains open to the public.

h. The City on the one hand and any owner of land within the Project on the other hand may at any time request and obtain an estoppel certificate from the City, the Developer (until the Developer's obligations are assumed by the master association) or the master association certifying as to the status of any unpaid amounts owing under this Maintenance Agreement or the Master Declaration for the Project Share and the party to whom the request is made shall have 30 days following receipt of a written request to provide the estoppel certificate. A failure to timely supply an estoppel certificate shall be deemed conclusive evidence that there are no unpaid amounts owing under this Maintenance Agreement as of the date the request was made.

11. **TIF Credits**. Pursuant to Section 9.4.1 of the Agreement, the City agrees to issue **$8,000,000** in TIF credits to Developer as they are paid for and for the value of Columbia Way right of way upon the acceptance of the dedication of right of way for Columbia Way. City shall issue the TIF credits immediately for the contributions that have been paid for to date by Developer. In lieu of Park Impact Fee Credits for the additional **$2,000,000** being contributed by Developer for the Park, City agrees that Developer will be entitled to an additional **$2,000,000** in TIF Credits.

12. **Pump Station**. The replacement of Columbia Boulevard sewer pump station ("**Pump Station**") referenced in Section 9.4.2 of the Agreement will serve both the Project and other lands within the City. Developer is entitled to request and City agrees to cause to be issued a sewer reimbursement contract to be executed by the City as provided in RCW 35.91.020 so that other properties which utilize the pump station will be required to pay to Developer a proportionate share of the cost of constructing the pump station and such contract shall have a term of not less twenty (20) years and City shall record such contract (or a memorandum thereof) in the real estate records burdening the properties with the reimbursement contract.

13. **Park Credits**. Developer is entitled to Park Impact Fee Credits pursuant to Section 9.4.3 of the Agreement. Developer is now contributing $1,000,000 in lieu of constructing the Core Park Improvements. Upon payment and dedication (as applicable), Developer shall be entitled to Park Impact Fee Credits for the **$1,000,000** contribution plus for the value of land dedicated for the park.

14. **Waterfront Esplanade**. The provision in Section 9.3.2.6 of the Agreement which calls for Developer's obligations thereunder to terminate on January 30, 2016, is hereby deleted.

15. **Replacement Guaranties**. Developer shall cause the Guaranties provided to City under Section 7.3.1.3 of the Agreement to be returned to the listed guarantors and replaced with new Guaranties in the form of Exhibit K attached hereto.

IN WITNESS WHEREOF, City and Developer executed this Second Amendment with the intent that it be effective as of the Effective Date.

CITY:

CITY OF VANCOUVER, a Washington municipal corporation

By: _____
Eric Holmes, City Manager

Approved as to form:

By: _____
E. Bronson Potter, City Attorney

DEVELOPER:

COLUMBIA WATERFRONT LLC, a Washington limited liability company

By: Gramor Columbia Waterfront LLC, a Washington limited liability company, its Manager

By: Gramor Investments, Inc., an Oregon corporation, its Manager

By: _____
Barry A. Cain, President

EXHIBIT I

[Design Standards]

EXHIBIT K

[Form of Guaranty]

EXHIBIT Q

[Public Restroom Location]

EXHIBIT R

[Map of Phase I of the Park and Phase II of the Park]

EXHIBIT I

1) Notwithstanding VMC 20.630.020(G), construction and permitted uses will be allowed under designated right-of-ways as determined by the master plan. The City will be responsible for the maintenance of the at grade right-of-way once it is dedicated. Right-of way must be designed to accommodate current and future infrastructure needs including, but not limited to, the following:
    1. Design guidelines established by an approved master plan on the Property.
    2. Accommodate both current and future utility needs.
    3. Design adequate clearances and design tolerances for below grade parking and service uses.

2) Notwithstanding VMC 20.630.040, new construction facing a street on one side only may reduce limitation on blank walls to 50%. The balance of the building wall facing the street shall be devoted to windows, doors, or interest-creating features.

3) Notwithstanding VMC 20.630.050(C)(2)(b), the gross floor area of the building at each floor over 50% above the low number and up to the high number of any given range may exceed 12,000 square feet, subject to design review and approval by the Planning Official.

4) Notwithstanding VMC 20.630.060(F), surface parking lots, including off-site accessory parking lots, may be allowed upon approval of a phased development plan, which provides for future buildings and elimination of the surface parking, subject to the following limitations and exceptions:
    a) Interior landscaping requirements of VMC 20.945.040(I)(3) may be deferred for a period of up to five (5) years from the time of construction with a one year extension by the Planning Official for good cause shown, after which time such interior landscaping requirements shall be met or such parking shall be immediately discontinued.
    b) If Block 15, which is designated for a future internal park in the master plan, is developed for temporary surface parking, such temporary parking improvements shall be removed and park improvements shall be completed prior to occupancy of any development on three of the blocks which are west of Grant Street and north of Columbia Way.

5) Notwithstanding VMC 20.630.080(D)(1), the design of the street system shall be based on a grid pattern and pedestrian system similar to the existing City Center grid of 200 foot blocks. Based on site and environmental constraints the planning official may approve smaller or larger blocks. Where blocks are 400 feet or longer on a face, a mid-block pedestrian connection shall be provided, except for Grant and Esther Streets where no mid-block connection shall be required.

6) Notwithstanding VMC 20.630.080(D)(4), The Developer may depart from the light design guidelines provided in the City's standards. The Developer shall submit proposed light design standards for approval by the City as part of the Development Approvals.

7) Notwithstanding VMC 20.630.080(D)(5), structural parking at the ground floor level_is prohibited between the river and first 90 feet of the building floor plate located nearest to the shoreline and at the interface of buildings and the river shoreline on blocks 2, 4, 6, 8, 9, 11, 12, 16, 15, 18, 20, 21, but shall be allowed beyond that 90 foot line if appropriately screened at the ground floor level consistent with the applicable provisions of VMC 20.630. Structural parking which is integrated with buildings devoted to other uses may be allowed above the ground floor without the above restriction, provided the Planning Official determines that such parking will be adequately screened using materials consistent with the balance of the habitable portion of the building.

8) Notwithstanding VMC 20.430.030-1, ground floor residential units shall be allowed in multi-story buildings, providing the floor area ratio requirements provided for in the Agreement are complied with.

SECOND AMENDED GUARANTY AGREEMENT

Effective Date: August 3, 2015

From: _____ ("Guarantor"')

In Favor of: The City of Vancouver, a Washington municipal corporation (the "City")

Columbia Waterfront LLC, a Washington limited liability company, entered into the Downtown Waterfront Development Agreement in 2009 with the City (the "Development Agreement"); a First Amendment to the Development Agreement ("First Amendment") on June 6, 2011; and a Second Amendment to the Development Agreement ("Second Amendment") on August 3, 2015. Pursuant to the Development Agreement, Columbia Waterfront LLC was obligated to pay to the City the sum of $8,000,000 as of October 19, 2009 with the final payment thereof under the First Amendment due June 30, 2015. As of the date of this Second Amended Guaranty Agreement, the amount of $2,200,000 has been paid to the City leaving a balance of $5,800,000 to be paid.

The Development Agreement was amended as provided for in the Second Amendment and approved by the City Council on August 3, 2015. The Second Amendment provided for changes to the payment and construction obligations and schedules as well as other changes as state therein.

In 2009, Guarantor executed a Guaranty Agreement (attached hereto as Exhibit A and hereinafter "2009 Guaranty Agreement") with the City guaranteeing payment to the City as provided for in the Development Agreement which is defined in the 2009 Guaranty Agreement as the "Guaranteed Obligations".

NOW THREFORE for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows:

SECTION 1 GUARANTY OF GUARANTEED OBLIGATIONS UNDER DOWNTOWN WATERFRONT DEVELOPMENT AGREEMENT AS AMENDED

The guaranty of the Guaranteed Obligations made in the 2009 Guaranty Agreement shall apply to the Columbia Waterfront LLC payment obligations for the Guaranteed Obligations under the Development Agreement as amended in the Second Amendment thereof.

SECTION 2 VOLUNTARY GUARANTY

Guarantor represents and acknowledges that he is executing this Guaranty voluntarily and for his own benefit

IN WITNESS WHEREOF this Guaranty has been duly executed by Guarantor as of the date and year first above written.

Guarantor _____

_____

STATE OF [_____])
)ss
COUNTY OF [_____])

I hereby certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and that said person acknowledged that he (he/she) is authorized to execute the foregoing document and acknowledges it to be the free and voluntary act of such party for the uses and purpose therein mentioned.

Dated this _____ day of _____, 2015.

_____
Notary Public for the State of [_____]
Residing at _____
My commission expires _____

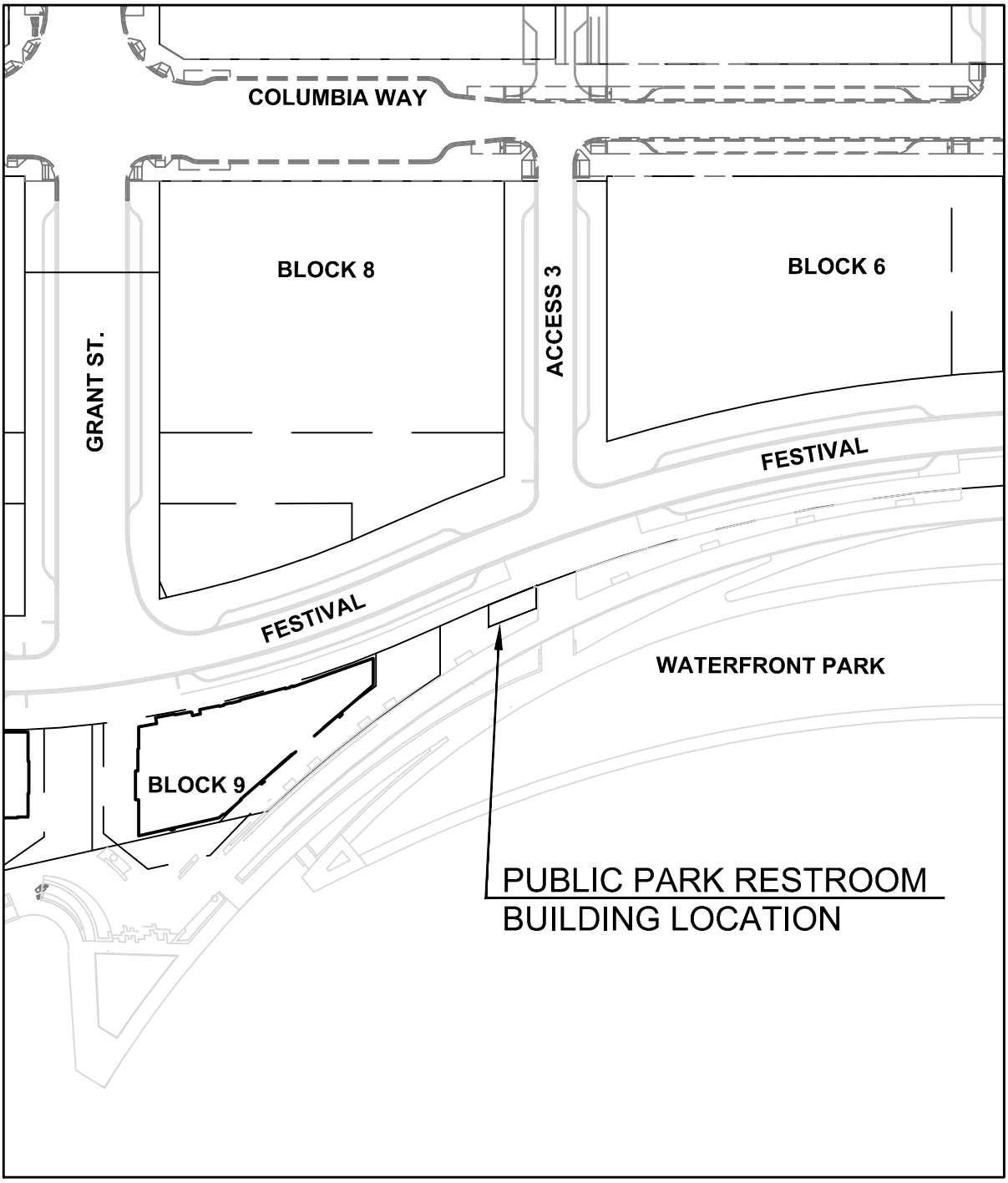
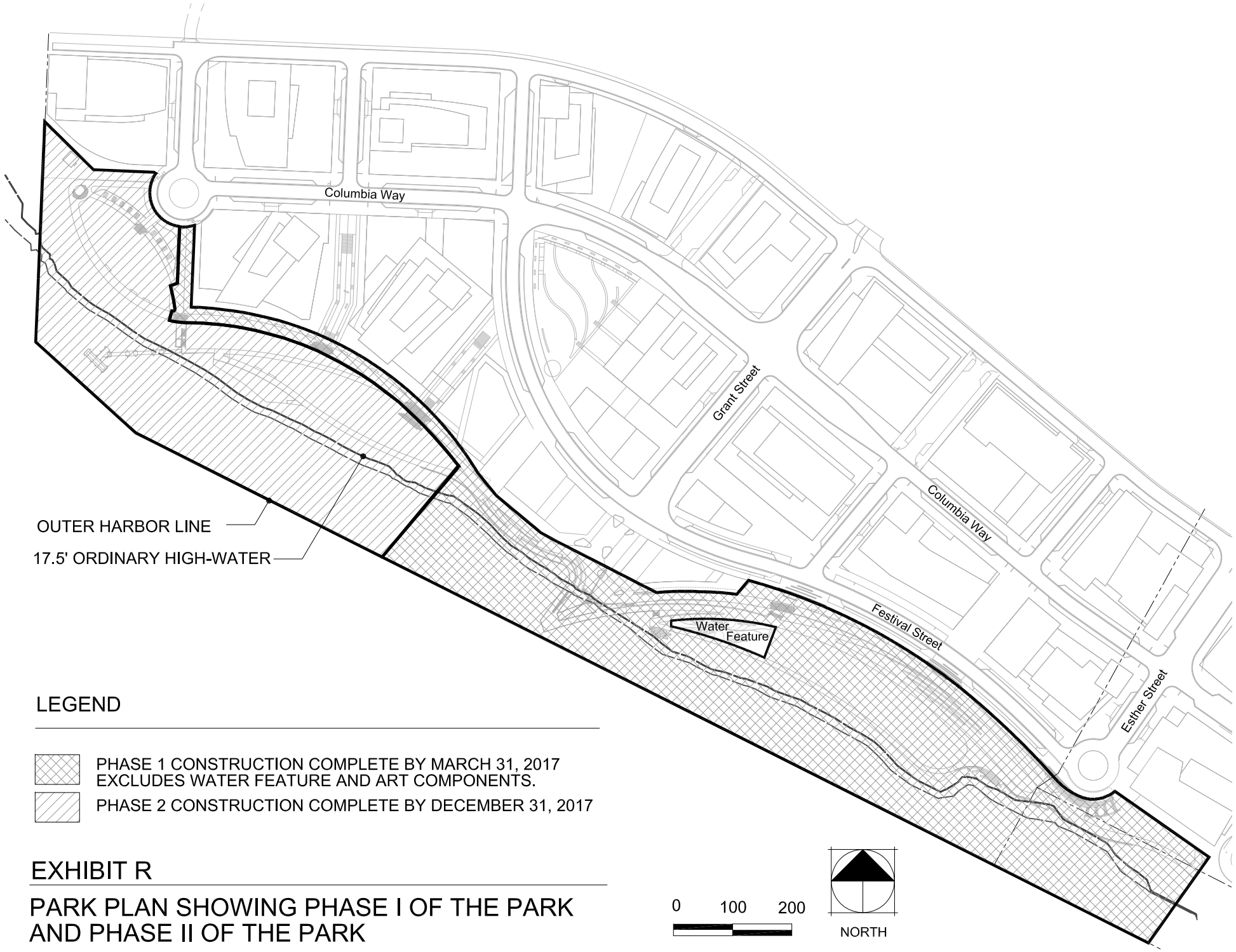


EXHIBIT Q
PROPOSED PUBLIC PARK RESTROOM LOCATION MAP



LEGEND

PHASE 1 CONSTRUCTION COMPLETE BY MARCH 31, 2017
EXCLUDES WATER FEATURE AND ART COMPONENTS.

PHASE 2 CONSTRUCTION COMPLETE BY DECEMBER 31, 2017

EXHIBIT R

PARK PLAN SHOWING PHASE I OF THE PARK AND PHASE II OF THE PARK

0 100 200

NORTH

CITY OF Vancouver WASHINGTON

TO: Richard Keller, Chair
City Center Revitalization Authority

FROM: Chad Eiken, Director
Community and Economic Development Department

DATE: July 22, 2015

SUBJECT: Waterfront Development Agreement Amendment Overview and Analysis

Background

City and Columbia Waterfront entered into a Development Agreement for the Waterfront Project on October 19, 2009, which described the scope of the development and public and private improvements, and the roles and responsibilities of both parties. This agreement was amended on June 6, 2011 to adjust the timing of an annual developer contribution to the access project because of delays to that project. In 2013, the City received a state grant for construction of Columbia Way through the site which is almost complete. Now, as the economy has recovered, the developer is in the design process for remaining streets, utilities and the first phase of construction including four or five buildings, and the City is finalizing construction plans for the 7 acre public waterfront park. As more detailed plans have been prepared, both parties recognize that additional changes to the development agreement are needed in order to: 1) facilitate vertical construction, 2) formalize developer commitments regarding financial contributions to the park construction, and 3) clarify and adjust design standards as needed.

On the whole, the proposed Second Amendment to the development agreement achieves three critical objectives:

- The overall scope and design of the approved master plan remains as originally approved, including block and street layout, mix of uses, and minimum densities (Floor Area Ratios);
- Developer would contribute $3.0 million to the City park improvements prior to completion of the park, and future maintenance of the park would be shared equitably between the property owners and City in perpetuity; and
- Flexibility in the developer's payment schedule of their contribution to the access project over a period of up to 14 years is possible if certain benchmarks are met for commencement of private building construction within the next two years.

The agreement, except where expressly intended to - such as relative to a limited set of design standards or exceptions to codified standards – does not circumvent the development review process. Rather, it augments and provides some new parameters for development review to rely on as future projects are submitted for review, including an additional review of individual

projects by the City Center Redevelopment Authority (CCRA) for consistency with the development agreement and adopted master plan.

Analysis of the Proposed Second Amendment to the Downtown Waterfront Development Agreement

Recitals. No substantive issues.

Section 1: Exhibit "I" Design Standards has been updated to provide greater flexibility in application of adopted design standards, primarily due to smaller than typical blocks and in some cases irregularly-shaped blocks. A summary and analysis of each of the proposed amendments to Exhibit I can be found on page 6 of this report.

Exhibit "K" Form of Guaranty will contain the updated personal guaranty of each of the CWLLC, Inc. investors.

Exhibit "Q" Public Restroom Location has been updated to provide an option for the Developer to construct the public restroom shell as a separate building (versus inside one of the mixed use buildings) subject to approval by both Developer and City. City would be responsible for the interior improvements.

Exhibit "R" Park Plan is a new exhibit to the D.A. and references the boundaries of Phases I and II of the park construction.

Section 2: Minor modifications are proposed to the Master Plan, but such changes will be reviewed under a separate process from the D.A., per city code. The proposed changes referenced in Exhibit B will only become effective if approved by the Review Authority (Planning Official or Planning Commission).

Section 3: The current D.A. requires the Developer to construct a space for the public restrooms in one of the buildings to be developed by the Developer, with all utilities in place for the City to finish the interior of the space. Developer has requested that the D.A. include an option to construct the public restrooms in a separate building at their expense (shell and utilities only), if a location is agreed to by both Developer and City.

The City Parks and Recreation Director and parks design team have agreed with the Developer that a separate building for the public restrooms would in many ways decrease impacts to tenants of buildings, and would likely result in a more convenient location for the public, if near the public park. A critical factor that led the City to support this change is that the City will not be contributing any additional funds to the shell construction, even if the construction costs more than similar restroom facilities in a larger mixed use building. Further administrative review and discussion regarding final design and location of this building would be required between Developer and City staff.

Section 4: This section includes language from the existing D.A. that provides that the City will review design changes as requested for approval or denial, and that if there is a

conflict between the D.A., the Master Plan, or any provision of the VMC, then the Agreement as modified by the proposed Second Amendment will control. This section adds a new requirement that the City Center Redevelopment Authority (CCRA) will review every site plan/design application for buildings in the project for consistency with the approved master plan and D.A., and shall then make recommendations to the Planning Official who is responsible for final approval/denial of the application. This new procedural requirement will provide for additional high-level oversight of the design of projects and how the master plan is being implemented.

Section 5: No substantive issues.

Section 6: In recognition of the five- to six-year recession which substantially delayed the project, the duration of the agreement would be extended to 25 years from the effective date of the original agreement. This extension is reasonable and is not anticipated to create any vesting issues due to changes in development codes or available traffic capacity.

Section 7: The existing D.A. at Section 4.2.6 contains a requirement that all buildings will be constructed to the equivalent of a Leadership in Energy Efficiency and Design (LEED) silver standard or better.

The Developer, which is in the design stage for several buildings, has asked for greater flexibility to this LEED equivalency standard for several reasons: 1) The criteria for attaining LEED equivalency have changed since 2009 when the D.A. was approved, which makes it much more expensive and difficult from a design perspective to meet; 2) other comparable sustainability programs such as Green Globes and Earth Advantage are now established which provide alternative methods to achieving energy efficiency certification; and 3) two of the first buildings on Blocks 9 and cannot likely meet the LEED silver level due in part to the large amount of glazing that is proposed on the south side of the building (which affects its energy rating) and also because most of the interior improvements will be made separately by the restaurants outside of the Developer's control.

The proposed amendment would also provide a process under which the CCRA may consider a partial exemption of buildings from the sustainability standards where strict adherence would result in a building that cannot meet adopted design guidelines or standards, would result in a significant hardship for the Developer (e.g. increase construction and design costs by more than 5%), or would result in an undesirable building design. The CCRA would make a recommendation on any such request to the Planning Official, who will make the final determination. This case-by-case flexibility will allow for unforeseen consequences of the sustainability standards to be addressed, as appropriate.

Section 8: Section 7.3.1 of the original D.A. requires the Developer to contribute $8.0 million to the City for their proportionate share of the access project through the railroad berm at Grant and Esther Streets. The Developer has paid $2.2 million since the original D.A. was approved, and the final balance of $5.8 million was to have been paid by June 30, 2015, which closely coincided with a 2015 deadline by the

City to pay back a $5.4 million loan from the U.S. Department of Housing and Urban Development (HUD), also for the access project.

The Developer has requested relief from the timing (not amount) of the final payment, in order to free up financing that is needed for building design plans and construction. The City is also interested in seeing significant vertical construction occur in the near term, but it is also true that the current D.A., which is a 20-year agreement, contains no obligation by the Developer to undertake vertical construction by any date.

City staff contacted HUD and formally requested to restructure the City's repayment of the Section 108 loan over a period of years. HUD responded with approval of the repayment of the balance owing over a period of 14 years. This extension by HUD provided the ability for the City to entertain a longer payback period by the Developer.

The proposed amendment would result in the Developer making a payment of $350,000 on or before August 31, 2015, and a second payment of $350,000 on or before June 30, 2016, with the balance of $5.1 million due on June 30, 2017. However, in order to incent significant vertical construction, the City would allow the balance to be paid in 13 installments of $392,307.70 over a period of 12 additional years if at least four (4) buildings on at least three (3) blocks have commenced construction by June 30, 2017.

Additionally, the Developer would have an option to "buy" a third year for $700,000 if construction on four buildings has not commenced by the above deadline.

In terms of trade-offs, the City would be forgoing a one-time cash contribution of $5.8 million by the Developer now and spreading that over a period of 14 years, but adhering to the current requirement in the D.A. would divert the Developer's resources that would be used to finalize design plans and obtain construction permits for the first phase of the development, including streets, utilities and buildings. The Developer has stated that the first phase of development, consisting of two restaurant buildings, two mixed use (residential/retail) buildings, and office tower, and a hotel building, would have a valuation of approximately $220 million.

The proposed amendment would ensure that at least four of the buildings are financed and under construction in order for the Developer to receive the full 14 year payback period, which is estimated to result in a total valuation of $98.0-$138.0 million, depending on which of the buildings commence construction. If, after two years, at least four of the buildings are not under construction, then the remaining balance of the Developer obligation will be due in full or a third year may be bought for double the amount of the prior year's payment.

The personal guarantees of the CWLLC, Inc. investors will be updated to formalize their commitment to paying off the full amount of the remaining obligation.

Section 9: This section modifies the Developer's requirement to design and construct the core park improvements (e.g. bank stabilization, rough grading, and trail), which will instead be completed by the City in exchange for a cash contribution to the City by the Developer in the amount of $1.0 million, to be paid upon the later of 1) December 31, 2015 or 2) the date the City enters into a contract for completion of the Phase I park improvements. Because of the complexities involved in the construction of and funding sources for the park, it would be inefficient for the construction to be split between City and Developer, therefore payment in lieu of the construction obligation is a reasonable solution.

This section also formalizes the amount and timing of the Developer's cash contribution to the Park in the amount of $2.0 million, in exchange for the State Transportation Improvement Board's funding the Columbia Way project, which was an obligation by the Developer in the original D.A. City staff recommends that this payment be directed toward the Waterfront Park design and construction as an exchange of Developer obligation.

Finally, this section includes a date by which the entire City Waterfront Park improvements not including public art or the proposed water feature would be completed by the City (December 31, 2017).

Section 10: The existing D.A. says Developer will maintain the park for two years after the trail has been completed. The Developer has an interest in ensuring a high level of maintenance for the park over time and therefore has agreed to participate financially in the maintenance of the park in perpetuity. Developer will reimburse the City for 30% of the cost of providing the maintenance of the park, not including any capital improvements or repairs.

Additionally, the City and Developer will jointly develop and agree on the specifications (standards and frequency) for the maintenance of the park.

The City would be agreeing to solicit bids from up to three maintenance contractors to perform the maintenance work. The bids will be based on the maintenance standards, and the low bid will be selected.

Section 11: This section assures the Developer that the City will provide Traffic Impact Fee credits in exchange for the $2,000,000 payment that the Developer has committed to pay in lieu of constructing Columbia Way, once payment is received by the City. Additionally, City will provide Traffic Impact Fee credits for the appraised value of the Columbia Way right-of-way, once it is dedicated to the City. This is consistent with the intent of the original D.A.

Section 12: Developer is entitled to request the execution of a sewer reimbursement contract for other properties that utilize the replacement sewer pump station that Developer will pay for and install. City commits to prepare and issue such a reimbursement contract, which is authorized under existing city code.

Section 13: This section assures the Developer that the City will provide Park Impact Fee credits in exchange for the $1,000,000 payment that the Developer has

committed to pay for the core park improvements, once payment is received by the City, plus PIF credits for the value of land that is dedicated to the City. This is consistent with the provisions of VMC 20.915 "Impact Fees."

Section 14: The Waterfront Esplanade (area around the pier feature) will be mostly constructed by the City as part of the park improvements; however, the Developer will construct a portion of the esplanade between the two restaurant buildings. Language that terminated the developer's obligations in 2016 in regard to the esplanade construction is recommended for deletion.

Section 15: The financial obligations of the Developer in the original D.A. were backed by personal guarantees of members of Columbia Waterfront, LLC. Because the terms of those financial obligations are being amended in the D.A., it is important to obtain updated Guarantees from the listed guarantors and this section will require the Developer to provide these.

Changes to Exhibit "I" Design Standards

1. Current language in Exhibit I states that the City will be responsible for the construction and maintenance of the at-grade right-of-way, which may have been a mistake because the original D.A. places the responsibility for construction of all of the streets south of the berm on the Developer. City proposes to clarify this sentence as follows: "*The City will be responsible for the ~~construction and~~ maintenance of the at grade right-of-way once it is dedicated.*" No other changes to this section are proposed.

2. This section references the City development code section (VMC 20.630.040) which contains limits on the amount of building frontage that may consist of "blank walls" by requiring windows, doors and interest-creating features. In the original D.A., the requirement that 75% of the building frontage must contain windows, doors or interest-creating features (e.g. art) was modified to 50% for the north elevation of the buildings which front on the service street immediately south of the berm.

   As the Developer's design team has tried to balance the state energy code, sustainability standards, and the blank walls standards, they have found it extremely difficult to meet the 75% on certain frontages; therefore, the Developer is requesting that this standard be 50% for the remainder of the development. Staff recognizes that the size of the Waterfront blocks are generally smaller than typical City blocks and in some cases are irregularly-shaped, which may make it difficult to achieve a 75% windows and doors along every building frontage, and does not object to a lower standard. Staff supports this change, as all buildings in the Waterfront project will be subject to a city design review and approval process.

3. This section from the original Exhibit I contains confusing language regarding the height of buildings and how large the floorplate can be above a certain height (no more than 12,000 square feet per floor above 68 feet in height). The intent of this was presumably to ensure that views to the river are maintained from within the project and perhaps through the project, although there is no indication that this limitation is specifically tied to a goal of creating view corridors.

The Developer is requesting flexibility for buildings taller than 68 feet to be larger than 12,000 square feet, subject to city design review and approval, primarily because views can be protected through careful design and building orientation as much as by setting a (perhaps arbitrary) limit on floor area. Staff is in favor of simplifying this section regarding maximum building height and adding in some flexibility to increase the size of floors over 68 feet to more than 12,000 square feet, subject to a city design review process.

4. This section allows for surface parking lots on an interim basis, subject to a phased development plan which provides for future buildings and elimination of the surface parking. The Developer intends to construct one or more surface parking lots to serve the first phase of development (and Waterfront Park), until more underground parking is constructed, and is requesting that the requirement for interior landscaping islands be eliminated because of the extra cost and waste when the site is redeveloped. Because the surface parking lots will be interim uses, staff is in support of deferring the interior landscaping requirements for a period of five years, with a one year extension option by the Planning Official. After five years, the landscaping requirements must be met or the parking shall be discontinued.

   The Developer intends to construct an interim surface parking lot on Block 15 to serve the restaurants. Block 15 is approved in the master plan as a future internal park to the development, but because it is not intended to be developed for private buildings, there is little incentive for the Developer to redevelop the parking lot into a park. As such, the City is requesting language that would require the temporary parking improvements to be removed and park improvements completed prior to the occupancy of any development on three of the blocks which are west of Grant Street and north of Columbia Way.

5. No changes.

6. No changes.

7. This section currently prohibits structural parking between the river and the first 90 feet of the building floorplate located nearest to the shoreline. In order to meet parking requirements for some of the buildings, particularly on some of the smaller blocks, the Developer's design team is requesting some flexibility to allow parking within this 90 feet above the ground floor only, and provided it is demonstrated that the parking will be adequately screened using materials consistent with the balance of the rest of the habitable portion of the building. This will ensure that areas of buildings, even if used for parking, are designed in such a way as to not look like parking from the exterior of the building. The Developer has provided several examples of buildings where structured parking is screened in a way that resembles any other portion of the building. Staff supports this additional case-by-case flexibility as there will still be a city design review process for every building.

8. No changes.