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The information contained in this boxed section is for recording purposes only pursuant to RCW 36.18 and RCW 65.04, and is not to be relied upon for any other purpose, and shall not affect the intent of or any warranty contained in the document itself.

Grantor(s): Port of Chelan County, a Washington municipal corporation
Grantee(s): Port of Chelan County, a Washington municipal corporation, and the Public
Reference Number(s) of Documents Assigned or Released: N/A
Abbreviated Legal Description:
Complete or Additional Legal Description of Page 1 of Document. *(p 31 & 33)*
Assessor's Parcel Number(s): 23-20-28-120-100; 23-20-28-110-300; 23-20-28-120-050; 23-20-28-120-150;
23-20-28-110-800

**COVENANTS, CONDITIONS AND RESTRICTIONS
PENNY ROAD COMMERCIAL PROPERTY
OLDS STATION, PORT OF CHELAN COUNTY**



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1. INTRODUCTION:

1.1 The Port of Chelan County ("Port"), as owner of real property legally described on Exhibit "A" which is attached hereto and incorporated herein by this reference (the "Property"), hereby establishes limitations, conditions, restrictions and covenants ("Covenants") that will run with the Property and are binding upon all persons owning or using the Property. In the event any part of the Property is sold, these Covenants shall remain as binding covenants on the sold Property after the sale. The Covenants are for the benefit of all the Property (the Property is also referred to as the "Benefited Property", as appropriate). A general depiction of the Property (e.g. parcels identified as "B", "G" and "J") is attached as Exhibit "B", which is attached hereto and incorporated herein by this reference and designated "Commercial Property."

1.2 Port also owns real property to the south of the Property, which property is legally described as follows (the "Port Parcel"):

See Exhibit "C" attached hereto and incorporated herein by this reference.

Port reserves the right to itself, acting alone to amend these Covenants by written declaration, statement of amendment, or the like, to add the Port Parcel, or any portion thereof, to the Property, at which time, the Port Parcel (or portion thereof designated by the Port), and the Owners and Occupants thereof, shall be subject to these Covenants and the Port Parcel (or portion thereof designated by the Port) shall be included as part of the Property described on Exhibit "A." The Port shall provide written notice of such amendment to the party responsible for payment of property taxes on each Lot, as listed in the records of the Chelan County Treasurer, and shall record the amendment with the Chelan County Auditor. Existing structures, Other Improvements and uses of the Port Parcel (or portion thereof designated by the Port) at the time the amendment is recorded are permitted on the Port Parcel even if not consistent with these Covenants.

1.3 The Property shall be subject to reciprocal utility easements benefiting and burdening each Lot (the "Utility Corridors"). The Utility Corridors shall be as set forth on attached Exhibit "B", which is incorporated herein by this reference. The Utility Corridors may be used for the placement of all underground utilities including, but not limited to, power, fiber, phone, cable, domestic water, sanitary sewer, fire protection, and stormwater. The Utility Corridors (a) are for the mutual benefit of existing and future Lots on the Property, (b) are



perpetual, (c) shall run with the land, and (d) shall be binding on the present and future Owners and Occupants of the Property.

1.4 The Port reserves the right, in its sole determination, to grant variances from the Covenants that are not inconsistent with existing state or county legal or regulatory limitations to provide maximum flexibility for expansion, changes in use, and adaptation of the Property for Occupants. No variance shall unfairly or unreasonably operate to the detriment of others or to the development of the Property that is the objective of these Covenants. In addition to complying with these Covenants, all Occupants must comply with zoning, building restrictions, permit and similar regulations and requirements now or hereafter enacted by recognized governmental authorities. Where any provision of the Covenants regulate any matter that is also regulated by a zoning or building regulation, the higher standard shall apply.

1.5 The northwest and northeast corners of the Property as depicted on attached Exhibit "B", which is incorporated herein by this reference are subject to exclusive easements reserved by the Port for the construction, maintenance, repair and replacement of a sign or signs by the Port ("Port Entry Signage"). The Port Entry Signage shall be exempt from the requirements set forth in these Covenants. The Port Entry Signage shall be professionally designed and constructed, but the location, size, and appearance of the Port Entry Signage are committed to the sole discretion of the Port. The Port shall maintain the Port Entry Signage and shall be responsible for landscaping and otherwise maintaining the area depicted on Exhibit "B" for the location of the Port Entry Signage. The Port may adopt reasonable rules and regulations for the identification of businesses and uses on the Property and other real property in the Olds Station Area of Chelan County. As part of said rules and regulations, the Port may charge a reasonable fee for the identification of a business or use on the Port Entry Signage. The easement for the Port Entry Signage shall run with the land and be binding on the present and future Owners and Occupants of the Property, and their successors and assigns.

1.6 The use, development and improvement of the Property and each Lot and Building site within the Property shall be in conformity with the Covenants.

2. DEFINITIONS:

2.1 "Building" or "Structure" are synonymous and mean any building or structure on the Property, and include, but are not limited to, such things as the main structures on a Lot and all additions thereto, including covered walkways, parking garages and all ancillary and secondary Buildings and Structures.

2.2 "Other Improvements" means any physical addition to a Lot other than a Building or Structure. Other Improvements include, but are not limited to, paved areas, walkways, fences, pillars, free-standing light fixtures and the like.

2.3 "Setback" means the distance between the outermost portion of a Building and a property line.



2.4 "Height" means the total vertical distance between the uppermost portion of any Building or Other Improvement and the average of the finish perimeter grade levels of all sides of the Building or Other Improvement.

2.5 "Street" means any street, road, drive, or thoroughfare which by nature of its location within the confines of the development is for the use of the general public.

2.6 "Lot" means any portion of the Property specifically described or otherwise allocated or delineated for use within defined or depicted boundaries.

2.7 "Occupant" means any person or entity using the Property, whether that use is temporary or long term, including the use by one who is a tenant, owner, permittee, licensee, guest, invitee, trespasser, or entity holding another relationship to a Lot which would make that person or entity a prime or dominant user of the Lot or any Structures thereon.

2.8 "Owner" means the owner of record of a Lot or any Structure on a Lot, and the owner(s) of record of the Property.

2.9 "Sign" means any device which publicly displays material or information regardless of the method of the display and regardless of where located, which is visible from outside a Building.

2.10 Unless otherwise clear from approved Plans (as defined below) or from the context, the "front" of a Building is the exterior portion of a Building with the main visitor entrance and shall face a Street, the "back" of a Building is the exterior portion opposite the front, and the "side" of a Building means that portion of the exterior of a Building which is not the front, the back, or the roof.

2.11 The word "remodel" shall be broadly construed to encompass all significant visible exterior or interior alterations or changes to a Building, Other Improvements, or the Lot, including but not limited to any alternation requiring a building permit from the local governmental entity with jurisdiction to issue building permits.

2.12 A "Nuisance" shall include, but not be limited to, any of the following conditions:

2.12.1 Any use, excluding reasonable construction activity, on the Property that emits dust, sweepings, dirt, or cinders into the atmosphere, or discharges liquid, solid wastes, or other matter into any stream, river, or other waterway that may adversely affect the health, safety, comfort of, or intended use of the Benefited Property.

2.12.2 The discharge of waste or any substance or materials of any kind into any public sewer serving the Property or any part thereof in violation of any regulation of any public body having jurisdiction over such public sewer; or



2.12.3 The escape or discharge of any fumes, odors, gases, vapors, steam, acids, or other substance into the atmosphere, which discharge may be detrimental to the health, safety, or welfare of any person or may interfere with the comfort of persons within the area, including the Benefited Property, or may be harmful to property or vegetation; or

2.12.4 The radiation or discharge of intense glare or heat, or atomic, electromagnetic, microwaves, ultrasonic, laser, or other radiation. Any operation producing intense glare or heat or such other radiation which is performed only within an enclosed or screened area and then only in such manner that the glare, heat, or radiation emitted will not be discernible from any point exterior to the Building within which the operation is conducted is not a Nuisance; or

2.12.5 Offensive and objectionable noise or vibration. Noise shall be measured on any boundary of the Lot on which the use generating the noise is located. Noise and vibration which is muffled so as not to become objectionable due to intermittence, beat frequency, shrillness, or intensity, may be considered not to be a Nuisance. The sound pressure level shall be measured with a sound level meter and an octave band analyzer that conforms to specifications published by the American Standards Associations, as they currently exist or are hereafter amended. Such resources as American Standard Sound Level Meter for Measurement of Noise and Other Sounds, Z24.3-1944, and American Standards Specifications for an Octave-Band Filter Set for the Analysis of Noise and Other Sounds, Z24.10-1953, American Standards Association, Inc., New York, N.Y., or other resources as may be determined reasonable by the Port shall be used

2.12.6 Speakers broadcasting outside a Building.

3. INTENDED USE:

3.1 Except as otherwise specifically provided herein or approved in writing by the Port, the Property is to be used for administrative, research, office, and business purposes.

3.2 Residential use of any portion of the Property is permitted only by obtaining a variance from the Port. Residential use can only be made under circumstances where the Port determines such residential use is related to another authorized use of a Lot. Only an employee of an enterprise conducting business on that Lot shall be permitted to reside at the Property. Any person applying for residential use shall provide, in advance of the meeting to act on the variance application, a written statement to the Port, in a form acceptable to the Port, that such person recognizes and acknowledges that the primary purpose of the Property is not residential and that normal and incident uses of the Property may be disruptive to residential use and that such person accepts and holds the Port and other Occupants and Owners harmless from such disruption. No residential use of the Property shall be allowed if the residential use in any way interferes with, impedes, or is otherwise disruptive to normal Property uses, or is in violation of any applicable zoning, building restrictions, or other laws or regulations enacted by recognized governmental authorities.



3.3 Retail, health care and services, wellness, fitness, and athletic centers, veterinary care and services and food services, including fast food, prepared-food, take-out, drive-through, and restaurant facilities, shall be permitted, except as provided below for Prohibited Uses, only if a variance is obtained from the Port.

4. REGULATION OF OPERATIONS AND USES:

It is the primary intent of the Covenants that Lots and Building sites be used for first class, high-quality and non-rail-served research, business, administration, and office purposes. This intent shall not, however, prevent the construction and operation of uses and support or service facilities consistent with the purposes of the Covenants, provided a variance is obtained from the Port for such use or support or service facility. Each approved use shall be performed or carried out entirely within a Building that is designed and constructed to enclose all operations and uses. Each approved use shall not cause or produce a Nuisance to other Lots.

5. PROHIBITED USES:

No use of or condition at the Property is permitted which is a Nuisance or which violates governmental rules or regulations, or which use or operation is considered to be unsafe or excessively hazardous.

Without limiting the generality of the foregoing, and without it being an exclusive listing of prohibited uses, the following operations and uses shall not be permitted on the Property:

- 5.1 Automotive services, gas stations;
- 5.2 Trailer courts or recreation vehicle campgrounds;
- 5.3 Junk yards, wrecking yards, or recycling facilities;
- 5.4 Refining or storage of petroleum, gas, or oil or of their by-products, or derivatives;
- 5.5 Commercial excavation of building or construction materials, provided that this prohibition shall not be construed to prohibit any excavation necessary in the course of approved construction pursuant to these Covenants;
- 5.6 Distillation of bones;
- 5.7 Dumping, disposal, incineration or reduction of garbage, sewage, offal, dead animals, or other refuse;
- 5.8 Fat rendering;
- 5.9 Stockyard or slaughter of animals;



- 5.10 Smelting of iron, tin, zinc, or any other ore or ores;
- 5.11 Cemeteries;
- 5.12 Jail or honor farms;
- 5.13 Truck terminals;
- 5.14 Automobile, go-cart, motorcycle, or quartermidget tracks and other or similar vehicle endurances or race tracks;
- 5.15 The sale of cars, trucks, boats, motorhomes, recreation vehicles, or any other vehicle, whether or not new or used;
- 5.16 Commercial parking lots and structures;
- 5.17 Construction related services such as contractor's office and yard, cabinetshop, welding shop;
- 5.18 Recreational uses such as bowling alley, movie theater, night club, and tavern;
- 5.19 Mini storage; and
- 5.20 Food Service Establishments characterized by two or more of the following:

5.20.1 A volume of business involving food purchased on site and taken off site for consumption which a reasonable person could conclude exceeds 20% of the total volume of business, whether or not it actually does exceed 20%.

5.20.2 A volume of business involving grill frying or flame broiling meat and/or deep frying of meat (including fish), potatoes, or onions which a reasonable person could conclude exceeds 20% of the total volume of business, whether or not it actually does exceed 20%;

5.20.3 Areas designated for non-food related entertainment such as play areas for children or video game centers.

For purposes of this section if a Food Service Establishment services in excess of an average of 40 vehicles per day between the hours of 7:30 a.m. and 6:00 p.m., it shall be deemed to have in excess of 20% of its business involving food purchased on site and taken off site for consumption.

- 5.21 Any other use not identified in Section 3.



6. GENERAL TERMS:

6.1 These Covenants are deemed to be contracts between the Port and each Occupant and Owner, and among all Occupants and all Owners.

6.2 To the extent it is necessary to exercise subjective judgment to determine if any provision of these Covenants is being complied with, the good faith subjective judgment of the Board of Commissioners of the Port shall be determinative. In the interpretation of the Covenants, the following rules of construction and interpretation shall apply:

6.2.1 All permitted uses set forth in Section 3.1, all approvals obtained from the Port, and all variances granted by the Port shall be strictly and narrowly construed;

6.2.2 All uses described in Section 3.3 and all prohibited uses identified in Section 5, shall be broadly construed to encompass uses not specifically mentioned but which are within the broadest meaning and intent of the description or prohibition;

6.2.3 In the event of litigation deference by a Court shall be given to the good faith action of the Board of Commissioners of the Port in its interpretation of the Covenants, granting of any approval, and granting of any variance.

7. GENERAL DESIGN AND CONSTRUCTION STANDARDS:

7.1 All improvements, alterations or changes of any Lot, the construction, or alteration of Buildings or Other Improvements, and any remodel on the Property shall occur only in compliance with these Covenants.

7.2 All Buildings and Other Improvements shall be designed in accordance with the requirements of the latest edition of the Uniform Building Code adopted by the municipal jurisdiction regulating the Building Code at the Property, and with other applicable government rules and regulations.

7.3 All Buildings and Other Improvements shall be architecturally designed so as not to be incompatible with the surroundings, including existing Structures, and shall be designed to create a Building which, for the intended use, is professional in appearance and aesthetics. Colors shall be chosen to blend with or compliment the surroundings, unless otherwise approved in writing by the Port. The Port may, from time to time, approve design criteria which may be relied upon by Occupant as being acceptable to the Port, for Buildings and Other Improvements.

7.4 The design criteria set out below shall apply to all Buildings and Other Improvements, unless it is otherwise clear from the context that they do not.

7.4.1 Metal siding may be used as a design element accent. "Accent," for purposes of the Covenants, shall mean that the total area of this material shall not exceed



35% of all surface exposed to view as a primary building elevation (e.g., the south facing elevation of a building). By written approval of the Port, after review by the Review Committee, set out in Section 23, below, mitigation of this restriction may be granted on a project-by-project basis, provided that under no circumstances shall the aggregate of all metal siding exposed to view for the total of all primary building elevations exceed 35%. The intent of this provision is not to exclude the use of a pre-engineered metal building system, or its equivalent, where it is used as the Building's primary and secondary framing support structure only, and where metal siding is not used for exterior wall and roof systems, except for accent.

7.4.2 Only medium gray or dark gray metal roofing colors with a light reflectance value below 40 are allowed. Only metal roofing materials with finishes applied by the manufacturer at the roofing factory, which have final coatings that include a mixture of Kynar or Hylar (or equal) and a color-fast, corrosion, chalking, and fading resistant agent are acceptable.

7.4.3 Rooflines in buildings under two stories shall have roofline modulation. Modulation may take the form of roof penetrations, such as square or rectangular openings of six (6) square feet or larger with or without cover and/or a vertical change in the roofline as follows:

7.4.3.1 Two (2) feet in roofs with a primary elevation eave line length of thirty (30) feet or less;

7.4.3.2 Three (3) feet or two combinations of two (2) feet in roofs with a primary elevation eave line length of between thirty (30) feet and fifty (50) feet;

7.4.3.3 Four (4) feet or multiple combinations of two (2) feet and/or three (3) feet in roofs with a primary elevation eave line length longer than fifty (50) feet.

7.4.4 Hip roofs are discouraged without some vertical modulation in the form of an entry canopy of a different height than the primary roof and the use of roof penetrations.

7.4.5 Buildings that are more than one story can modulate the "roof line" by terracing or stepping the floor and/or using parapet levels to create a "stair step" appearance.

7.4.6 Certain masonry materials may be acceptable when used as an exterior building material exposed to view. Such materials include:

7.4.6.1 A smooth face red to red-brown color Common Brick;

7.4.6.2 Split and/or Ground face concrete masonry units; colored as Natural, Khaki, Burnt Orange, Rose Brown and Cocoa (all earth tone colors) as manufactured by Mutual Materials Co., or equal, standard and non-standard sizes, including scoring. No



smooth or regular face blocks (such as generic concrete masonry) may be used except as may be allowed for accent by the Port. No other shapes are allowed;

7.4.6.3 Combinations of any of the above are encouraged.

7.4.7 Exterior Wall Modulation. Exterior wall modulation to create diversity and interest of proposed building exteriors is required. The following standards apply to exterior walls of Buildings and Other Improvements covering in excess of 500 square feet:

7.4.7.1 Front Facades. Modulation is required if the front façade width exceeds thirty (30) feet with no principal entrance facing the street, or forty (40) feet with a principal entrance facing the street.

7.4.7.2 Side Facades. On corner lots, side facades which face the street shall be modulated if greater than forty (40) feet in width for one story structures, and thirty (30) feet in width for structures with more than one story.

7.4.7.3 Interior Facades. All interior facades (not facing a street) wider than forty (40) feet shall be modulated provided that the maximum modulation width shall be forty (40) feet.

7.4.7.4 Eaves. The buildings eave line as part of one story structures shall be modulated exactly as is the corresponding primary elevation wall immediately below the eave.

7.4.7.5 Modulation Standards. Minimum Depth of Modulation shall be four (4) feet. When balconies are part of the modulation and have a minimum area of at least forty-eight (48) square feet, the minimum depth of modulation shall be two (2) feet. The minimum width of modulation shall be five (5) feet. The Maximum width of Modulation shall not be greater than thirty (30) feet.

7.4.8 Windows shall be designed to create visual harmony from one Building to another.

7.4.9 Window frames may be metal, pre-finished in white or a color that complements the balance of the proposed Building's exterior wall systems. No metallic anodized frames, bronze, black or mill finish aluminum are acceptable.

7.4.9.1 The glass products used are encouraged to be High Performance (or equal) clear or light color tint relying on Low E (or equal) coatings and gas fill to comply with applicable Energy Codes.

7.4.9.2 Other tints of glass may be acceptable after considering factors including, without limitation, the actual glass and frame system including overall window frame appearance. of the proposal.



7.4.9.3 There shall be no operable windows or windows that can be opened other than sliding or swingable glass doors which are used for pedestrian access to a balcony, patio or other similarly used exterior space.

7.4.10 The Port may vary from the design criteria set forth above to provide mitigation on a specific project if the Port determines strict adherence to the criteria would not be in the best interests of the development of the Property; provided that any variance shall not significantly deviate from the overall effect of the design criteria.

8. MINIMUM SETBACK:

8.1 No Building or Other Improvement and no part thereof, shall be constructed or placed closer than permitted to a property line. "Interior property line" shall mean the common boundary between any Lot within the Property. "Property line" shall mean the boundary of every Lot.

No Building or Other Improvement shall be constructed or placed closer than twenty-five (25) feet from the property line separating a Lot from Penny Road, Chester Kimm Avenue, and Technology Way; except parking provided the landscaping requirements of Section 12.3 have been satisfied. No Building or Other Improvement shall be constructed or placed closer than fifteen (15) feet from the interior property line of any Lot.

8.2 Subject to specific requirements, restrictions and approvals set forth in the Covenants, the following are specifically excluded from the setback requirements set forth in Section 8.1:

8.2.1 Roof overhang, provided said overhang does not extend more than eighteen (18) inches into the setback area;

8.2.2 Steps and walkways;

8.2.3 Fences;

8.2.4 Landscaping and irrigation systems;

8.2.5 Planters that do not exceed three (3) feet in height;

8.2.6 Lighting;

8.2.7 Signs; and

8.2.8 Underground utility facilities and sewers.



9. BUILDING DIMENSIONS:

The ratio of the floor area of a Building to the size of the Lot shall not exceed thirty five percent (35%). For example, the maximum floor area of a Building on a 40,000 square foot Lot would be 14,000 square feet (35% of 40,000). The floor area ratio shall be determined by dividing the gross floor area of all Buildings on a parcel by the land area of that parcel. Covered parking, underground parking, under-Building parking, and outside storage areas are not included in the calculation of permitted floor area. Determination of Building height should also be in response to individual site characteristics, such as topographical and vegetative features, and solar orientation as well as Building function.

10. EXTERIOR APPEARANCE:

10.1 Except as allowed by the design criteria set out in Section 7, all exterior walls of Buildings shall be finished masonry, face brick or stone, or other surfacing approved by the Port. Wooden frame with wood exterior construction for business office Structures is permitted only by obtaining a variance from the Port.

10.2 Any portion of a Building facing a Street shall be designed to present an aesthetically pleasing facade to the Street, and whenever possible the Building shall be designed so that traffic and parking shall occur on a side of a Building not facing a Street.

10.3 The architectural character of each proposed Building or Structure shall be contemporary, rather than traditional, in style; eclectic styles, such as gothic or colonial, will not be permitted. Architectural designs will be evaluated in terms of the sensitive integration of form, textures, and colors with the particular landscape and topographical character of each site.

10.4 To maintain a high standard of construction and appearance and to provide interesting and tasteful exteriors, the exterior walls of each Building are to be constructed of durable, permanent materials, tastefully handled (carefully selected brick, or other architectural surfaces). No temporary or flammable material will be approved. All penetrations through the roof (for example, mechanical equipment or skylights) must be organized in a manner that is integral to the architectural form of the Building and/or screened, and shall be approved by the Port pursuant to Section 20.

10.5 All exterior service, and utility areas will be located at the side or rear of the Building and will be screened or sheltered so as not to be visible from the street right-of-way or from adjacent Lots or the Benefited Property. All mechanical equipment, utility meters, storage tanks, air conditioning equipment, and similar items shall be screened with landscaping or attractive architectural features integrated into the structure itself.



11. PARKING, ACCESS AND RIGHT OF WAYS:

11.1 Off-street parking adequate to accommodate the parking needs of the Owner or Occupant, employees, and visitors at the Lot shall be provided by the Owner or Occupant of each Lot. The intent of this provision is to eliminate the need for any on-street parking; provided, however, that nothing herein shall be deemed to prohibit on-street parking of public transportation vehicles. A minimum of one parking stall per 300 gross square feet of Building area is desired. Parking areas and driveways must be paved with a hard, dust free year-round surface (e.g. asphalt, brick or concrete) striped, and maintained in good condition, free from litter, and must be adequately lighted. Unless not reasonably possible, Employee parking areas shall not face a street, but shall be located at the side of Buildings away from a Street, unless otherwise approved in writing by the Port pursuant to Section 20. In the event visitor parking is to be located on a side of a Building facing a Street, adequate space must be provided for parking and traffic flow. Consideration of underground and under-Building parking is encouraged.

11.2 On-street parking is permitted only where the Street has been improved with curb, gutter, and sidewalks, provided that any on-street parking must be approved in writing by the Port pursuant to Section 20. On-street parking is subject to restriction by the Port and the entity responsible for snow removal on that Street. If parking requirements increase as a result of a change in the use of a Lot or in the number of persons employed by the Owner or Occupant, additional off-street parking shall be provided by the Owner or Occupant, in order to satisfy the intent of this section.

11.3 Required off-street parking shall be provided on the Lot, or on a contiguous Lot. Where parking is provided on a contiguous Lot for the benefit of the Lot concerned, a proponent shall provide a certified copy of a recorded instrument, duly executed and acknowledged by the person or persons holding title to the contiguous Lot upon which the parking area is located, stipulating to the permanent reservation of the use of the contiguous Lot for parking on the Lot concerned.

11.4 It shall be the responsibility of any Owner of a Lot along any Street within or surrounding and abutting the Property, now existing or hereafter constructed, to provide for "Finished Development" (as described below) of that portion of the road right-of-way abutting the Owner's Lot between the Owner's Lot and the improved portion of the Street. Finished Development shall be complete prior to a Lot being used as allowed by these Covenants.

11.5 "Finished Development" means completing abutting roads to the required width, and landscaping the balance of the right of way, pursuant to Plans submitted to and approved by the Port pursuant to Section 20. Finished Development shall include but not be limited to, paving, driveway cuts, sidewalks, curbing, guttering, storm sewers, landscaping and lighting, as required by the Port. Unless otherwise specified by the Port, Finished Development includes a road constructed curb to curb in compliance with the Chelan County Road Standards.



The Finished Development shall be in a style and manner consistent with these Covenants, and shall be completed at such time as the Port shall direct pursuant to Section 20.

11.6 Finished Development by the Owner may be delayed for up to two (2) years from the date development of a Lot begins, provided a variance is obtained before the expiration of any time frames established pursuant to Section 20. The Port may, among other things, require the Owner, as a condition of the delay, to post a bond in an amount equal to one hundred twenty-five percent (125%) of the Port's estimated costs of the Finished Development along the Owner's Lot.

11.7 On-site access roads shall be separated from the parking areas by a raised curb walkway, planting area, or a combination of all three. All parking areas shall be screened from road rights-of-way and adjacent developed parcels by earth berms or evergreen planting to assure that the visual effect of large paved areas and standing automobiles is minimized. Each parking space provided shall be designated by lines painted upon the paved surface which shall be of the following spacing:

- Standard parking space: 9 feet wide x 19 feet long
- Compact parking space: 8 feet wide x 16 feet long

11.8 A maximum of thirty-five percent (35%) of the parking stalls may be compact. Accessible parking shall be provided as required by Washington State Regulations.

12. LANDSCAPING.

12.1 The portion of each Lot not covered by a Building, Other Improvements, sidewalk, or other paving, shall be adequately landscaped pursuant to a Plan approved by the Port as provided in Section 20 of these Covenants.

12.2 Within ninety (90) days following completion of construction, or by the date each Structure is occupied, whichever shall occur first, each Lot shall be landscaped in accordance with the Plans. The area of each Lot between any street and any minimum setback line as set forth hereafter shall be landscaped and maintained with an attractive combination of trees, shrubs and other ground cover. All portions of a Lot not fronting a street and not used for parking, storage, or Buildings shall be landscaped in a complimentary and similar manner. Minimum landscape requirements shall be twenty-five percent (25%) of the gross square footage of each Lot.

12.3 The following minimum landscaping requirements shall apply to the Property:

12.3.1 The first ten (10) feet of all setback areas shall be landscaped and maintained in accordance with Section 12.3, except for the purpose of automobile access to the Property and pedestrian walkways to Building entrances, where applicable.



12.3.2 In addition to the required landscaping of required setback areas, any unpaved areas lying within adjacent Street rights-of-way shall be landscaped and maintained to the finished curb line of the Street by the Owner or Occupant of the adjacent Lot.

12.3.3 If an outdoor off-street parking area contains fifteen (15) or more parking stalls, six percent (6%) of the interior of such parking area shall be landscaped and maintained. Landscaped islands shall be required at intervals of one (1) such island for each twenty (20) vehicular parking spaces. Such islands shall be a minimum of six (6) feet in width and the length of the adjacent parking stalls. Where parking occurs face to face then such landscaped islands must provide a break between the rows of parking and continue through continuously to both ends or sides of the parking strip. Landscaped islands may contain lighting for the parking area. Subject to review and approval of the Port pursuant to Section 20, individual required landscape islands may be aggregated into fewer larger islands with the overall intent of softening the effect of large paved parking areas. Earth berms are encouraged for use with landscape islands.

12.3.4 Landscaping may include pedestrian walkways connecting bays of parking to each other or to the Building.

12.3.5 The perimeter of parking areas adjacent to streets shall be landscaped with solid screen evergreen plant material so as to screen said areas from view from adjacent streets and freeways. Such screening shall extend at least forty-eight (48) inches above the high point of the finished pavement in said parking area. Landscaped earth berms at least thirty-six (36) inches high may substitute for the solid screen planting. The height and treatment of the berm shall be shown on the required landscape plan and must be approved by the Port pursuant to Section 20.

12.4 All Landscaping shall be constructed and maintained to the following minimum standards:

12.4.1 All landscaping adjacent to Streets and side yards shall be a lawn, interspersed with suitable plantings. The lawn shall be established by sodding with a high quality sod blend and not by seeding. In addition, landscaping adjacent to each office entry shall be a minimum of fifty percent (50%) lawn interspersed with suitable plantings.

12.4.2 Plant material shall be uniform in shape, in good healthy condition, and well adapted to the Wenatchee climate zone. No plant material with invasive roots shall be used.

12.4.3 All plant material shall meet the minimum size and height requirements set forth in Section 12.2. Ground cover sizes and types should be selected according to growth rate, spacing and amount of area to be covered.



12.4.4 There should be an interesting variety of plant material used in the landscape plan, including large and small deciduous trees; large, medium and small shrubs; large and small evergreen trees; large, medium and small evergreen shrubs; and ground covers. The landscape plan shall anticipate size of plant material at maturity, not at purchase. Thorny plants shall not be placed next to pedestrian areas. Landscape material shall be of long-lived varieties. Plants and other landscaped elements shall be permanent in nature. Short-lived materials, such as annual flowers, may be used to accent or supplement the basic permanent landscape plan.

12.4.5 All lawn and planted areas are to be automatically irrigated by an underground system providing one hundred percent (100%) irrigation coverage. The entire irrigation system must be designed and constructed in accordance with all local building code requirements and installed and maintained by the Owner.

12.4.6 After completion, landscaping shall be maintained in a slightly and well-kept condition. If the required landscaping is not maintained in a slightly and well-kept condition, the owners of the Benefited Property shall be entitled to the remedies set forth in the Covenants.

13. LIGHTING.

Well-designated soft lighting of the Building exterior will be permitted, provided the light source is not visible (e.g. shielded or concealed) and compliments the architecture. The lighting should not draw inordinate attention to the Building. Parking lot and roadway lighting shall be provided by free-standing fixtures with cut-off light sources to assure that the source is not seen from the street or adjacent parcels. All parking lot and roadway lighting shall be provided by a cool and concealed source with a minimum lighting of 1.2 lumens per square foot surface area and shall be placed on dark poles, 35 feet in height with a 90 foot spacing between poles. The material and color of the fixtures will be evaluated in terms of their compatibility with the architecture and natural site characteristics. The lighting of pedestrian walkways shall be provided by warm, semi-concealed or visible sources with a minimum 1.0 lumen average per square foot of surface and shall be placed on dark poles, with a maximum height of twelve (12) feet.

14. SIGNS:

14.1 Signs shall only be placed on the wall of a Building, or on the ground. No roof signs or window signs are permitted.

14.2 Wall signs shall identify only the business or the company on the premises. Ground signs may identify the Building, office complex, business or service. Wall signs shall be placed upon that segment of the wall occupied by the business. Ground signs shall be placed on the same Building site and in proximity to the business or service identified.



14.3 Wall signs shall be fixture signs. Signs painted upon a wall or projecting more than twelve (12) inches from a wall shall not be allowed. Signs affixed to a Building shall be limited to identifying the tenant, its activity or product.

14.4 For a Building with multiple Occupants, each Occupant may be identified with a wall Sign not exceeding twelve (12) square feet in area. In addition, the Building complex or use may be identified with up to two ground signs. The total area of each permitted ground sign shall not exceed one hundred (100) square feet.

14.5 Wall Signs shall be permitted to the maximum height of the Building on which they are located. Ground Signs shall not exceed eight (8) feet in height.

14.6 No Sign shall be located closer than fifteen (15) feet from any property line.

14.7 Directional signs may be permitted upon review and approval of the Port pursuant to Section 20.

14.8 Signs may be illuminated but shall not be portable, moving, rotating, flashing, animated, blinking, floating or fluctuating. Internally lit signs are preferred.

14.9 The location, type, size, design and material of all signs shall be approved by the Port pursuant to Section 20.

15. FENCES.

No fences or walls shall be permitted on any Lot unless such fence or wall is necessary for security or screening purposes. The Port reserves the right to approve the location and design of all fences in its discretion, and no fence shall be constructed without obtaining the Port's approval pursuant to Section 20.

16. UTILITIES:

16.1 All permanent utility systems and related services, including water, sewer, storm water collection, retention, and detention, power, telephone, television cable, gas, and the like shall be underground or in the Building. Any external transformers, meters, and similar apparatus must be at ground level or below with approved screening for ground level installation. Temporary utilities, such as temporary power for construction or special events must be approved by the Port pursuant to Section 20, or a variance must be obtained. Temporary utilities shall be removed at the earlier of the completion of the designated time period. The nature and extent of the temporary utilities shall be limited to that permitted by the Port.

16.2 No antenna for the transmission or reception of information, data, or communications, including telephone, television, microwave, or radio signals shall be placed on any Lot, whether or not actually used, unless such antenna shall be so located that it cannot be



seen from five (5) feet zero (0) inches above ground or ground-floor level at a distance of two hundred (200) feet in any direction, and a variance is obtained from the Port.

16.3 The Port reserves the sole right to grant consents for the construction and operation of public utilities, including, but not limited to, interurban or rapid transit, poles or lines for electricity, telephone, or telegraph, above-or below-ground conduits, and gas pipes in and upon any and all streets now existing or hereafter established upon which any portion of the Property may now or hereafter front or abut. The Port reserves the exclusive right to grant consents and to petition the proper authorities for any and all street improvements, such as grading, seeding, tree planting, sidewalks, paving and sewer and water installation, whether it be on the surface or subsurface, which in the opinion of the Port are necessary next to or near the Property.

17. STORAGE:

Outside storage is permitted only on the side of a Structure not facing or fronting on a Street, and only within an area completely screened from view by fencing which is at least six (6) feet in height. Fencing must be of sound construction, compatible with the Buildings, and shall be of a kind and style approved in writing, in advance of installation, by the Port. Under any and all circumstances, prior written approval from the Port pursuant to Section 20 is required for any outside storage which is visible from Street elevation.

18. REFUSE COLLECTION AREAS:

All outdoor refuse collection areas shall be visually screened so as not to be visible from neighboring property or Streets. No refuse collection area shall be permitted between a street and the Building.

19. TRUCK LOADING:

Permanent loading and unloading areas, including zones, docks, and pits are prohibited, unless approved by the Port pursuant to Section 20 or unless a variance is obtained.

20. APPROVAL OF PLANS REQUIRED.

20.1 Design plans and specifications ("Plans") for any proposed change to a Lot or any remodel of an existing Structure or Other Improvement, or for a new Structure or Other Improvement shall be submitted, in advance, to the Port. No modification or change shall be made to a Lot and no Structure or Other Improvement shall be built or remodeled, when the remodeling will in any way alter the exterior appearance (other than routine maintenance, upkeep, painting, and the like), without complying with these Covenants, including, without limitation Sections 20 through 28.



20.1.1 Unless otherwise agreed in writing by the Port, Plans submitted to the Port shall contain the seal of a registered architect, structural engineer, or professional engineer and shall include an overall Lot plan, including a landscaping plan, means of pedestrian access, parking, setback locations, Building location, Building dimensions, and the like. Such Plans shall include architectural or engineering renderings sufficient to allow the Port to determine the construction plan for any Building and to determine the appearance of the facade.

20.1.2 Plans shall include a description of the building materials, colors of Buildings and Other Improvements, and such other reasonable information and specifications requested by the Port as may fairly and accurately depict any Building and Other Improvement planned for construction or change. The Plans shall include landscaping, grading, traffic and parking plans (including points of ingress and egress), utility corridors, storm-water run-off and drainage plans, outdoor lighting and such other details as the Port may reasonably request to ensure compliance with the Covenants. The documentation accompanying the Plans shall detail any deviations from the Covenants and shall set forth a request for a variance for each deviation in compliance with Section 28.

20.1.3 Plans shall include a projected timetable for completion of Building, Other Improvements, and Finished Development.

20.2 No Building or Other Improvement shall be erected, placed, remodeled, altered, maintained, permitted to remain on any Lot until the Plans have been submitted to and approved in writing by Port. Plans shall be reviewed and rejected or allowed, as hereafter provided.

21. BASIS FOR APPROVAL:

21.1 Approval of the Plans shall be based, among other things, upon compliance with the Covenants, including adequacy of site dimensions, adequacy of structural design, conformity and harmony of external design with neighboring structures, affect of location and use of proposed improvements upon neighboring Lots, adequacy of screening of mechanical, air-conditioning, or other rooftop installations, and conformity of the Plans to the purpose and general plan and intent of the Covenants. No Plans will be approved that do not provide for the underground installation of power, electrical, telephone and other utility line form the property line to Buildings or Other Improvements.

21.2 The Port shall have the right to reject Plans on any reasonable grounds including, but not limited to the following:

21.2.1 Failure to comply with any of the restrictions set forth in the Covenants;

21.2.2 Failure to include information in such plans and specification as may have been reasonably requested by the Port;



21.2.3 Objection to the exterior design, the appearance of materials, or materials employed in any proposed Structure or Other Improvement;

21.2.4 Objection on the ground of incompatibility of any proposed Structure or use with existing Structures or uses upon other Lots;;

21.2.5 Objection to the location of any proposed Structure with reference to other Lots, or any other part of the Benefited Property;

21.2.6 Objection to the grading or landscaping plan for any Lot;

21.2.7 Objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any Structure;

21.2.8 Objection to the number or size of parking spaces, or to the design of the parking area;

21.2.9 Any other matter that, in the judgment of the Port, would render the proposed improvements or use not to be harmonious with the general plan for improvement of the Property or with improvements located upon other Lots or other property in the vicinity.

22. REVIEW FEE.

An architectural review fee shall be paid to the Port simultaneously with the submission of the Plans. The architectural review fee shall be a minimum of \$250 plus the sum of One Hundred Dollars (\$100) per acre or portion thereof that the Owner desires to develop, based on the gross square footage of the Lot or Lots being developed. The amount of the architectural review fee may be amended from time to time by the Port.

23. APPROVAL:

23.1 The Plans shall initially be reviewed by an evaluation committee composed of an architect, an appraiser or real estate professional, the Port Director, the Port Property Manager, or such other individuals as the Port may select ("Review Committee").

23.2 The Review Committee shall attempt to review and respond to the Plans in a reasonable time under the circumstances. The Review Committee may recommend approval, rejection, or approval of some but not all of the proposed Plans to the Board of Commissioners of the Port (the "Board"), request additional information, or recommend approval of the Plans as submitted with or without revisions. All recommendations by the Review Committee shall be made to the Board and shall be addressed at the next regularly scheduled public meeting of the Board following the recommendation of the Review Committee. The Board shall consider the recommendation of the Review Committee, and shall, within a reasonable time, approve or reject some or all of the Plans, or approve the Plans with such modification or conditions, including a condition requiring a performance bond as set out below in Section 25, as the Port may



determine. The Board may request additional information it deems is necessary to act on the Plans. Upon approval or conditional approval by the Board of the Plans, a copy of the Plans, together with any conditions, shall be deposited for permanent record with the Port.

23.3 Any change to a Lot or construction or remodel of a Structure or Other Improvement shall be made only in compliance with approved Plans.

24. TIME LIMIT FOR RECOMMENDATION:

The Review Committee shall make a written recommendation concerning the Plans submitted to it for review within forty-five (45) days after the same have been submitted; provided, however, that the Review Committee may, within the forty-five (45) day period, provide written notice to the Owner-applicant of the fact that more time is required to review the Plans ("Notice of Extension"). The Notice of Extension shall specifically designate the period of time needed by the Review Committee beyond the original forty-five (45) days to complete its review of the Plans.

25. PROCEEDING WITH WORK:

25.1 Upon written approval of the Plans by the Board pursuant to Section 23, the Owner or Occupant, or both, to whom the same is given, shall, as soon as practicable, satisfy any and all conditions of such approval and shall diligently proceed with the commencement and completion of all work, excavation, construction, refinishing and alterations to implement the approved Plan. In all cases, work to implement approved Plans shall commence within six (6) months from the date of the Port's approval of the Plans, and if work is not so commenced, Plan approval shall be deemed revoked, unless a variance is obtained before the expiration of the six (6) month period. In all cases, work to implement approved Plans shall be completed within two (2) years from the date of the Port's approval of the Plans, unless a variance is obtained before the expiration of the two (2) year period.

25.2 At the request of the Port the Owner or Occupant who has received written Plan approval shall obtain a performance bond to assure completion of the work to implement approved Plans within the above-referenced two (2) year period. The performance bond shall be for the benefit of the Port. In the event the Port makes a claim against the performance bond, the proceeds of the performance bond need not be applied by the Port, in whole or in part, to the completion of the matters set forth in the Plans.

26. PORT NOT LIABLE:

The Port shall not be liable for any damage, loss, or prejudice suffered or claimed by any person on account of:

26.1 The approval or rejection of any Plans, drawings, and specifications, whether or not in any way defective;



26.2 The construction of any improvement, or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; or

26.3 The development of any property owned by the Port.

27. CONSTRUCTION WITHOUT APPROVAL:

If any Building or Other Improvement shall be erected, placed, or maintained upon any Lot, or any new use commenced upon any Lot, other than in accordance with the Plan approval by the Port pursuant to the provisions of the Covenants, such alteration, erection, placement, maintenance, or use shall be deemed to have been undertaken in violation of the Covenants and upon written notice from the Port, any such improvement so altered, erected, placed, maintained, or used upon any Lot in violation of the Covenants shall be removed or altered so as to conform to the Covenants, at the cost of the Owner, and any such use shall cease or be amended so as to conform to the Covenants. Should such removal or alteration or cessation or amendment or use not be accomplished within thirty (30) days after receipt of such notice, then the party in breach of the Covenants shall be subject to the enforcement procedures set forth herein.

28. VARIANCE.

28.1 The Board shall have the authority to grant variances from the requirements of the Covenants where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, the literal interpretation of the Covenants would cause undue or unnecessary hardship or where varying from the Covenants is determined by the Port to be consistent with the intent of the Covenants and consistent with the overall development of the Property. No variance shall be granted to allow the use of Property for prohibited purposes on the Property. In granting a variance, the Port may attach conditions which it finds necessary to protect the best interests of the Benefited Property and to otherwise achieve the purposes of the Covenants. The Port shall have the authority to grant variances in accordance with this section when the request for such variance is an integral part of, and made at the same time as, an application for approval of Plans submitted pursuant to Section 20. Each variance application shall be accompanied by an application fee equal to \$500 which may be amended from time to time by the Port.

28.2 No variance shall be granted unless it can be shown that most of the following conditions exist:

28.2.1 The variance is necessary to recognize substantial changes to other property in the neighborhood or general vicinity;

28.2.2 The plight of the applicant is due to unique circumstances such as topography, Lot size or shape, or size of Buildings, over which the applicant has no control;



28.2.3 The hardship asserted by the applicant is not the result of the applicant's or the Owner's action or inaction;

28.2.4 The authorization of the variance shall not be materially detrimental to the purposes and objections of the Covenants, or be injurious to the Benefited Property; and

28.2.5 The hardship asserted by the applicant results from the application of the Covenants to the Property.

28.2.6 The variance will not create a situation which is incompatible with the intent of the Covenants and the overall development of the Property.

28.3 A request for a variance may be initiated by an Owner or his or her authorized agent by filing an application with the Port Director. The Port Director shall make a recommendation to the Board to be addressed at the next regularly scheduled Board meeting. In his or her discretion, the Port Director may submit the variance application for review to the Review Committee established in Section 20 for a recommendation to the Board.

28.4 Before a request for a variance is acted upon by the Board, it shall be considered at a public meeting.

28.5 The Board, on its own motion, may recess a meeting on a request for a variance in order to obtain additional information. Upon recessing for this purpose, the Board shall announce the time and date when the meeting will be resumed.

28.6 The Board shall cause written notification of its action to be mailed to the applicant for a variance within five (5) days after the decision has been rendered.

28.7 Any applicant, or his or her agent, may at any time request withdrawal or postponement of consideration of the variance application, but in no event may the applicant postpone consideration of the variance application for more than thirty (30) days.

28.8 The Board shall make its decision on a variance application within thirty (30) days following the Port Director's recommendation. A majority of the Board shall be necessary for any decision on the variance application.

29. MAINTENANCE:

29.1 The Occupant of a Lot shall be directly and primarily responsible for all maintenance and upkeep of the Lot, the Building and Other Improvements, including, without limitation, the maintenance of all parking areas, driveways and walkways in a clean and safe condition, including the paving and repairing or resurfacing of such areas when necessary with the type of material originally installed thereon or such substitute as shall, in all respects, be equal in quality, appearance, and durability, the removal of debris and waste material and the



washing and sweeping of paved areas, and the painting and repainting of striping markers and directional signals as required.

29.2 Each Occupant shall remove at regular and frequent intervals, at its expense, rubbish or vegetation which is not part of an approved landscaping plan and debris of any character whatsoever which may grow or otherwise be deposited or accumulated on the Occupant's Lot. The Occupant shall perform all necessary maintenance of all landscaping, including the trimming, watering, and fertilization of all grass, groundcover, shrubs, or trees, the removal of dead or waste materials, and the replacement of any dead or diseased grass, groundcover, shrubs, or trees on the Occupant's Lot.

29.3 Exterior surfaces of any Structure or Other Improvement on a Lot shall be maintained in first-class condition. Any damage to the exterior shall be repaired and removed. Damaged bricks shall be repaired and replaced with like colors. Exterior painting shall be professionally done.

29.4 Garbage, waste material and trash shall be maintained in a closed receptacle at a location on each Lot agreed to by the Port pursuant to approved Plans. No waste material, trash containers, or other item shall be stored or left outside of a Structure, other than in approved trash receptacles, except on an occasional and temporary basis to facilitate loading and unloading as needed. All waste material, debris, garbage and the like shall be contained in a fenced enclosure required for outside storage.

29.5 Each Occupant shall remove snow and ice from any Structure, from sidewalks, parking areas and roads, on the Occupant's Lot, and from the Lot it uses or occupies, as is reasonable, necessary, and safe.

29.6 Any broken windows or glass of a Building or Other Improvements shall be immediately replaced by the Occupant whether the Building or Other Improvement is occupied or not. The Occupant shall clean, maintain, and relamp any external lighting fixtures at regular and frequent intervals, except such fixtures which are the property of any public utility or government body.

29.7 The Owner or Occupant of any Lot shall at all times keep it and the Buildings, and Other Improvements thereon in a safe, clean, and wholesome condition and comply, at its own expense, in all respects with all applicable governmental, health, fire and safety ordinances, regulations, requirements, and directives.

30. DISPOSABLE WASTE:

Discharge of any waste or waste products by an Occupant onto any Lot or the Benefited Property is prohibited. Discharge of any waste or waste products by an Occupant into the sewer system may occur only with the approval of the appropriate governmental agency(s) having jurisdiction therefore, and shall be at the expense of the Occupant.



31. STORM WATER RUN-OFF:

31.1 The Lot shall be designed and graded to appropriately handle storm water and other run-off, and to prevent drainage onto joining properties. The Plans shall make adequate provision for drainage from Structures and other impervious surfaces.

31.2 Each Occupant shall be responsible for controlling storm water run-off from the Lot, Structures and Other Improvements utilized by the Occupant in compliance with applicable rules and regulations, at the expense of the Occupant. The method for handling storm water run-off shall be reflected on approved Plans. To the extent available, a community or municipal storm water run-off and drainage system shall be utilized.

32. HAZARDOUS AND TOXIC SUBSTANCES:

32.1 No Occupant shall cause or permit any activity on any Lot in the Property which directly or indirectly could result in any of the Property becoming contaminated with hazardous or toxic waste or substances. For purposes of these Covenants, the term "hazardous or toxic waste or substances" means any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous toxic or radioactive substance or other similar term by any applicable federal, state, or local statute, regulation, or ordinance now or hereafter in effect.

32.2 Each Occupant shall promptly comply with all statutes, regulations, ordinances, and rules which apply to the use of hazardous or toxic waste or substances in, on, or around any part of the Property.

32.3 Each Occupant shall indemnify and hold the Port and all other Occupants harmless from all obligations relating to a clean-up, removal, or mitigation of any hazardous or toxic substances on or relating to any part of the Property as a result of that Occupant's use, disposal, transportation, generation or sale of hazardous or toxic waste or substances.

33. SAVINGS:

Nothing in these Covenants shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provisions of these Covenants and any statute, law, public regulation or ordinance, or court decree, the latter shall prevail, but in such event, the provisions of these Covenants affected shall be curtailed and limited only to the extent necessary to bring it within legal requirements. If any provision of these Covenants is determined by a court of competent jurisdiction to be unenforceable, the remainder of the provisions shall continue to be enforceable.



34. ENFORCEMENT:

34.1 These Covenants are perpetual and run with the land. The Port has the right but not the obligation to enforce these Covenants. Any failure by the Port to enforce compliance with any of the provisions of these Covenants immediately upon having notice of any noncompliance shall in no event be deemed a waiver of the right of the Port to do so thereafter, but shall merely be deemed a waiver of the Port's right to enforce compliance prior to the Port actually doing so. Under no circumstances shall the Port have any responsibility or liability to any Owner, Occupant or third party for failure to specifically enforce these Covenants.

34.2 Each Owner or Occupant of the Benefited Property, in its sole discretion, shall have the right to compel specific performance of these Covenants by any other Owner or Occupant through an action in the Superior Court of the State of Washington, in Chelan County.

34.3 If any Owner or Occupant of the Property shall fail to perform the maintenance and repair required by the Covenants ("Defaulting Owner"), then any Owner of the Benefited Property ("Enforcing Owner") may, after fifteen days advance written notice is personally served on such Defaulting Owner setting forth the extent of the noncompliance with the Covenants, perform such maintenance and repair and charge the Defaulting Owner with costs of such assessment or such work, together with interest thereon at the rate of twelve percent (12%) per annum from the date of advancement of funds for such payment or such work to the date of reimbursement of the Enforcing Owner. The reimbursement shall be for all expenses including without limitation, costs of clean-up, maintenance, and repair of any Lot, and attorneys' fees, engineering fees, architectural fees, and the like incurred by the Enforcing Owner as a result of any noncompliance with these Covenants.

34.4 If the Defaulting Owner shall fail to reimburse the Enforcing Owner for such costs within ten (10) business days after written demand therefor is mailed by first class mail postage pre-paid to the Defaulting Owner at the address of the Building on the Lot or is personally served on the Defaulting Owner, the Enforcing Owner may at any time within 90 days after the written demand, but not later than two years after such advance, file for record in the Chelan County Auditor's Office, Washington, a "Claim of Lien" signed by the Enforcing Owner before a notary public. The Claim of Lien shall be effective to establish a lien against the interest of the Defaulting Owner' Lot, Building, and Other Improvements, together with interest at twelve percent (12%) per annum on the amount of such advance from the date thereof, recording fees, cost of title search obtained in connection with such lien or the foreclosure thereof, court costs, reasonable attorney's fees that may be incurred in the enforcement of such a lien, and all other costs and fees as set forth in Sections 34.3 and 34.4. The Claim of Lien shall be for the benefit of the Enforcing Owner and may be enforced and foreclosed in a like manner as a real estate mortgage is foreclosed in the State of Washington. If a Claim of Lien is cured by full payment, the Enforcing Owner shall record a rescission of the Claim of Lien with the Chelan County Auditor.



34.5 In the event it is necessary for any Owner of the Benefited Property to engage the services of an attorney to enforce any of the provisions of these Covenants, whether or not legal action is instituted, the Owner and Occupant of a Lot where the non-compliance exists shall be obligated to pay to the Enforcing Owner the Enforcing Owner's costs and reasonable attorneys' and experts fees involved in the enforcement efforts.

34.6 The Claim of Lien and the rights to foreclose thereunder shall be in addition to, and not in substitution of other rights and remedies that any Owner of the Benefited Property may have hereunder and by law, including any suit to recover a money judgment.

34.7 In seeking or implementing compliance with these Covenants, the Port shall have no liability for injury or damage to any property of any Owner or Occupant occasioned by that Owner or Occupant's failure to comply with the Covenants and the Port's efforts to obtain compliance, except to the extent of the Port's willful or intentional acts causing property damage under circumstances where property damage could reasonably have been avoided in obtaining compliance with the Covenants.

34.8 In the event of litigation, the venue of any action commenced to enforce the terms of these Covenants shall be in Chelan County, Washington.

35. ASSIGNMENT OF PORT'S RIGHTS AND RESPONSIBILITIES:

35.1 Notwithstanding any other provision of these Covenants, at such time as the Port may determine, but not sooner than December 31, 2005, the Port may establish an "Owner's Group," consisting of all Owners of the Property. The Port may incorporate the Owner's Group as a non-profit corporation. All Owners shall automatically be members of the Owner's Group.

35.2 The Port shall give written notice to the Owners of the formation of the Owner's Group, which notice shall also set a date, time, and place for the initial meeting of the Owner's Group, to be not less than ten (10) nor more than thirty (30) days from the date of the notice. At that initial meeting the Owner's Group shall organize itself, elect a board of directors, and conduct such other business as it may determine appropriate.

35.3 Following the initial meeting of the Owner's Group, the Port may, at its election, give notice to all Owners that the Port will be transferring to the Owner's Group all of the Port's rights, responsibilities, and duties set out in these Covenants other than those which the Port may have as an Owner if the Port is then or thereafter becomes such an Owner (which transferred rights, responsibilities, and duties are referred to as the "Port Oversight Authority"). The effective date of the transfer shall be not less than sixty (60) nor more than one hundred twenty (120) days after the notice, at a date established by the Port in the notice. At the time the Port transfers the Port Oversight Authority to the Owner's Group, the Port shall transfer to the Owner's Group or provide to the Owner's Group access to all of the Plans, records, and other relevant documents related to the Port's role established in these Covenants, so the Owner's



Group will be able to act as the successor to the Port in all respects, other than as an Owner, in all matters related to these Covenants. From and after the date of the Port's transfer to the Owner's Group of the Port Oversight Authority the Owner's Group shall have, and be responsible to execute, all of the Port Oversight Authority in the place of the Port, including, without limitation, Plan Approval Responsibility, the right to grant variances, and the right but not the duty to enforce these Covenants.

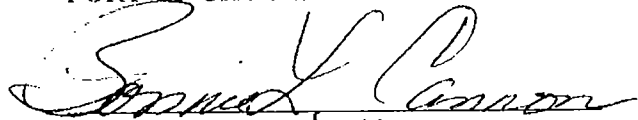
35.4 From and after the date of the Port's transfer to the Owner's Group of the Port Oversight Authority, the Port shall no longer have the right or responsibility to exercise any of the Port Oversight Authority, and shall have only its rights, if any, as an Owner.

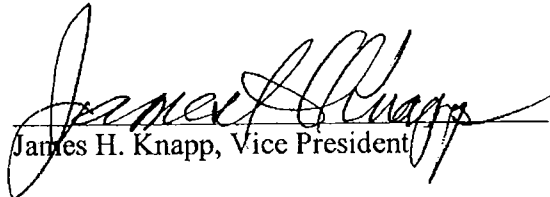
36. AMENDMENTS OF COVENANTS.

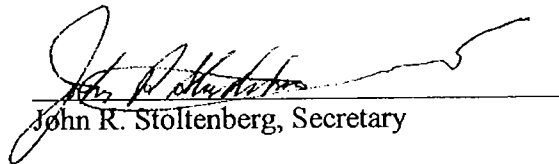
Except as otherwise provided herein, the Covenants may only be amended by the unanimous consent of all Owners of the Benefited Property.

ADOPTED this 23RD day of April, 2003.

PORT OF CHELAN COUNTY


Bonnie L. Cannon, President


James H. Knapp, Vice President


John R. Stollenberg, Secretary

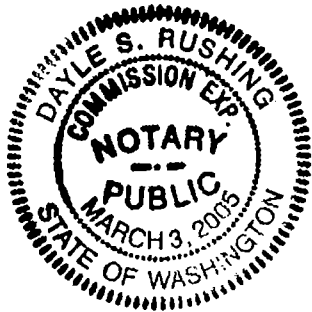
STATE OF WASHINGTON)
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County of Chelan)



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Chelan Co, WA

I certify that I know or have satisfactory evidence that **Bonnie L. Cannon** is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as a Commissioner of the Port of Chelan County to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 23 day of April, 2003.

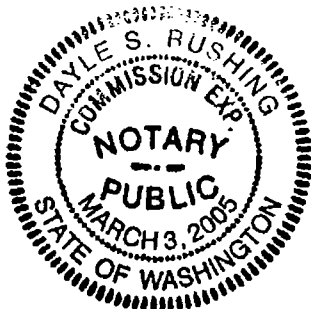


Dayle S. Rushing
Dayle S. Rushing
(printed name)
NOTARY PUBLIC, State of Washington
My appointment expires 3-3-2005

STATE OF WASHINGTON)
)ss.
County of Chelan)

I certify that I know or have satisfactory evidence that **James H. Knapp** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as a Commissioner of the Port of Chelan County to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 23 day of April, 2003.



Dayle S. Rushing
Dayle S. Rushing
(printed name)
NOTARY PUBLIC, State of Washington
My appointment expires 3-3-2005

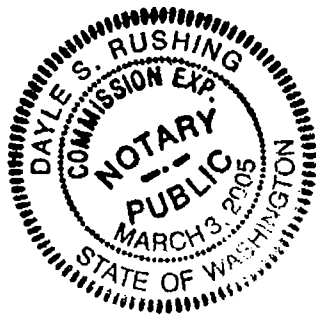
STATE OF WASHINGTON)
)ss.
County of Chelan)



2142987
Page: 30 of 34
05/05/2003 04:31P
Chelan Co, WA

I certify that I know or have satisfactory evidence that **John R. Stoltenberg** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as a Commissioner of the Port of Chelan County to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 23 day of April, 2003.



Dayle S. Rushing
Dayle S. Rushing
(printed name)
NOTARY PUBLIC, State of Washington
My appointment expires 3-3-2005



EXHIBIT "A"

1. Parcel B of Boundary Line Adjustment 2003-033, records of Chelan County, Recorded on April 8, 2003, at Auditor's File Number 2140596, legally described as follows:

A tract of land situated in the Northeast quarter of Section 28, Township 23 North, Range 20 East, W.M., Chelan County, Washington more particularly described as follows:
Commencing at the north quarter corner of said Section 28; thence North 89°35'29" East 375.56 feet, along the North line thereof to the intersection of Penny Road and Chester Kimm Avenue to the True Point of Beginning; thence South 00°59'45" East along the center line of Chester Kimm a distance of 345.25 feet; thence East 201.15 feet; thence North 0°59'45" West 346.68 feet to the north line of said Section 28; thence South 89°35'29" West 201.15 feet, ore or less, to the True Point of Beginning.
EXCEPT the right of way for Penny Road and Chester-Kimm Avenue.

2. Parcel G of Boundary Line Adjustment 2003-033, records of Chelan County, Recorded on April 8, 2003, at Auditor's File Number 2140596, legally described as follows:

A tract of land situated in the Northeast quarter of Section 28, Township 23 North, Range 20 East, W.M., Chelan County, Washington, more particularly described as follows:
Commencing at the north quarter corner of said Section 28; thence North 89°35'29" East 375.56 feet, along the North line thereof to the intersection of Penny Road and Chester Kimm Avenue; thence South 00°59'45" East along the center line of Chester Kimm a distance of 345.25 feet; thence North 90°00'00" East 363.52 feet to the True Point of Beginning; thence continue North 90°00'00" East 540.87 feet; thence North 0°31'18" East 304.46 feet; thence along a curve to the left with a radius of 17.00 feet, a length of 26.98 feet to the south right of way of Penny Road; Thence South 89°35'29" West 532.06 feet along said right of way; thence South 0°59'45" East 317.84 feet to the True Point of Beginning.

3. Parcel J of Boundary Line Adjustment 2003-033, records of Chelan County, Recorded on April 8, 2003, at Auditor's File Number 2140596, legally described as follows:

A tract of land situated in the Northeast quarter of Section 28, Township 23 North, Range 20 East, W.M., Chelan County, Washington, more particularly described as follows:
Commencing at the north quarter corner of said Section 28; thence North 89°35'29" East 375.56 feet, along the North line thereof to the intersection of Penny Road and Chester Kimm Avenue; thence South 00°59'45" East along the center line of Chester Kimm a distance of 345.25 feet; thence North 90°00'00" East 162.37 feet; thence North 0°59'45" West 317.84 feet; to the south right of way of Penny Road; Thence South 89°35'29" West 162.35 feet, along said right of way; thence South 0°59'45" East 316.68 feet to the True Point of Beginning.

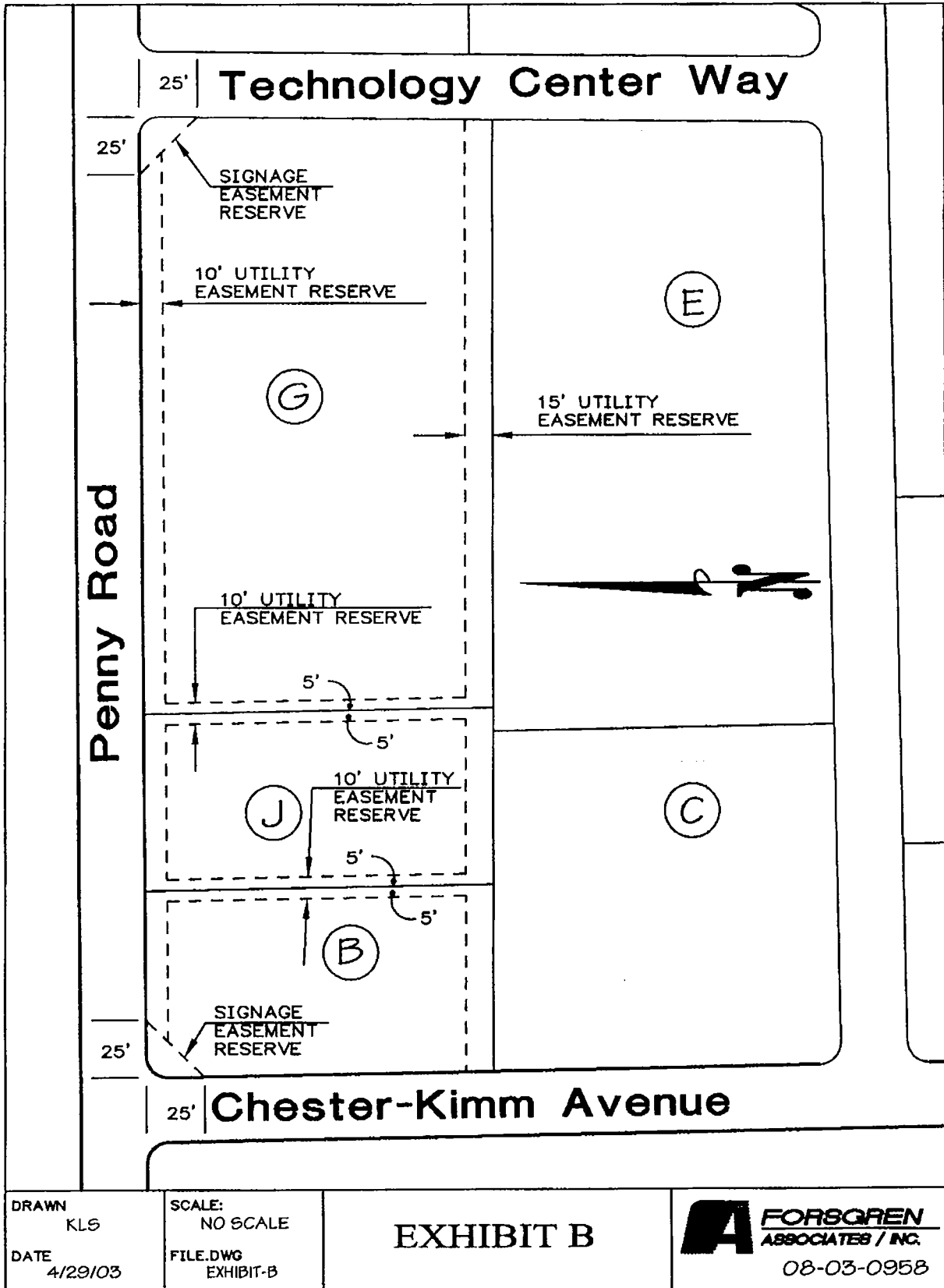


2142907
Page: 32 of 34
05/05/2003 04:31P
Chelan Co, WA

OGDEN MURPHY WALLACE

COVEN# 52.00

EXHIBIT "B"
General Map with Utility Corridors and Port Entry Signage Easement



DRAWN
KLS
DATE
4/29/03

SCALE:
NO SCALE
FILE.DWG
EXHIBIT-B

EXHIBIT B

A **FORSQREN**
ASSOCIATES / INC.
08-03-0958



EXHIBIT "C"

Parcel C of Boundary Line Adjustment 2003-033, records of Chelan County, Recorded on April 8, 2003, at Auditor's File Number 2140596, legally described as follows:

A tract of land situated in the Northeast quarter of Section 28, Township 23 North, Range 20 East, W.M., Chelan County, Washington, more particularly described as follows:
Commencing at the north quarter corner of said Section 28; thence North 89°35'29" East 375.56 feet, along the North line thereof to the intersection of Penny Road and Chester Kimm Avenue; thence South 00°59'45" East along the center line of Chester Kimm Avenue a distance of 345.25 feet to the True Point of Beginning; thence North 90°00'00" East 342.04 feet; thence South 0°59'45" East 369.81 feet; thence North 89°00'15" West 111.98 feet; thence South 0°59'45" East 591.97 feet to a point on the centerline of Olds Station Road; thence South 89°31'24" West 230.03 feet to the intersection with the centerline of Chester-Kimm Avenue; thence North 0°59'45" West 589.89 feet, along said centerline to the True Point of Beginning. EXCEPT the right of way for Chester-Kimm Avenue and Olds Station Road.

Parcel E of Boundary Line Adjustment 2003-033, records of Chelan County, Recorded on April 8, 2003, at Auditor's File Number 2140596, legally described as follows:

A tract of land situated in the Northeast quarter of Section 28, Township 23 North, Range 20 East, W.M., Chelan County, Washington, more particularly described as follows:
Commencing at the north quarter corner of said Section 28; thence North 89°35'29" East 375.56 feet along the North line thereof to the intersection of Penny Road and Chester-Kimm Avenue; thence South 00°59'45" East along the center line of Chester-Kimm a distance of 1310.59 feet; thence North 89°31'24" East 230.03 feet; thence North 0°59'45" West 30.00 feet to the True Point of Beginning; thence continue North 0°59'45" West 561.97 feet; thence North 89°00'15" East 111.98 feet; thence North 0°59'45" West 369.81 feet; thence North 90°00'00" East 562.35 feet; thence North 0°31'18" East 304.46 feet; thence along a curve to the left with a radius of 17.00 feet, a length of 26.98 feet to a point on the south right of way of Penny Road; thence North 89°34'41" East 899.75 feet along said right of way to a point 110.00 feet Northwest of the centerline of the Burlington Northern railway tracks as constructed measured at right angle; thence South 39°40'29" West, parallel to said railway, 394.95 feet; thence South 89°41'00" West 640.78 feet; thence South 0°31'18" West 380.32 feet; thence South 89°00'15" West 405.19 feet; thence South 0°59'29" East 189.83 feet; thence North 89°31'23" East 43.51 feet; thence South 0°59'29" East 195.02 feet; thence South 89°27'28" West 23.00 feet; thence South 0°59'29" East 179.99 feet to the north right of way of Olds Station Road; thence South 89°31'24" West 340.01 feet to the True Point of Beginning.



2155162
Page: 1 of 4
03/15/2003 03:46P
Chelan Co, WA

Filed for and return to:

OGDEN MURPHY WALLACE, P.L.L.C.
1 Fifth Street, Suite 200
PO Box 1606
Wenatchee WA 98807-1606
8-29-03 (p.s.)

The information contained in this boxed section is for recording purposes only pursuant to RCW 36.18 and RCW 65.04, and is not to be relied upon for any other purpose, and shall not affect the intent of or any warranty contained in the document itself.

Grantor(s): Port of Chelan County, a Washington municipal corporation
Grantee(s): Port of Chelan County, a Washington municipal corporation, and the Public Reference Number(s) of Documents Assigned or Released or Referenced: The Covenants Abbreviated Legal Description:
Complete or Additional Legal Description of Page 1 of Document.
Assessor's Parcel Number(s): 23-20-28-120-100; 23-20-28-110-300; 23-20-28-120-050; 23-20-28-120-150; 23-20-28-110-800

**AMENDMENT TO COVENANTS, CONDITIONS AND RESTRICTIONS
PENNY ROAD COMMERCIAL PROPERTY
OLDS STATION, PORT OF CHELAN COUNTY**

This Amendment is made effective as of this date to the "Covenants, Conditions and Restrictions, Penny Road Commercial Property, Olds Station, Port of Chelan County" recorded on May 5, 2003, under Chelan County Auditor's File No. 2142907 (the "Covenants").

The second sentence of Paragraph 1.3 of the Covenants is hereby deleted and replaced in its entirety with the following sentence:

Utility Corridors shall be established in essentially the manner set forth on attached Exhibit "B," which is incorporated herein by this reference; provided if a boundary to which a utility easement is appurtenant is adjusted or changed, the utility easement shall be adjusted or changed automatically to the extent of the adjustment or change in the boundary, so the easement abuts the appropriate property boundary for the appropriate width, as depicted on Exhibit "B."



Exhibit "B" attached to the Covenants is hereby deleted and replaced in its entirety by a new Exhibit "B", which is attached hereto and incorporated herein by this reference.

This Amendment is made pursuant to Section 36 of the Covenants since the Port of Chelan County owns all of the identified in the Covenants as of the date this Amendment is adopted.

ADOPTED this 11th day of September, 2003.

PORT OF CHELAN COUNTY

Bonnie L. Cannon
Bonnie L. Cannon, President

James H. Knapp
James H. Knapp, Vice President

John R. Stoltenberg
John R. Stoltenberg, Secretary

STATE OF WASHINGTON)
)ss.
County of Chelan)

I certify that I know or have satisfactory evidence that **Bonnie L. Cannon** is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as a Commissioner of the Port of Chelan County to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 12 day of September 2003.



Dayle S. Rushing
Dayle S. Rushing
(printed name)
NOTARY PUBLIC, State of Washington
My appointment expires 3-3-2005



STATE OF WASHINGTON)
)ss.
County of Chelan)

I certify that I know or have satisfactory evidence that **James H. Knapp** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as a Commissioner of the Port of Chelan County to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

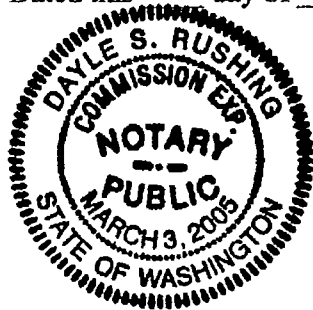
Dated this ____ day of _____, 2003.

(printed name)
NOTARY PUBLIC, State of Washington
My appointment expires _____

STATE OF WASHINGTON)
)ss.
County of Chelan)

I certify that I know or have satisfactory evidence that **John R. Stoltenberg** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as a Commissioner of the Port of Chelan County to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 12 day of September, 2003.

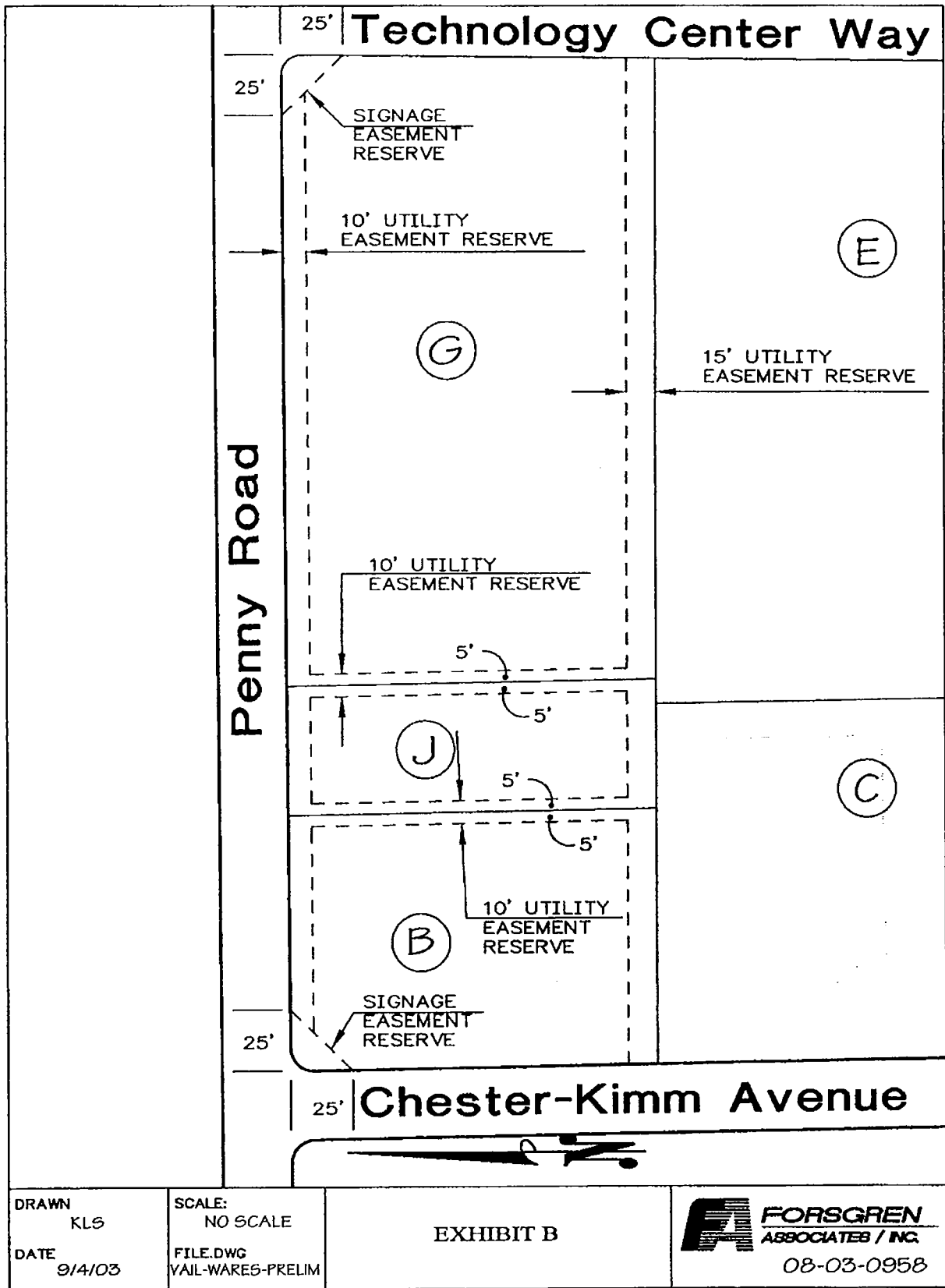


Dayle S. Rushing
Dayle S. Rushing
(printed name)
NOTARY PUBLIC, State of Washington
My appointment expires 3-3-2005



LAND TITLE CO

AMND # 22.00



DRAWN
KLS
DATE
9/4/03

SCALE:
NO SCALE
FILE.DWG
VAIL-WARES-PRELIM

EXHIBIT B

F FORSGREN
ASSOCIATES / INC.
08-03-0958

Filed for and return to:

OGDEN MURPHY WALLACE, P.L.L.C.
1 Fifth Street, Suite 200
PO Box 1606
Wenatchee WA 98807-1606



2198543
Page: 1 of 5
01/03/2005 09:43A
Chelan Co, WA

OGDEN MURPHY WALLACE

COVEN# 23.00

The information contained in this boxed section is for recording purposes only pursuant to RCW 36.18 and RCW 65.04, and is not to be relied upon for any other purpose, and shall not affect the intent of or any warranty contained in the document itself.

Grantor(s): Port of Chelan County, a Washington municipal corporation; Penny Properties, LLC, a Washington limited liability company; Berry Investments Company, LLC, a Washington limited liability company
Grantee(s): Port of Chelan County, a Washington municipal corporation, and the Public
Reference Number(s) of Documents Assigned or Released or Referenced: The Covenants
Abbreviated Legal Description: Tracts B, G and J, BLA 2003-033, Chelan County, WA
Complete or Additional Legal Description of Page 1 of Document.
Assessor's Parcel Number(s): 23-20-28-120-100; 23-20-28-110-300; 23-20-28-120-050; 23-20-28-120-150; 23-20-28-110-800

**SECOND AMENDMENT TO COVENANTS, CONDITIONS
AND RESTRICTIONS
PENNY ROAD COMMERCIAL PROPERTY
OLDS STATION, PORT OF CHELAN COUNTY ("Second Amendment")**

This Second Amendment is made effective as of this date to the "Covenants, Conditions and Restrictions, Penny Road Commercial Property, Olds Station, Port of Chelan County" recorded on May 5, 2003, at Chelan County Auditor's File No. 2142907 and amended pursuant to Amendment to Covenants, Conditions and Restrictions Penny Road Commercial Property Olds Station, Port of Chelan County recorded on September 15, 2003, at Chelan County Auditor's File No. 2155162 (altogether, the "Covenants").

The undersigned unanimously agree that Section 7.4.2 of the Covenants is hereby stricken and replaced in its entirety with the following:

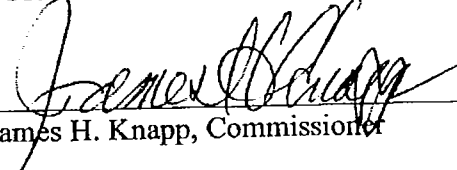
7.4.2 Only medium gray or dark gray metal roofing colors with a light reflectance value below 40 are allowed. Only metal roofing materials with finishes applied by the manufacturer at the roofing factory, which have final coatings that include a mixture of Kynar or Hylar (or equal) and a color-fast, corrosion, chalking, and fading resistant agent are acceptable.

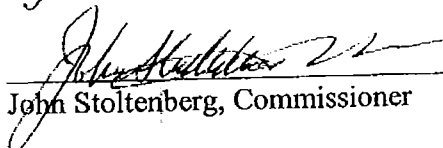
7.4.2.1 If another roofing color is desired, the desired color shall be submitted to the Review Committee and the Review Committee shall evaluate how the requested color compliments the architectural design of the proposed building, and whether the requested roofing color is consistent with and complimentary to neighboring properties. The Review Committee shall make a recommendation to the Board (as defined in Section 23.2, below) regarding the requested roofing color as part of the process outlined in Sections 20 to 23, below.

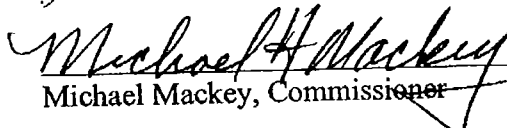
The undersigned, being all of the owners of the property described in the Covenants, hereby unanimously approve this Second Amendment, which shall run with the property described in the Covenants and be binding on the present and future owners of said property. The undersigned further ratify and affirm the Covenants as amended by this Second Amendment.

ADOPTED this 4th day of August, 2004.

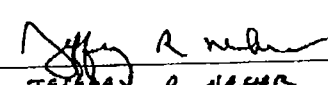
PORT OF CHELAN COUNTY


James H. Knapp, Commissioner

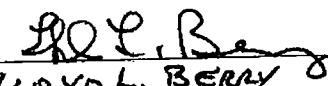

John Stoltenberg, Commissioner


Michael Mackey, Commissioner

PENNY PROPERTIES, LLC

By: 
JEFFREY R. NEFFER, MEMBER
(printed name) (title)

BERRY INVESTMENTS COMPANY, LLC

By: 
LLOYD L. BERRY, MANAGER
(printed name) (title)

2190543
Page: 2 of 5
91/93/2095 09:43A
COVEN# 23.00 Chelan Co, WA
ODDEN MURPHY WALLACE

STATE OF WASHINGTON)

)ss.
)

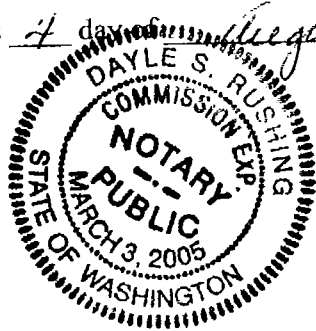


2190543
Page: 3 of 5
01/03/2005 09:43A
Chelan Co. WA

County of Chelan)

I certify that I know or have satisfactory evidence that James H. Knapp is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as a Commissioner of the Port of Chelan County to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 4 day of August, 2004.



Dayle S. Rushing
Dayle S. Rushing (Printed name)
NOTARY PUBLIC, State of Washington
My appointment expires 3-3-2005

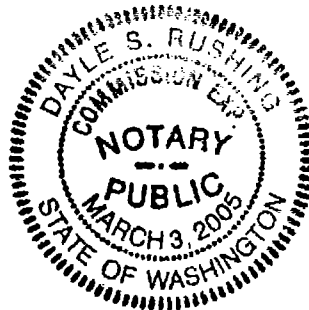
STATE OF WASHINGTON)

)ss.
)

County of Chelan)

I certify that I know or have satisfactory evidence that John Stoltenberg is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as a Commissioner of the Port of Chelan County to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 4 day of August, 2004.



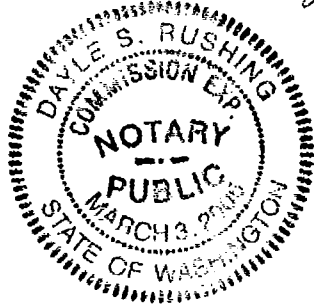
Dayle S. Rushing
Dayle S. Rushing (Printed name)
NOTARY PUBLIC, State of Washington
My appointment expires 3-3-2005

STATE OF WASHINGTON)
)ss.
County of Chelan)



I certify that I know or have satisfactory evidence that Michael Mackey is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as a Commissioner of the Port of Chelan County to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 4 day of August, 2004.



Dayle S. Rushing
Dayle S. Rushing (Printed name)
NOTARY PUBLIC, State of Washington
My appointment expires 3-3-2005

STATE OF WASHINGTON)
)ss.
County of Chelan)

I certify that I know or have satisfactory evidence that JEFFERY R. NEHER is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as a member of PENNY PROPERTIES, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: August 4, 2004



Robin L. Palma
Robin L. Palma (Printed name)
NOTARY PUBLIC, State of Washington
My appointment expires 5-17-2008

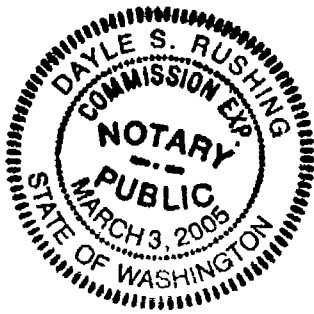
STATE OF WASHINGTON)
)ss.
County of Chelan)



2198543
Page: 5 of 5
01/03/2005 09:43A
Chelan Co, WA

I certify that I know or have satisfactory evidence that Lloyd L. Berry is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that Lloyd was authorized to execute the instrument and acknowledged it as a member of BERRY INVESTMENTS COMPANY, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: August 16, 2004



Dayle S. Rushing
Dayle S. Rushing (Printed name)
NOTARY PUBLIC, State of Washington
My appointment expires 3-3-2005



2205719
Page: 1 of 4
08/02/2005 10:05A
Chelan Co, WA

Filed for and return to:

OGDEN MURPHY WALLACE, P.L.L.C.
1 Fifth Street, Suite 200
PO Box 1606
Wenatchee WA 98807-1606
52289970

The information contained in this boxed section is for recording purposes only pursuant to RCW 36.18 and RCW 65.04, and is not to be relied upon for any other purpose, and shall not affect the intent of or any warranty contained in the document itself.

Grantor(s): Port of Chelan County, a Washington municipal corporation; Penny Properties, LLC, a Washington limited liability company; Berry Investments Company, LLC, a Washington limited liability company
Grantee(s): Port of Chelan County, a Washington municipal corporation, and the Public
Reference Number(s) of Documents Assigned or Released or Referenced: The Covenants
Abbreviated Legal Description: Tracts B, G and J, BLA 2003-033, as amended by BLA 2003-130, Records of Chelan County, WA
Complete or Additional Legal Description of Page 1 of Document.
Assessor's Parcel Number(s): 23-20-28-120-100; 23-20-28-110-300; 23-20-28-120-050; 23-20-28-120-150; 23-20-28-110-800

**THIRD AMENDMENT TO COVENANTS, CONDITIONS
AND RESTRICTIONS
PENNY ROAD COMMERCIAL PROPERTY
OLDS STATION, PORT OF CHELAN COUNTY ("Third Amendment")**

This Third Amendment is made effective as of this date to the "Covenants, Conditions and Restrictions, Penny Road Commercial Property, Olds Station, Port of Chelan County" recorded on May 5, 2003, at Chelan County Auditor's File No. 2142907 and amended pursuant to Amendment to Covenants, Conditions and Restrictions Penny Road Commercial Property Olds Station, Port of Chelan County recorded on September 15, 2003, at Chelan County Auditor's File No. 2155162, and Second Amendment to Covenants, Conditions and Restrictions Penny Road Commercial Property Olds Station, Port of Chelan County recorded on January 3, 2005, at Chelan County Auditor's File No. 2190543 (altogether, the "Covenants").

The undersigned unanimously agree that Section 3.3 of the Covenants is hereby stricken and replaced in its entirety with the following:

3.3 Retail, health care and services, wellness, fitness, and athletic centers, veterinary care and services, hotels and motels, and food services, including fast food, prepared-food, take-out, drive-through and restaurant facilities, shall be permitted, except as provided below for Prohibited Uses, only if a variance is obtained from the Port.




In the event an application for a variance is sought by Steven and Tanya Tramp, an entity solely owned by Steven Tramp and/or Tanya Tramp, or an entity in which Steven Tramp and/or Tanya Tramp own a controlling interest, to place a hotel and/or a restaurant on the Property subject to the Covenants not owned by Penny Properties, LLC or Berry Investments, LLC, then Penny Properties, LLC and Berry Investments, LLC agree not to oppose or contest the granting of said variance.

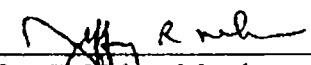
The undersigned, being all of the owners of the property described in the Covenants, hereby unanimously approve this Third Amendment, which shall run with the property described in the Covenants and be binding on the present and future owners of said property. The undersigned further ratify and affirm the Covenants as amended by this Third Amendment.

ADOPTED this 6th day of July, 2005.

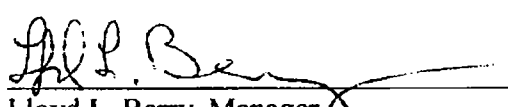
PORT OF CHELAN COUNTY

By: 
Mark Urdahl, Executive Director

PENNY PROPERTIES, LLC

By: 
Jeffery R. Deher, Member

BERRY INVESTMENTS COMPANY, LLC

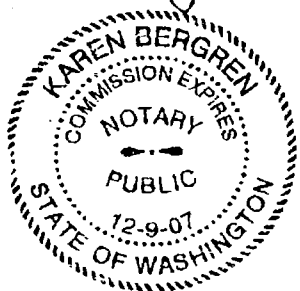
By: 
Lloyd L. Berry, Manager



STATE OF WASHINGTON)
)ss.
County of Chelan)

I certify that I know or have satisfactory evidence that Mark Urdahl is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as Executive Director of the Port of Chelan County to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: July 6, 2005



Karen Bergren
Karen Bergren (Printed name)
NOTARY PUBLIC, State of Washington
My appointment expires 12-9-07

STATE OF WASHINGTON)
)ss.
County of Chelan)

I certify that I know or have satisfactory evidence that Jeffery R. Neher is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as a member of PENNY PROPERTIES, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 3/16/05, 2005



Abigail A. Snyder
ABIGAIL A. SNYDER (Printed name)
NOTARY PUBLIC, State of Washington
My appointment expires 6-30-2008



2205719
Page: 4 of 4
09/02/2005 10:05A
Chelan Co, WA

STATE OF WASHINGTON)
California)ss.
County of ~~Chelan~~)
Riverside

I certify that I know or have satisfactory evidence that Lloyd L. Berry is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as a member of BERRY INVESTMENTS COMPANY, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: March 21, 2005

Elaine M. Eagle
Elaine M. Eagle (Printed name)
NOTARY PUBLIC, State of ~~Washington~~ *California*
My appointment expires 11-18-2007

