PORT OF SEATTLE/PORT OF TACOMA

ALLIANCE AGREEMENT

FMC AGREEMENT NO. 201228

A Marine Terminal Operator Agreement as defined in 46 C.F.R. 535.201(b)

Original Effective Date:

Expiration Date: None

FMC Agreement No.: 201228-003 Effective Date: Monday, September 18, 2023
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ARTICLE I: FULL NAME OF THE AGREEMENT

This Agreement is known as the Port of Seattle/Port of Tacoma Alliance Agreement ("Agreement").

ARTICLE II: BASIS FOR AGREEMENT

A. The Ports of Tacoma and Seattle ("Ports") are separate port districts governed by locally elected port commissioners. They are 30 miles apart on Puget Sound. There are over 75 different ports in Washington. Washington state law provides for local control of port facilities, and also allows each port to exercise any of its powers jointly with any other port by mutual agreement.

B. The Ports are the two largest ports in Washington state, with extensive investments in their marine facilities, and together are the third largest trade gateway in the United States. Each port handles container and other cargos. The Ports estimate that a significant segment of their import cargo is bound for destinations outside Puget Sound, principally the Midwest. This discretionary cargo is critical for the financial stability of the Ports and the private marine terminal operators who operate the terminals.

C. The leaders of the Ports believe that recent developments in the shipping industry threaten the future of the United States Pacific Northwest trade. These developments include:

    1. The Ports have faced increased competition from other expanding ports across North America, prompting them to explore opportunities for a creative collaboration.

    2. Losses in the Pacific trade over the past three years have led shipping lines to consolidate into alliances. Such alliances require ports to craft cooperative responses, where appropriate, to meet shipping lines' needs.

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3. Shipping lines are deploying larger container ships. The size of these ships could lead to fewer port calls, but also signals an opportunity for ports that have the capability to handle these vessels through deeper drafts, stronger aprons and berths, and adequate cranes.

4. The larger container ships entering the shipping trades require significant capital investment by ports and marine terminal operators in infrastructure. Ports must make targeted and strategic infrastructure investments to remain competitive.

D. The Ports, in recognizing these developments, entered into an earlier discussion agreement that became effective as FMC Agreement No. 201222) ("Discussion Agreement"). The purpose of the Discussion Agreement was to set forth a framework in which the Ports would explore the feasibility of entering into an alliance. In conjunction with the Discussion Agreement, the Ports entered into an interlocal agreement that described how the Ports would proceed to determine the feasibility of entering an alliance (that interlocal agreement is referred to as the "Framework ILA"). Following consideration of issues relating to the form, management, and content of an alliance between them, the Ports have now concluded their review under the Discussion Agreement and the Framework ILA and are prepared to move forward with this Agreement and form an alliance between the Ports.

E. The Ports will form the alliance pursuant to the following federal and state authorities: (1) this Alliance Agreement, (2) an interlocal agreement (attached as Exhibit A) with delegated powers exercised pursuant to the port joint powers statute (RCW 53.08.240) which expressly permits joint operation and investment outside of a port's district boundaries, (3) RCW 39.34.030, the state Interlocal Cooperation Act, and (4) Chapter 53.57 RCW, which authorizes the Ports to create a port development authority ("PDA") to operate certain marine facilities jointly, to be known as The Northwest Seaport Alliance ("Alliance").

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ARTICLE III: PURPOSE OF THE ALLIANCE AGREEMENT

A. The purpose of this Alliance Agreement ("Agreement") is to authorize its signatories to meet, discuss, collect and share information, and to coordinate and reach agreement and implement all actions under its authority, and the authority of other agreements approved by the Ports' Commissions in conjunction with creating and managing the Alliance. Alliance activities carried out pursuant to this Agreement shall include, but are not limited to, management, operation and use of the facilities designated as within the scope of the Alliance and this Agreement; joint marketing; planning; development and utilization of Alliance facilities; negotiating, setting and approving all terminal rates, charges, rules and regulations, and rates of return; and exploring all development and use options relating to those facilities that the Ports designate as falling within the scope of the Alliance and this Agreement.

B. The Alliance PDA shall be effective August 1, 2015 pursuant to RCW 39.34.030, the Interlocal Cooperation Act, RCW 53.08.240, which expressly permits joint operation and investment outside of a port's district boundaries and Chapter 53.57 RCW, which authorizes the Ports to create a PDA to operate certain marine facilities jointly as the Alliance, for a term commencing on August 1, 2015 continuing indefinitely until dissolution in accordance with the provisions of the PDA Charter, attached as Exhibit B, or as otherwise provided by law.

ARTICLE IV: PARTIES TO THE AGREEMENT

A. The parties to the Agreement are:

1. Port of Seattle
   2711 Alaskan Way
   Seattle, WA 98121

2. Port of Tacoma
   One Sitcum Plaza
   Tacoma, WA 98421

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B. Both Ports are municipal corporations of the state of Washington, each of which act by and through their respective Commissions.

C. The signatories to this Agreement may from time to time invite outside parties to attend Agreement meetings to consult with or otherwise provide input, information, or expertise on subjects within the Agreement's purposes. Such parties will not participate in the deliberations or any decision-making processes that may be allowed under this Agreement. The signatories to this Agreement may also meet in Executive Session (non-public meetings pursuant to certain exemptions defined in Washington State's Open Public Meetings law Chapter 42.56 RCW); such Executive Sessions are not considered FMC Agreement meetings held pursuant to this Agreement.

ARTICLE V: GEOGRAPHIC SCOPE OF THE AGREEMENT

This Agreement covers all geographic areas served by the Ports of Seattle and Tacoma.

ARTICLE VI: AGREEMENT AUTHORITY

The Ports are authorized to create the Alliance and to discuss, collect and share information and coordinate and reach agreement and implement the following actions:

A. Management, use and operation of the marine cargo business of the Ports by the Alliance at those facilities placed within the Alliance.

B. Exercise by the Alliance, acting through the PDA, of its authority to exercise the powers permitted to PDAs, subject to applicable federal and state laws.

C. Facility planning and development for those facilities that the Ports place within the PDA ("Licensed Properties"). The Ports may place or not place facilities within the PDA by agreement so long as they are within the geographical scope identified in Article V.

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D. Management, use and operation of the Licensed Properties.

E. Working with federal, state, and local governments and agencies and the private sector to enhance existing or developing regional, port-related transportation infrastructure.

F. Seeking legislation, regulations, and funding from local, state, and federal governments as to any matter within the scope of this Agreement.

G. Establishing and implementing policies to achieving financial returns for the Licensed Properties, based on all terminal rates, charges, and rules and regulations, whether imposed by tariff, marine terminal operator schedule, lease or other contract, or in any other manner.

H. Expenditures of funds for the purposes described in this Agreement.

I. Carrying out all other activities as set forth in the PDA Charter, it's supporting documents, future amendments, and any subsequent agreements between the Ports relating to the PDA.

ARTICLE VII: ADMINISTRATION AND DELEGATION OF AUTHORITY

A. Administration. The Ports will administer this Agreement through their duly authorized representatives. The Ports may carry out the activities authorized in this Agreement through meetings, telephone communications, video conferences, electronic mail or other communications means as the signatories choose.

B. Committees. The Ports may establish committees and subcommittees as they deem desirable to carry out the purposes of this Agreement. All such sub-groups under this Agreement will maintain minutes of their meetings and make those available to the Secretary under this Agreement.

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C. Outside Resources. The Ports may hire and retain consultants, subcontractors, or other third parties to carry out the purposes of this Agreement, subject to the Ports' respective agreement regarding costs in connection with such hiring.

D. Secretary. The Ports will select one or more secretaries to be responsible for all administrative tasks under this Agreement ("Secretary"). The Secretary will take minutes of all meetings held under this Agreement and a record of all discussions and actions taken within such meetings. The Secretary will file minutes of all meetings conducted under the Agreement and any materials provided to the Ports, committees, or subcommittees with the Commission and provide copies to each Port, provided that Executive Sessions defined herein at Article IV are not considered FMC Discussion Agreement meetings held pursuant to this Agreement.

ARTICLE VIII: DURATION, MODIFICATION, AND TERMINATION

A. Duration. This Agreement will become effective as of its effective date under the U.S. Shipping Act of 1984, as amended, including under 46 U.S.C. § 40304. This Agreement will have an indefinite term, and will continue in full force until terminated by action of the signatories or the Commission.

B. Modification. The signatories may amend this Agreement if both signatories agree in writing. The Secretary will file the amendments with the FMC and the amendments will be effective as specified under applicable federal law and regulation.

C. This Agreement and each amendment to or republication of this Agreement may be executed in one or more counterparts, and all of such counterparts shall constitute one Agreement, notwithstanding that all signatories have not signed the same counterpart.

IN WITNESS WHEREOF, the parties have executed this Alliance Agreement on the __day of June 2015.

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Dated this 1st day of February, 2016.

PORT OF SEATTLE

Thomas H. Tanaka
Senior Port Counsel
Port of Seattle
2711 Alaskan Way
Seattle, WA 98121

PORT OF TACOMA

Carolyn Lake by ES

Carolyn Lake
Port General Legal Counsel
Port of Tacoma
501 South G Street
Tacoma, WA 98405

discussion agreement amendment 2015-01-11

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EXHIBIT A
to Discussion Agreement Amendment

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INTERLOCAL AGREEMENT
BETWEEN THE PORTS OF SEATTLE AND TACOMA
CREATING A JOINT SEAPORT ALLIANCE

This Interlocal Agreement (the "**ILA**") is made this 4th day of August, 2015, by and between the Port of Seattle and the Port of Tacoma (each, a "**Port**" and together, the "**Ports**"), each a port district organized under the laws of the State of Washington (the "**State**"), under the authority of the Washington State Interlocal Cooperation Act, RCW 39.34 and the Port Joint Powers authority (RCW 53.08.240), and the authority of the Federal Maritime Commission ("**FMC**") in accordance with the provisions of the Federal Shipping Act of 1984 for the purpose of creating a Port of Seattle and Port of Tacoma joint marine cargo seaport alliance ("**Alliance**").

RECITALS

WHEREAS, the Port of Seattle (the "**POS**") and the Port of Tacoma (the "**POT**") are municipal corporations of the State, organized under provisions of the laws of the State, now codified at Title 53 RCW. POS owns and operates the marine facilities at the Seattle harbor, Seattle-Tacoma International Airport, and other properties. POT owns and operates the marine facilities at the Tacoma harbor and other properties; and

WHEREAS, the Ports are the two largest ports in the State and together represent the third largest container trade gateway in the United States, serve as the primary gateway for our state's export-based economy and support thousands of maritime-related jobs; and

WHEREAS, discretionary container cargo, principally bound for or from the Midwest, represents a significant segment of each Port's cargo volume, supports the financial success of each Port's seaport operations, and provides critical empty container capacity for Washington exporters; and

WHEREAS, the Ports understand significant changes in the shipping industry present challenges and opportunities for the future of the United States' Pacific Northwest trade, including:

1. Increased competition from expanding international gateways across North America, including other West Coast ports,

2. Shipping line consolidations and alliances leading to fewer port calls,

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3. The introduction of larger container ships and increased use of all water routes, leading to fewer port calls, and

4. Attracting and accommodating larger container ships will require substantial capital investment by the Ports; and

WHEREAS, these market developments present opportunities for expanded collaboration between the Ports to improve our region's capabilities to grow cargo volume and protect market share by:

1. Coordinating investment strategies to achieve terminal infrastructure needed to handle ultra-large container ships;

2. Improving terminal capacity utilization;

3. Adopting a sustainable financial business model that improves financial outcomes for the two public port authorities;

4. Jointly pursuing and executing a shared road and rail infrastructure strategy;

5. Enhancing the Ports' mission of responsible economic development through coordinated environmental stewardship;

6. Sharing advocacy on state and federal issues affecting marine cargo and related logistics issues; and

7. Improving infrastructure utilization and long-term financial stability by implementing a marine cargo gateway approach to mitigate the risks of changing markets and market uncertainty; and

WHEREAS, the continued competitiveness of the Puget Sound gateway and the resulting job growth would be enhanced by leveraging the strengths of each Port to reach shared goals for the region and the State in ways that either Port acting alone could not achieve; and

WHEREAS, State law allows the Ports to exercise any of their powers jointly by mutual agreement; and the Ports desire to come together to form, establish, and support a joint seaport alliance to carry out the unified management and operation of the marine cargo operations and functions of each Port; and

WHEREAS, this ILA reflects the actions of and approvals by the two Ports to create and implement a joint seaport alliance; and

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WHEREAS, the Ports will remain separate port districts governed by locally elected port commissioners; these joint actions discussed herein will not consolidate or merge the Ports; and

WHEREAS, the Ports are committed to shared core objectives of financially viable business models that support customer success, value the Port-labor partnership, protect and increase regional jobs, benefit the citizens of Pierce and King counties, promote the Pacific Northwest corridor's role in US trade strategies and the greater North American economy, and ensure the ability of the Ports to reinvest in terminal assets and infrastructure; and

WHEREAS, pursuant to Federal law 46 USC Title 46, Congress has granted authority for ports and marine terminal operators in certain circumstances and if approved by the FMC, to "discuss, fix or regulate rate or other conditions of service; or engage in exclusive, preferential, or cooperative working arrangements, to the extent that such agreements involve ocean transportation in the foreign commerce of the United States." 46 USC § 40301(b)(1-2); and

WHEREAS, the Ports are committed to working together based on trust and transparency, mutual respect for the goals and public input of the people of both Pierce and King counties, and a recognition the region is stronger when its leaders collaborate and leverage limited public resources; and

WHEREAS, the Ports are committed to serving the citizens of Pierce and King counties and the manufacturing and agricultural exporters throughout the State by supporting thousands of existing jobs, growing new jobs, securing new investments, and generating significant tax revenues to state and local governments; and

WHEREAS, the Ports believe the ability to achieve these guiding objectives is through the creation of a joint seaport alliance that prioritizes regional interests in decision-making, with a unified vision for regional success, to better fulfill their shared economic development mission as defined in State law; and

WHEREAS, the Alliance will promote regional economic development, which is a legislatively authorized port and municipal purpose; and

WHEREAS, the Ports find mutual benefit in the creation and implementation of the Alliance and in defining the operational scope, powers and roles of the Alliance and the two creating Ports; and

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WHEREAS, pursuant to the laws of Washington and expressly subject to the approval of and oversight by the FMC, the Ports elect to enter into this ILA for the purpose of approving of the creation, operation, funding and delegated powers of the Alliance.

NOW THEREFORE, in consideration of the premises contained in this ILA, the Ports agree as follows:

AGREEMENT

I. GENERAL

A. The Ports are port districts, organized under provisions of the laws of the State of Washington, and codified under Title 53 RCW.

B. The Ports pursuant to Federal law 46 USC Section 40301(b)(1-2), have filed a Discussion Agreement with the FMC for permission to jointly operate certain marine cargo facilities through an Alliance.

C. The Ports by this ILA form the alliance pursuant to the following federal and state authorities: (1) the FMC Discussion Agreement (2) an interlocal agreement with delegated powers exercised pursuant to the port joint powers statute (RCW 53.08.240), which expressly permits joint operation and investment outside of a port's district boundaries, (3) RCW 39.34.030, the state Interlocal Cooperation Act, and (4) WA Session Laws 2015-6, ESHB 1170 (Title 53.XX RCW), which authorizes the Ports to create a port development authority to use, operate and manage certain marine facilities jointly, to be known as The Northwest Seaport Alliance ("**Alliance PDA**").

II. ALLIANCE PDA

A. **Effective Date**. Commencing August 4, 2015 **("PDA Effective Date")**, and subject to (1) FMC approval which became effective July 23, 2015, and (2) each Port's approval of the Charter, the Alliance PDA will begin operations under the terms of the Alliance PDA's Charter attached hereto as **Exhibit A** ("**Charter**") for a term commencing on the PDA Effective Date and continuing indefinitely until dissolution thereof in accordance with the provisions of the Charter or as otherwise provided by law.

B. **Charter to be Adopted**. Immediately upon effectiveness of this ILA, each Port shall adopt by resolution the Charter.

C. **Managing Members.** The Port of Tacoma and the Port of Seattle, as

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members of the Alliance PDA (each, a "**Managing Member**" and collectively, "**Managing Members**") are the only governing members of the Alliance PDA. Each Managing Member shall act in such capacity through its own elected commission.

D. **Licensed Properties.** Effective as of August 4, 2015, the Ports as Managing Members shall license to the Alliance the operation, management, and use of certain properties of each Port as set forth in the Charter at Schedule 2 (**"**Licensed Properties"), and as depicted on the attached Schedule 2 maps of each Port's Licensed Properties.

III. ALLIANCE PDA STARTUP PERIOD; ASSIGNED PORT EMPLOYEES

A. **Startup Period.** The Alliance PDA "**Startup Period**" is defined as the term from August 4, 2015 through December 31 2015.

B. **Assigned Port Employees**. During the Startup Period, staff of the Ports identified as appropriate to be working full time (or near full time) on the Alliance PDA will be assigned by the port where they are employed or contracted as of August 4, 2015 to perform duties full time (or near full time) on behalf of the Alliance PDA ("**Assigned Port Employees**"). Service agreements between the Ports will be put in place for other staff support. Each Port will collect their respective costs associated with Alliance PDA activities in preparation for the Alliance PDA budget and accounting activities which will commence on January 1, 2016.

   a. Initially, approximately 30 to 40 people who are currently Port of Seattle and Port of Tacoma employees will be Assigned Port Employees, including all "customer facing" employees in the commercial and operations segments of the Alliance PDA business, plus management positions for all primary Alliance PDA functions.

   b. Beginning January 1, 2016, the Assigned Port Employees will begin to transition to Alliance PDA employment or formal assignment. Most transition processes are anticipated to be complete by the end of 2016, although some will be provided after a longer timeframe if needed to support a sound transition. It is expected that by the end of 2016, all Assigned Port Employees will be Alliance PDA employees. The Alliance PDA will implement a compensation package (salary and benefits) that is designed to attract, retain, reward and motivate the productivity and commitment of a highly qualified and diverse workforce.

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C. **Support Services.** Focused support will be provided to the Alliance PDA from the staff of each Port through specific service agreements. These include non-represented employees who will provide services to the Alliance PDA for engineering, construction management, permitting and environmental services, public affairs, accounting, financial analysis, human resources, information technology, public records management, legal, and similar. These also include represented employees (under collective bargaining agreements), who will provide services to the Alliance PDA for equipment and facilities maintenance, Port security/police, railroad operations, construction inspection, and similar. During the initial years of Alliance PDA operations, Alliance PDA employee functions and those functions provided through service agreements will be evaluated and adjusted as appropriate to best support the Alliance PDA business model. Following Alliance PDA organizational development, Alliance PDA staff could also provide support to the Ports if needed, using service agreements.

IV. ALLIANCE PDA STRATEGIC BUSINESS PLAN.

A. **Creation.** The commercial teams from the two Ports and the Managing Members shall together develop a Strategic Business Plan for the Alliance PDA, with a 10-year planning horizon. This Strategic Business Plan shall set forth a strategic vision for the Alliance for the period 2015-2025.

B. **Defining Principles.** The Strategic Business Plan shall define the principles for increased cargo volumes, job creation and financial performance. It shall define opportunities for development of strategic terminals with the ability to handle ultra-large container ships and increased throughput. It shall propose approaches for phased build-out of strategic terminals based on market drivers, opportunities to optimize existing facilities, and opportunities to use excess container terminal acreage for alternative cargos and to boost the Alliance PDA diversified cargo and maritime portfolio. The Strategic Business Plan shall enhance the Ports' mission of responsible economic development through coordinated environmental stewardship. The Strategic Business Plan additionally shall address the Alliance PDA's commitment to deliver best value to customers and stakeholders, through focus on operational excellence - ease of doing business, reliability, operational efficiency and cost of doing business.

C. **Framework for Decisions.** The Strategic Business Plan shall be used as a framework for individual future build-out decisions, which will be based on market demand, capital capacity, speed to market, and improved Alliance PDA financial results.

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D. **Periodic Reporting.** Periodic reporting and evaluation of key Alliance PDA metrics is essential to success. Beginning in the fourth quarter of 2014, the two Ports commenced reporting joint, combined cargo statistics. The Strategic Business Plan will be periodically evaluated relative to market and performance data, and updated accordingly.

V. ALLIANCE PDA FINANCIAL DECISION CRITERIA.

A. Based on recommendations from the CEO and financial teams from the two Ports, the Alliance PDA Managing Members shall together develop Alliance PDA Financial Decision Criteria, to include a standard approach to developing a net present value calculation for projects.

B. Based on recommendations from the CEO and financial teams from the two Ports, the Alliance PDA Managing Members shall establish standard financial modeling assumptions for use in evaluating Alliance projects.

VI. SHARED GOVERNANCE FLEXIBILITY AND TRANSPARENCY.

A. **Attendance at Executive Sessions.** To facilitate overall Alliance PDA coordination, all POT commission executive sessions and all POS commission executive sessions addressing Alliance PDA matters, will be open for attendance by any of the ten commissioners of either Port.

B. **Limitation.** No Alliance business will be discussed in executive session at either Port commission meeting unless jointly agreed to in advance by both Port commission presidents.

C. **Communication Protocols**. The Alliance PDA and the Ports' management teams will establish communication and work flow protocols to ensure information is shared with each Port and its commissioners in a consistent and timely manner. This activity is crucial to build trust and effectiveness that will support success.

VII. MISCELLANEOUS

A. **Third Party Beneficiaries**. This ILA does not create any rights, claims, or benefits inuring to any person that is not a party hereto, and it does not create or establish any third party beneficiary hereto.

B. **Binding Effect**. This ILA shall be binding upon and inure to the benefit of the

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Ports, and their legal representatives, successors, and permitted assigns.

C. **Severability**. If any provision of this ILA shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The Ports agree to use good faith efforts to replace such invalid or unenforceable provision of this ILA with a valid and enforceable provision that will achieve, to the extent possible, the purposes of such invalid or unenforceable provision. If the Ports cannot reach a mutually agreeable and enforceable replacement for such invalid, illegal, or unenforceable provision, the balance of the ILA shall be interpreted as if such provision were so excluded so as reasonably to effectuate the intent of the Ports.

D. **Notices**. Unless otherwise specified herein, all notices, consents, approvals, reports, designations, requests, waivers, elections, and other communications authorized or required to be given pursuant to this ILA shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by personal hand-delivery, by facsimile transmission, by electronic mail, by mailing the same in a sealed envelope, registered first-class mail, postage prepaid, return receipt requested, or by air courier guaranteeing overnight delivery, sent to the addresses on Schedule 3 of the Charter (as such may be updated by notice from time to time).

E. **Usage Generally; Interpretation**.

1. The captions and headings of this ILA are for convenience of reference only and shall not affect the interpretation of this ILA.

2. Any statute or law defined or referred to herein means such statute or law as from time to time amended, modified, or supplemented, including by succession of comparable successor statutes.

F. **Entire Agreement**. This ILA, together with the Charter, embodies the entire agreement of the parties and supersedes all prior agreements and understandings between the Ports with respect to the subject matter hereof.

G. **Counterparts**. This ILA may be executed in any number of counterparts, including by electronic transmission or facsimile, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

H. **Amendments**. The terms and provisions of this ILA may only be modified or amended at any time and from time to time by mutual agreement of the Ports.

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I. **Further Assurances**. Each Port shall execute and deliver any additional documents and instruments and perform any additional acts that the Ports determine to be necessary or appropriate to effectuate and perform the provisions of this ILA.

J. **Governing Law**. This ILA shall be governed and construed in accordance with the laws of the State of Washington, without regard to the conflicts of law principles thereof. Generally, in the event of a conflict, the following sources of authority shall prevail in descending order of supremacy: (i) Federal law and regulation, including those of the FMC; (ii) state law and regulation, including the Port Joint Powers statute RCW 53.08.240), the Port PDA Act (WA Session Laws 2015-6, ESHB 1170), and this ILA; (iii) the Charter; (iv) any policies of the Alliance.

K. **Waiver of Jury Trial**. Each of the parties to this ILA acknowledges and agrees that any controversy arising under this ILA is likely to involve complicated and difficult issues. As a result each party to this ILA irrevocably and unconditionally waives any right that such party may have to resort to the courts for a judicial remedy and to a trial by jury in respect to litigation arising out of this ILA or any of the transactions related hereto. Each party to this ILA understands and has considered the implications of this waiver and makes this waiver voluntarily.

L. **Costs, Fees and Expenses**. The Ports shall share on a prorata basis, consistent with the Membership Interest as defined in the Charter, any legal and other costs, fees and expenses incurred by such party in connection with the negotiation and preparation of this ILA and the transactions contemplated hereby.

M. **Waivers**. No waiver of any breach of any of the terms of this ILA shall be effective unless such waiver is made expressly in writing and executed and delivered by the party against whom such waiver is claimed. No waiver of any breach shall be deemed to be a further or continuing waiver of such breach or a waiver of any other or subsequent breach. Except as otherwise expressly provided herein, no failure on the part of any party to exercise, and no delay in exercising, any right, power, or remedy hereunder, or otherwise available in respect hereof at law or in equity, shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power, or remedy by such party preclude any other or further exercise thereof, or the exercise of any other right, power, or remedy.

N. **Ratification**. Acts taken in conformity with this ILA prior to its execution are hereby ratified and affirmed.

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O. **Document Execution and Filing.** The Ports agree that there shall be three (3) signed originals of this ILA procured and distributed for signature by the necessary officials of each Port. Upon execution by both Ports, each such signed original shall constitute an ILA binding upon both Ports. The executed originals of this ILA shall either recorded with the respective County Auditors or shall be posted on both Ports' web site as authorized by RCW.39.34.040.

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SIGNED BY:

PORT OF SEATTLE COMMISIONERS

PORT OF TACOMA COMMISSIONERS

Port of Seattle	**Port of Tacoma**
Commission Co-Chair Stephanie Bowman	Commission Chair Donald C. Johnson
Commission Co-Chair Courtney Gregoire	Commissioner Connie Bacon
Commissioner John Creighton	Commissioner Dick Marzano
Commissioner Tom Albro	Commissioner Don Meyer
Commissioner Bill Bryant	Commissioner Clare Petrich

Exhibit A – Charter

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EXHIBIT A
to Interlocal Agreement

Please see Exhibit B to Discussion Agreement Amendment for a complete version of PDA Charter

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EXHIBIT B
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THIRD AMENDED
THE NORTHWEST SEAPORT ALLIANCE CHARTER

This THIRD AMENDED CHARTER (the "**Charter**") of The Northwest Seaport Alliance, a Washington port development authority (the "**PDA**"), originally dated August 4, 2015 (the "**Effective Date**"), and as first amended on January 19, 2016 and as secondly amended on October 16, 2020, by and among the Port of Tacoma, a public port district operating under the laws of the state of Washington, and the Port of Seattle, a public port district operating under the laws of the state of Washington, as members of the PDA (each, a "**Managing Member**" and collectively, "**Managing Members**"), and, for purposes of Section 4.2, Section 5.5, Section 5.8, Section 11.15, Article VII, and Article IX, the PDA, is adopted this 4th day of January, 2023.

WHEREAS, pursuant to Federal law 46 USC Section 40301(b)(1-2), the United States Congress has granted authority for ports and marine terminal operators in certain circumstances and if approved by the Federal Maritime Commission, to "discuss, fix or regulate rate or other conditions of service; or engage in exclusive, preferential, or cooperative working arrangements, to the extent that such agreements involve ocean transportation in the foreign commerce of the United States";

WHEREAS, under Washington State law, including Chapter 53.08 RCW, which allows ports to exercise any of their powers jointly by mutual agreement and allows the Managing Members to form a port development authority and including the Interlocal Cooperation Act, which allows ports to act jointly (including the formation of a separate legal entity for such joint cooperative action), the Managing Members desire to come together to form, establish, and support this PDA to carry out the unified management and operation of the Marine Cargo operations of each Managing Member; and

WHEREAS, the Managing Members individually will remain separate port districts governed by locally elected port commissioners; the creation of this PDA will not consolidate or merge the Managing Members and nothing in this Charter changes the governance of each Managing Member; and neither the creation of this PDA nor anything in this Charter relieves either Managing Member of any obligation or responsibility imposed upon it by law or bond covenant.

NOW, THEREFORE, in consideration of the mutual premises and covenants contained herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

ARTICLE I
DEFINITIONS

1.1 Listed Definitions. Capitalized terms used but not otherwise defined in the Charter have the following meanings:

(a) "**Affiliate**" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person. For these purposes, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract, or otherwise.

(b) "**Calculation Period**" means a period of time approved by the CEO that is no longer than a fiscal quarter.

(c) "**Cash**" means cash or financial investments/securities as allowed by Washington State.

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(d) "**Covered Person**" means (i) each Managing Member, (ii) each officer, director, commissioner, member, Affiliate, agent, or representative of each Managing Member, and each of their Affiliates, and (iii) each CEO, officer, agent, or representative of the PDA.

(e) "**Damages**" means, collectively, any losses, claims, damages, judgments, fines, or liabilities, including reasonable legal fees or other expenses incurred in investigating or defending against such losses, claims, damages, judgments, fines, or liabilities, and any amounts expended in settlement of any claims.

(f) "**Delegation of Authority Master Policy**" means the Delegation of Authority Master Policy as may be amended by the Managing Members from time to time.

(g) "**Dispute**" means a material difference of opinion between the Managing Members that cannot be resolved via the consent of each Managing Member and that requires the consent of each Managing Member, and is limited to (i) those matters where a Managing Member believes in good faith that the other Managing Member is in material breach of any of its obligations under any agreement in connection with the PDA and that such breach is likely to cause immediate and irreparable harm to such Managing Member or the PDA, (ii) matters of interpretation of this Charter or other written Agreements between the PDA and one or both Homeports, (iii) distribution matters upon dissolution pursuant to Section 10.3, or (iv) such other matters as may be agreed to by both Managing Members.

(h) "**Distributable Cash**" means (1) an amount equivalent to cash flow provided from operations and non-operating lease interest income less non-operating lease interest expense per GASB 87 as calculated pursuant to GAAP for a Calculation Period, plus (2) grant income received in arrears for a Calculation Period and may also include (3) interest earned in the prior year for which the PDA Treasurer is authorized, at the Treasurer's discretion, to distribute once annually.

(i) "**Five Year Capital Investment Plan**" means a plan of capitalized and expensed projects that the PDA plans to complete in the following five years.

(j) "**GAAP**" means United States generally accepted accounting principles.

(k) "**Homeport**" means either the Port of Seattle or the Port of Tacoma, as applicable, acting in its capacity as such (rather than in its capacity as a Managing Member).

(l) "**Interlocal Cooperation Act**" means RCW 39.34, as amended.

(m) "**Joint Powers**" means RCW 53.08.240, the Port Joint Powers Authority.

(n) "**Legacy Contamination**" means contamination on Licensed Properties that occurred before the Effective Date.

(o) "**Marine Cargo**" means waterborne goods other than grain, liquified natural gas, or methanol.

(p) "**Membership Equity**" means the equity of the respective Managing Members as shown on the PDA's financial statements.

(q) "**Net Income**" and "**Losses**" means, for each Fiscal Year or other period, an amount equal to the PDA's net operating income or losses less depreciation plus non-operating income or losses, including extraordinary and special items for such Fiscal Year or other period, determined in accordance with GAAP

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(r) "**Other Cash**" means any Cash other than Distributable Cash not in a dedicated reserve.

(s) "**Person**" means an individual, corporation, association, limited liability company, limited liability partnership, partnership, estate, trust, joint venture, unincorporated organization or other entity or a government or any agency or political subdivision thereof.

(t) "**Port Development Authority Act**" means Chapter 53. 57 RCW, WA Session Laws of 2015-6, as amended.

(u) "**RCW**" means Revised Code of Washington.

(v) "**Special Covered Person**" means any past or present officer or employee of the PDA.

(w) "**Transfer**" means, with respect to any Membership Interests, a direct or indirect transfer, sale, exchange, assignment, pledge, hypothecation, or other encumbrance or other disposition of such Membership Interests, including the grant of an option or other right, whether directly or indirectly, whether voluntarily, involuntarily, or by operation of law.

1.2 Other Definitions. The remaining capitalized terms used in the Charter but not defined in Section 1.1 are defined in this Charter on the following pages:

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ARTICLE II
ORGANIZATIONAL MATTERS

2.1 PDA Name. The name under which the PDA shall conduct its business is "The Northwest Seaport Alliance." The business of the PDA may be conducted under any other name permitted by applicable law as the Managing Members may determine from time to time.

2.2 Business Purpose.

(a) The PDA's purpose is to promote and assist economic development of the Managing Members' Marine Cargo operations with an emphasis on unified business retention and recruitment, coordinated enhancement of the value of Marine Cargo properties, improved intermodal rail service, improved freight capabilities, and the general promotion of maritime economic development and other related Port business activity.

(b) During the term of this Charter and subject to the provisions of Section 2.2(e), the PDA will be the manager and operator of the Marine Cargo business of both Managing Members, and will manage and operate such other supporting business properties as may be licensed to the PDA by the Managing Members from time to time, along with any Post-Formation Improvements in accordance with this Charter. The PDA will oversee such operations, capital investments, and investments with unified management as described in this Charter to (i) optimize the value of Marine Cargo properties; (ii) grow cargo volumes and protect market share for the benefit of the region and state; (iii) manage overall terminal capacity, through coordinated investment strategies; (iv) provide enhanced job prospects for the Managing Members' labor and business partners, and (v) achieve overall financial returns that will not only enable reinvestment but also ultimately provide additional, unencumbered financial returns for each Managing Member.

(c) The Managing Members are committed to shared core objectives of financially viable business models that support customer success, value the port-labor partnership, protect and increase regional jobs, benefit the citizens of Pierce and King counties, promote the Pacific Northwest corridor's role in US trade strategies and the greater North American economy, and ensure the ability of each Managing Member to reinvest in terminal assets and infrastructure.

(d) It is the commitment of each Managing Member that the Managing Members will act to further the purposes set forth in the foregoing provisions of this Section 2.2 in good faith and fair dealing pursuant to the terms of this Charter.

(e) The Managing Members affirm and shall adhere to the following allocation of Marine Cargo activities between the PDA and Homeports:

(i) Marine Cargo activities for the Licensed Properties, which are operated, managed, and used by PDA, are exclusive to PDA.

(ii) Homeports may continue Marine Cargo activities for existing Homeport businesses, the operation, management, and use of which are not licensed to the PDA.

(iii) For any Marine Cargo opportunities, the PDA has the right of first refusal to handle such business. If the PDA refuses by action or inaction to handle any Marine Cargo opportunity ("**Declined Cargo**"), one of the Homeports may handle the Declined Cargo under any of the following conditions:

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(A) the PDA decides, by vote, to refer such opportunity to one of the Homeports;

(B) the PDA refuses (by vote) to handle the Declined Cargo and one of the Homeports thereafter provides written notice to the PDA within 10 business days after such vote of its intention to handle the Declined Cargo; or

(C) the PDA fails to take action within 45 days (which period may be extended by vote of the Managing Members) after the CEO has notified the Managing Members of the Marine Cargo opportunity, in which case the Homeport that wishes to handle the Declined Cargo may do so after it has sent written notice to the PDA at any time after such 45 day period or any extensions have expired.

2.3 Formation. The Managing Members have formed the PDA as of the Effective Date. The Managing Members shall license the operation, management, and use of the Licensed Properties as set forth in **Schedule 2** effective as of January 1, 2016. The Managing Members shall make the capital contributions required under Section 3.7 effective as of January 1, 2016. During the period beginning the Effective Date through December 31, 2015, the Homeports shall continue to receive all revenues and pay all expenses related to the operations, management, and use of the Licensed Properties.

2.4 Authority; Power. The PDA shall have the power and authority to engage in such activities and to exercise such powers permitted to port development authorities, including authority to perform any lawful public purpose or public function related to maritime activities of the Homeports that created this PDA, under the laws of the State of Washington, and all subject to the limitations provided in the Port Development Authority Act, provided however, the PDA shall not have authority to issue debt or to own real property.

2.5 Limitation of Liability. The obligations and liabilities of the PDA, whether arising in contract, tort, or otherwise, shall be solely the obligations and liabilities of the PDA, and the Managing Members shall have no obligation whatsoever for any such obligation or liability of the PDA solely by reason of being a Managing Member. The failure of the PDA to observe any formalities or requirements relating to the exercise of its power or management of its business or affairs under the Port Development Authority Act or this Charter shall not be grounds for imposing liability on the Managing Members for any obligations, or liabilities of the PDA.

2.6 Ownership.

(a) Formation. The Managing Members (a) have caused the PDA to be formed as a port development authority under the Interlocal Cooperation Act, the Joint Powers, and the Port Development Authority Act by resolution, and the Managing Members shall cause the CEO of the PDA to execute, file, and record (or direct the execution, filing, and recording of) all certificates and documents as may be appropriate to comply with all requirements for the continuation and operation of a port development authority, the ownership of personal property, and the conduct of business by the PDA under the laws of the State of Washington and any other jurisdiction in which the PDA may own personal property or conduct business; and (b) hereby confirm and agree to their status as Managing Members. Nothing in this Charter and no actions taken by the parties under this Charter shall constitute a partnership between any of the parties for any purpose. For the purposes of RCW 25.05.055, the PDA is formed under the Interlocal Cooperation Act, Joint Powers, and the Port Development Authority Act.

(b) Managing Members. The Managing Members identified in the preamble are the only members of the PDA. Based on the valuations described in Section 3.1 of the Licensed Properties (as set forth in **Schedule 2**), the Managing Members have pro rata percentage interests in the PDA (the

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ownership and respective percentage interest, a "**Membership Interest**") and thus shall share Net Income or Losses pro rata based on each Managing Member's respective percentage Membership Interest, unless and until agreed otherwise by both Managing Members pursuant to Section 3.1. No other Person may become a member of the PDA. Except as otherwise expressly provided in this Charter, the PDA shall not issue or redeem any Membership Interest without the prior written consent of each Managing Member. The Managing Members shall not have any interest in the PDA other than the Membership Interests, which have only the rights provided in this Charter. Nothing in this Section 2.6 precludes a Managing Member from having contractual arrangements with the PDA, subject to the other provisions of this Charter. Other than as provided in Section 10.1, with respect to dissolution and liquidation, Membership Interests shall not entitle a Managing Member to any title in or to the whole or any part of the property of the PDA or right to call for a partition or division of the same.

(c) Limitations on Transfer. No Managing Member may Transfer any Membership Interests. Any purported Transfer of Membership Interests not in accordance with this Charter shall be null and void, and the PDA shall refuse to recognize any such Transfer for any purpose and shall not reflect in its records any change in record ownership of Membership Interests pursuant to any such Transfer.

(d) Separate Existence. The PDA shall do all things necessary to maintain its port development authority existence separate and apart from each Managing Member and any Affiliate of any Managing Member, including maintaining its books and records on a current basis separate from that of the Managing Members, any Affiliate of the PDA, or any other Person, and shall segregate the PDA's assets from that of the Managing Members, any Affiliate of the PDA, or any other Person.

(e) Offices. The PDA shall have such locations as the Managing Members may deem appropriate. The Managing Members acknowledge that PDA staff will be based in locations in both King and Pierce Counties, and may have staff and locations outside the United States, whether on a transitional basis or for ongoing operational needs. The Managing Members shall authorize, and the CEO shall execute, deliver, and file, any certificates (and any amendments and/or restatements thereof) necessary for the PDA to qualify to do business in any jurisdiction in which the PDA may wish to conduct business. The Managing Members shall authorize, and the CEO shall cause, the PDA to be qualified, formed, or registered in any jurisdiction in which the PDA transacts business in which such qualification, formation, or registration is required or desirable.

2.7 Term. The PDA commenced on the Effective Date and shall continue indefinitely until dissolution thereof in accordance with the provisions of this Charter or as otherwise provided by law.

ARTICLE III
MEMBERSHIP INTERESTS, BUDGETING, WORKING CAPITAL, CASH USE AND RESERVES, AND CAPITAL CONSTRUCTION

3.1 Valuation of Membership Interests.

(a) Each Managing Member will license to the PDA only the operation, use, and management of certain real and personal property of such Managing Member, and not ownership of such property (the property for which such operation, use, and management have been so licensed, the "**Licensed Properties**"). Such license of operation, use, and management of the Licensed Properties is needed to carry out the purpose of the PDA, and the Licensed Properties include the real and personal property, leases, terminals, and infrastructure listed in **Schedule 2**. The PDA will not take ownership of the Licensed Properties. Ownership of the Licensed Properties will continue to be separately held by the applicable Managing Member, including the respective responsibility for deb

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and debt service, subject to the allocation of environmental costs as provided in Section 3.2 below. In order for the PDA to carry out the purposes of the PDA set forth in Section 2.2, the Managing Members agree and acknowledge that the PDA may enter into one or more agreements with each Managing Member for the PDA's exclusive management, operation, and use of the Licensed Properties (such agreements, the "**Licensed Property Agreements**").

(b) For purposes of determining the Managing Members' respective Membership Interests, the Managing Members acknowledge and agree on the valuations of the use of the Licensed Properties set forth in **Schedule 2**, which valuations are based on a ten year net present value of each such Licensed Properties' estimated cash flows and enterprise value, including "maintenance and repair" capital and updated operation, maintenance, and administrative costs provided by each Managing Member.

(c) Such Membership Interest valuations shall remain in effect until the earlier of termination or dissolution of the PDA, except as described in Sections 3.1(c)(i) and 3.1(c)(ii) below.

(i) One-time Membership Interest Affirmation. The CEO shall review the valuation as of December 31, 2017 of the Licensed Properties used to calculate the initial Membership Interests to confirm if there has been a material change to such value (such review, the "**Membership Interest Affirmation**"). This one-time Membership Interest Affirmation shall be limited to those Licensed Properties where the Marine Cargo terminal revenues were not secured by contractual agreements throughout the time period covered by the Initial Membership Interest valuation. On March 20, 2018, the Managing Members approved an extension of the one-time Membership Interest Affirmation from the original date of March 31, 2018 to occur in 2019. The Managing Members completed the one-time Membership Interest Affirmation, affirming Membership Interests equal fifty percent for each Homeport by action taken at a public meeting on April 2, 2019. No material change occurred as a result. If a material change should ever occur, the applicable Membership Interest shall be adjusted by the difference between the initial valuation of that Licensed Property and the recalculated net present value of that same Licensed Property, each over the same initial ten year initial cash flow valuation period, such net present value to be calculated consistently using the methodology used to calculate the Initial Membership Interest under Section 3.1(b) above. Upon recommendation by the CEO, the Managing Members shall approve any change in Membership Interest by vote, to include provision for addressing any change to Distributions and allocations as a result of the change in Membership Interest.

(ii) Addition or Removal of any Property Licensed to the PDA. From time to time, upon recommendation of the CEO, the Managing Members may approve by vote to add or remove Licensed Properties from the PDA, specifying the effective date of such addition or removal. Revenues of each Licensed Property so removed or so added as a Licensed Property may be valued consistently using the methodology used to calculate the initial Membership Interest, and the Membership Interests shall be adjusted accordingly.

3.2 Allocation of Environmental Costs. Environmental costs shall be allocated by and between the Homeports and the PDA as follows:

(a) General Intent. Environmental investigation, remediation, and mitigation costs associated with Licensed Properties and PDA business activities shall be allocated between the PDA and Homeports as described herein. Investigation and remediation costs associated with contamination on Licensed Properties that occurred before the Effective Date ("**Legacy Contamination")** shall remain the responsibility of the Homeport in which the Licensed Property is located, as described below. Notwithstanding this Section 3.2, all such cost allocations may be revised on a project-specific basis by vote of the Managing Members.

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(b) Remediation of Legacy Contamination. Costs of investigation and remediation of Legacy Contamination shall be the responsibility of the Homeport that owns such Licensed Property. If Legacy Contamination is discovered during planning or construction of a PDA project on a Licensed Property, any legally required investigation or cleanup of such Legacy Contamination shall be the responsibility of the Homeport. Where soil or other materials are disturbed or removed as part of a PDA project, the PDA shall be responsible for all associated costs, except that the Homeport shall be responsible for the incremental cost of disposal (i.e., the additional cost to dispose of contaminated materials above the cost to dispose of clean materials).

(c) Maintenance and Cleanup Dredging. Costs of routine maintenance dredging (dredging required due to sediment deposition) required for PDA operation of Licensed Properties, including disposal costs of dredged sediments that include Legacy Contamination, shall be the responsibility of the PDA, except that the Homeport which owns the Licensed Property shall be responsible for the incremental cost of disposal of Legacy Contamination in dredged sediments (i.e., the additional cost to dispose of contaminated materials above the cost to dispose of clean materials). Costs of dredging required by a U.S. Environmental Protection Agency or Washington Department of Ecology order for cleanup of Legacy Contamination shall be the responsibility of the Homeport that owns such Licensed Property,

(d) Environmental Monitoring for Past Environmental Cleanup Operations. Environmental monitoring of a Licensed Property required after any environmental clean-up operation conducted by a Homeport as to any of its Licensed Properties shall be the responsibility of such Homeport.

(e) Environmental Remediation Associated with Homeport Real Property Acquisition for PDA Development. If a Homeport acquires real property for PDA business, and that real property has or is later found to have contamination requiring a cleanup under federal or state law, then environmental investigation and remediation associated with that real property shall be the responsibility of the PDA.

(f) Habitat, Access and Mitigation Cost Allocation.

(i) Post-Formation Habitat, Wetlands and Public Access Mitigation. The Homeports expect to develop advanced and/or mitigation banking credits that could be potentially sold or used by the respective Homeport(s) and/or sold to the PDA depending on where the development activity impacts occur. These advance/bank mitigation projects will be managed and paid for by the Homeports in which the advance/bank mitigation projects are located.

(ii) Existing Habitat, Wetlands and Public Access Mitigation Sites. To the extent feasible, ongoing operations and maintenance costs to maintain existing habitat and public access mitigation sites which were created to support a Licensed Property shall be the responsibility of the PDA, including replacement of existing habitat, wetlands, and/or public access mitigation sites required as a result of PDA redevelopment/expansion needs.

(iii) Future Mitigation Sites. As each Homeport creates advanced/bank habitat mitigation sites, each will develop a market rate price per square foot, or per credit associated with the total cost-of-ownership, which will include land value, design, permitting, construction, monitoring, adaptive management and long-term maintenance costs. Each Homeport may offer the PDA the option to purchase advanced/bank habitat mitigation credits at a market rate or as otherwise agreed to, from such Homeport as needed to mitigate PDA development as these credits are available.

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(iv) PDA Project Mitigation. In all cases, where a PDA Project development triggers a requirement for mitigation, then all costs associated with that mitigation shall be the responsibility of the PDA.

3.3 Post-Formation Improvements. The Managing Members may by vote authorize and instruct the PDA to acquire or construct improvements to terminals, other improvements and infrastructure such as cranes and other fixtures on Licensed Properties as necessary to support PDA operations ("**Post-Formation Improvements**"), which Post-Formation Improvements shall be owned by the PDA. The PDA shall have exclusive control to determine the nature and manner of the use of any Post-Formation Improvement as well as the responsibility for its maintenance.

3.4 PDA-Owned Personal Property. The Managing Members may by affirmative vote authorize and instruct the PDA to, or the CEO may, subject to the Delegation of Authority Master Policy, acquire personal property necessary or useful to support PDA operations ("**PDA-Owned Personal Property**").

3.5 Annual Budget. The Managing Members shall cause the CEO and other PDA management to prepare an annual operating budget in coordination with the Homeports' budget processes and timing requirements as required by law, and PDA policies for consideration and approval by the Managing Members.

3.6 Five Year Capital Investment Plan. The Managing Members shall cause the CEO and other PDA management to annually prepare a Five Year Capital Investment Plan for Licensed Properties for approval by the Managing Members. Such approval by the Managing Members denotes conceptual agreement to the Five Year Capital Investment Plan only; any material capital expenditures shall be subject to Section 3.11.

3.7 Working Capital. Effective as of January 1, 2016, the Managing Members shall make initial cash capital contributions to the PDA as set forth on **Schedule 1** (collectively, "**Working Capital**"). The purpose of Working Capital is to provide the PDA with money required for operations and liquidity. The initial contributions of each Managing Member to Working Capital shall be the aggregate estimated amount of the working capital as established by the Managing Members, which each Managing Member shall contribute based on the percentage of each Managing Members' respective Membership Interest. PDA operating cash flow (cash revenue less cash expenses) shall be a component of Working Capital and be distributed on a periodic basis not less than quarterly to each Managing Member as more particularly described in Article IV. Other than for providing short term liquidity less than sixty (60) days, pending reimbursement per Section 3.12, Working Capital shall not be diverted for capital projects to Capital Construction.

3.8 Working Capital Reserve Policy. The Managing Members shall develop a reserve policy establishing a minimum target fund level for Working Capital. The CEO is directed to notify the Managing Members if Working Capital drops below such targeted minimum level for more than 60 days and shall seek Managing Members' approval by vote to replenish Working Capital accordingly. The Reserve is allowed to drop below the targeted minimum level only to provide the liquidity associated with pending reimbursements to the Homeports per Section 3.7 and 3.12. The Managing Members may consider other requests for additional contributions to the PDA, the affirmative approval of which will require a vote by each Managing Member.

3.9 No Additional Contributions Without Managing Member Vote. Beyond the initial contribution to Working Capital and the initial contribution for Capital Construction as provided in Sections 3.7 and 3.12, no Managing Member shall be required to make any additional contributions to the PDA without the vote of each Managing Member, which vote may be taken as part of a Capital

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Construction project approval or vote to fund Capital Construction. Provided however, any projects approved by the CEO in accordance with the Managing Member-approved Delegation of Authority Master Policy shall be funded by the Homeports without need for additional Managing Member approval or vote, subject to the requirement that the total expected capital spending will not exceed the capitalized project amount in the first year of the Five Year Capital Investment Plan, (as adjusted by projects subsequently approved by the Managing Members during the budget year). If any such additional contribution is so approved but is not made by a Managing Member, such failure to make such contribution is acknowledged to be a material breach under clause (i) of the definition of "Dispute." In addition, without a vote of the Managing Members, no Managing Member shall be permitted to make any additional contributions to the PDA.

3.10 Additional Reserves. Appropriate additional reserves may be determined and charged to the Managing Members for contingent liabilities, if any, and as agreed to by the Managing Members as of the date any such contingent liability becomes known to the PDA management or either Managing Member, and such other reserves determined and agreed to by the Managing Members; provided, however, that any such reserves shall be charged to the Managing Members pro rata based on their respective Membership Interests.

3.11 Capital Expenditures. The CEO shall make recommendations to the Managing Members regarding any capital expenditures by the PDA but shall not carry out or commit to any such capital expenditures unless and until such expenditure has been authorized pursuant to the Delegation of Authority Master Policy.

3.12 Capital Construction. Separate from Working Capital, the PDA shall provide for the funding of capital expenditures ("**Capital Construction**") to be funded by a pro rata initial contribution from each Managing Member based on their respective Membership Interests. Managing Members may approve by vote contributions to Capital Construction in amounts other than based on each Managing Members' pro rata respective Membership Interests on a project-specific basis. Requests for funding Capital Construction shall be based either on the CEO's periodic projection of PDA capital project cash flow needs or based on project authorizations to the CEO in accordance with the Managing Members' Delegation of Authority Master Policy Resolution. Managing Members may consider requests for additional contributions to the PDA, the affirmative approval of which will require a vote by each Managing Member. Capital Construction shall be funded by each Managing Member separately and not from Working Capital except to provide short term liquidity per Section 3.7. Distributions of Capital Construction funds will be made expressly subject to either (1) Managing Member approval of capital projects or (2) CEO approval of capital expenditure, where such expenditure is within the levels set in the Delegation of Authority Master Policy.

3.13 No Interest on Contributions. Physical assets and monetary contributions to the PDA will not be treated as loans to the PDA and therefore the Homeports shall not be paid interest on the contributions. Revenue and earnings from assets and contributions managed by the PDA will be distributed as specified in this Charter.

3.14 Contributed Capital. Separate from Working Capital and Capital Construction, Contributed Capital is additional cash or property, but not including real property, paid by one or both of the homeport(s) to the PDA and may be paid in amounts other than based on each Managing Member's pro rata respective Member Interests (**"Contributed Capital**"). Contributed Capital may only occur after

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a vote of each Managing Member, and may be authorized subject to conditions, if any, specified in the authorization. Contributed Capital does not impact or change either homeport's Membership Interest.

3.15 Funding of Agreements with Tribes.

(a) Subject to the delegation of authority provisions herein and unless otherwise approved by the Managing Members, agreements with federally recognized tribes shall be funded as follows:

(i) Agreements necessary to gain approval for PDA projects (i.e. "**Project Agreements**") shall be fully funded by the PDA. The PDA will have primary responsibility for negotiations with the tribe(s) for such agreements but will coordinate with the Homeport(s).

(ii) Agreements necessary to gain approval for vessel traffic and operations associated with PDA Licensed Properties (i.e. "**Operational Agreements**") shall be jointly and equally funded by the PDA and Homeport(s) and the PDA and Homeport(s) will share responsibility for negotiations with the tribe(s).

(b) Alternatively, the Managing Members may agree on a different cost-share approach for Operational Agreements in the event of special, unforeseen or unexpected circumstances.

(c) For any jointly funded agreements, the Homeport(s) will have primary responsibility for negotiations with the tribes, but will coordinate closely with the PDA. Both the PDA and applicable Homeport(s) shall be a signatory party to any jointly funded tribal agreements.

ARTICLE IV
CASH DISTRIBUTIONS, RESERVES, AND MEMBER BOND OBLIGATIONS

4.1 Distributions.

(a) The PDA through the CEO will make distributions of all Distributable Cash to the Managing Members as soon as practicable after each Calculation Period. Prior to executing any distribution, the CEO shall provide a report of the planned distribution to the Managing Members.

(b) Distributions to the Managing Members of Distributable Cash shall be distributed pro rata to the Managing Members based on their respective Membership Interests.

(c) Distributions of Other Cash may be distributed as approved by the Managing Members. Distribution of Other Cash may be other than pro rata as approved by the Managing Members. If the distribution is not consistent with the pro rata Membership Interests, the distribution will be recalculated at the next re-set date.

(d) Notwithstanding any provision to the contrary contained in this Charter, the PDA shall not make a distribution to any Managing Member if such distribution would violate applicable law.

(e) Cash set aside as Working Capital Reserves and Additional Reserves (including lease security deposits) is not subject to distribution to the Managing Members under Section IV.4.1(a).

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4.2 Member Bond Obligations.

(a) Managing Member Bond Obligations. The PDA acknowledges the Managing Members' debt obligations and their obligations to cause their assets and facilities to be managed in a manner that will permit them to meet their rate and operating covenants. The Managing Members instruct the CEO to manage the PDA in a prudent and reasonable manner in support of the Managing Members' respective bond covenants. The Managing Members shall keep the CEO and PDA management informed of their respective bond obligations and shall notify the other Managing Member of any proposed change to such Managing Member's Master Bond Resolutions as soon as practicable before adoption. Nothing in this section shall alter the respective share of distributions or revenues of each Managing Member based on their respective Membership Interest. Nothing in this Charter modifies or alters the obligations of each Managing Member with respect to its own bond obligations. The PDA does not assume any obligations to the Managing Members' bond holders.

(b) Bond Income Calculation. Managing Members shall establish and maintain a requirement for the PDA to calculate and establish a minimum level of net income available to pay revenue bond debt service for each Managing Member from the PDA equal to the amount currently required for the Homeports to meet their current bond rate covenants for bond issues outstanding at the time of the formation of the PDA. ("**Bond Income Calculation**"). In the case of the Port of Seattle, the Bond Income Calculations excludes bonds issued to fund Airport Facilities. The Managing Members shall require the Bond Income Calculation to be reviewed annually as part of the PDA budget process and the Managing Members may adjust the Bond Income Calculation so long as it does not cause any Managing Member to fail to comply with its rate covenant. The PDA may not take any action that reasonably would reduce PDA income below the minimum level established by the Bond Income Calculation unless each Homeport separately votes to approve that action. Such a vote by each Homeport must occur even if the action is within the CEO's authority under the Delegation of Authority Master Policy.

(c) Rate Coverage Management. If net income available to pay revenue bond debt service for each Managing Member of the PDA is not sufficient for either Homeport to be in compliance with a rate covenant (as currently described in each Homeport's Master Bond Resolutions in effect as of the Effective Date), then:

(i) Upon that Homeport's request, the PDA shall hire an independent third-party consultant to perform analysis and make recommendations for actions needed to achieve bond covenant compliance.

(ii) If the consultant recommends an action that the PDA is unwilling, unable or refuses to undertake, either Managing Member can require dissolution of the PDA following the dispute resolution process even if within the Initial Period.

(iii) The PDA shall have at least four months to respond, act and or dissolve following its receipt of the consultant's recommended action, unless a shorter time is required by the applicable bond covenants.

(d) Pledge for Security Purposes. Each Managing Member's respective share of revenues received by the PDA with respect to the Licensed Properties may be pledged for security purposes in connection with the respective bond obligations of each of the Managing Members. The PDA shall cooperate with each Managing Member in connection with their respective bond obligations

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(e) No Adverse Effect on Managing Member Bonds. Any actions proposed to be taken by the PDA that have a material and adverse effect on either Managing Member's ability to meet its bond obligations or regulatory compliance must be approved pursuant to this Section 4.2.

(f) No PDA Debt Issuance. The PDA will not issue bonds or enter into any other debt instruments or borrow funds from any other entity, including Homeports.

(g) Management of Bond Proceeds. If a Homeport provides a capital contribution from proceeds of tax-exempt bonds, the Homeport may manage or cause the PDA to manage the proceeds in a manner that provides for compliance with applicable regulations.

ARTICLE V
ACCOUNTING; TAX MATTERS; PDA OPERATIONS

5.1 No Condemnation Authority or Taxing Authority. As provided in RCW 53.57. 030(4), the PDA shall have no authority of eminent domain and no authority to levy taxes or special assessments.

5.2 Oversight; Accounting Principles; Accounting Period.

(a) Managing Member Oversight. The Managing Members through the CEO shall oversee the accounting, tax, and record keeping matters of the PDA, which shall be kept in compliance with GAAP and applicable laws and regulations.

(b) Fiscal Year. Unless otherwise determined by the Managing Members, the fiscal year of the PDA (the "**Fiscal Year**") shall conclude on December 31st of each calendar year. The taxable year of the PDA for any applicable state and local tax purposes shall be the same as the PDA's Fiscal Year unless a different taxable year is required by law.

5.3 Allocation of Net Income or Losses. For each Fiscal Year, Net Income or Losses, or items thereof, shall be allocated among the Managing Members pro rata to the Managing Members based on their respective Membership Interests.

5.4 Other Allocation Rules. For purposes of determining the Net Income, Losses, or any other items allocable to any period, Net Income, Losses, and any such other items shall be determined on a daily, monthly, or other basis, as reasonably determined by the Managing Members using any permissible method under GAAP.

5.5 Financial Statements and Reports.

(a) The PDA shall comply with all requirements of law and GAAP with respect to its financial statements.

(b) Subject to Section 5.5(a):

(i) The PDA shall provide to the Managing Members monthly, quarterly, and annual financial statements of the PDA and such other information as may be reasonably requested by each Managing Member. Such financial statements shall be delivered to the Managing Members consistent with current Homeport reporting guidelines.

(ii) Monthly and quarterly financial statements may be unaudited, but the annual financial statements shall be audited by an accounting firm selected by the Managing Members.

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(iii) Monthly and quarterly financial statements shall include an unaudited consolidated balance sheet as of the end of such period, as well as an unaudited consolidated income statement and an unaudited statement of cash flows for such period. Yearly financials shall include the audited consolidated balance sheet as of the end of such year, and a consolidated income statement, consolidated statement of Managing Members' equity, and a consolidated statement of cash flows of the PDA for such year.

(c) The PDA shall establish any subdivision of funds, accounts, or reports for either Homeport to manage information associated with the PDA.

5.6 Membership Equity. The PDA shall account for Membership Equity in accordance with the following:

(a) Membership Equity for a Managing Member shall be (i) increased by such Managing Member's contributions and its share of Net Income, and (ii) reduced by such Managing Member's share of Losses and Distributions.

(b) Maintenance of Membership Equity is intended to comply with joint venture accounting under GAAP. If the Managing Members determine it is prudent to modify the manner in which Membership Equity, or any debits or credits thereto, are computed in order to so comply therewith, the Managing Members may make such modification unless such modification is likely to have a material effect on the amounts distributable to either Managing Member upon dissolution of the PDA.

(c) Except upon dissolution of the PDA or as otherwise provided in this Charter, no Managing Member shall have the right to withdraw from the PDA or to demand or to receive the return of all or any part of its Membership Equity or its contributions.

5.7 Tax Reports. All tax returns and reports of the PDA shall be prepared at the direction of the CEO.

5.8 Inspection Rights. The PDA shall, and shall cause its CEO and other PDA management, employees, auditors, and other agents to afford the officers, commissioners, employees, auditors, and other agents of the Managing Members or any of their Affiliates, during normal business hours and upon reasonable advance notice to the PDA, (i) reasonable access at all reasonable times to its management, employees, auditors, legal counsel, properties, offices, and other facilities and to all books and records including related financial systems for any purpose reasonably related to such Managing Member's interest in the PDA, and (ii) the opportunity to consult with PDA management from time to time as such Managing Member or its Affiliates may reasonably request regarding the affairs, finances, and accounts of the PDA.

5.9 Elections. Except as otherwise provided in this Charter, all decisions as to accounting principles, whether for the PDA's books or for tax purposes (and such decisions may be different for each such purpose) and all elections available to the PDA under applicable tax law, shall be made by the CEO. However, where that may differ materially from the accounting principles applied by the Managing Members, the CEO shall consult with the Managing Members' chief financial officers.

5.10 Tax Audits and Litigation.

(a) Designation of Tax Matters Person. The CEO is hereby designated as the tax matters person ("**Tax Matters Person**") with respect to the PDA. In such capacity the Tax Matters Person shall have all of the rights, authority, and power, and shall be subject to all of the obligations, analogous to those of a tax matters partner to the extent provided in the Internal Revenue Code of 1986,

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as amended, and the Treasury Regulations promulgated thereunder; provided, that the exercise of such rights, authority, and power shall be consistent with all PDA elections and provided further that if any exercise of such rights has an adverse impact on a Managing Member, the consent of such Managing Member shall be required.

(b) Foreign, State, and Local Tax Law. If any foreign, state, or local tax law provides for a tax matters partner or person having similar rights, powers, authority, or obligations as described in Section 5.10(a), the CEO shall also serve in such capacity and shall represent the PDA in all tax audit contest or settlement matters to the extent allowed by law.

5.11 Tax Classification of the PDA. It is intended that the PDA be classified as a tax exempt entity for United States Federal income tax purposes and no election to the contrary may be made. For purposes of Washington state and local taxation, the PDA shall be classified and treated consistent with the Port Development Authority Act and the Interlocal Cooperation Act. No Managing Member or CEO or member of PDA management shall take any action that causes the PDA to be treated, for Federal income tax purposes, as a taxable corporation or as a partnership for Federal income tax purposes or otherwise change the exempt status of the PDA or a Managing Member.

ARTICLE VI
PDA MANAGEMENT, OFFICERS, AND EMPLOYEES

6.1 PDA Management.

(a) The PDA shall be governed by its Managing Members, who will carry out the provisions of RCW 53.57.030 by overseeing the business of the PDA as decided by the Managing Members and consulting with and advising the CEO. The Managing Members reserve to themselves all authority granted to the PDA under state law, including the authority designated in Chapters 53.08 and 53.57 RCW, except as expressly delegated to the CEO in this Charter or in the Delegation of Authority Master Policy. Each Managing Member shall act in such capacity through its own elected commissions.

(b) The PDA shall reimburse the Managing Members for all reasonable out-of-pocket expenses incurred in connection with their attendance at meetings of the Managing Members, including travel, lodging, and meal expenses, and per diem compensation as allowed by RCW 53.12.260 and as may further be determined by each Managing Member. For purposes of RCW 53.12.260(1), "performance of other official services or duties on behalf of the Managing Members' port district" includes the participation and action by PDA Managing Members. Payment by the PDA of Managing Members' international travel requires prior authorization by both Managing Members.

(c) The CEO will report proposed expenditures for promotion and promotional hosting as provided in RCW 53.36.120 to the Managing Members as part of the annual budget adoption under Section 3.5. Expenditures proposed for promotional hosting shall be limited as provided in RCW 53.36.130.

(d) PDA management and agents holding positions responsible for industrial development and trade promotion that are authorized to host under the Delegation of Authority Master Policy are authorized to make expenditures for promotional hosting of all appropriate PDA activities, subject to the Delegation of Authority Master Policy. Payment by the PDA for Managing Member hosting requires prior authorization by both Managing Members, which may be authorized as part of the annual budget approval process.

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6.2 Managing Members Meetings.

(a) The Managing Members shall meet at least quarterly. Managing Members' meetings shall be open to the public to the extent required by RCW 42.30. The Managing Members shall establish and file regular meeting dates and times per RCW 42.30.075. Special meetings may be called and shall be noticed pursuant to RCW 42.30.080.

Any vote by a Managing Member referenced in this Charter shall require the vote of such Managing Member in open session. Approval by each Managing Member is defined as an affirmative vote of three of the five commissioners of such Managing Member, regardless of quorum. In any meeting of the Managing Members, a single Managing Member may move to recess the Managing Members' meeting for the purpose of convening a special public meeting and vote by the port commission of that Managing Member; provided however, in such case, all appropriate prior public notice and posting requirements shall have been followed.

(b) The Managing Members may hold executive sessions to consider matters enumerated in RCW 42.30 or privileged matters recognized by law, including such confidential sessions as may be authorized pursuant to a Federal Maritime Commission-approved Discussion Agreement. Notice of meetings shall be given and meeting agendas published in a manner consistent with the Port Development Authority Act, RCW 42.30, RCW 42.30.077, this Section 6.2(c), and other applicable state or federal law. Meetings of the Managing Members may be held at any time at any location specified in the notice thereof in such place within the State of Washington as allowed by RCW 42.30.

(c) Managing Members may participate in Managing Member meetings and executive sessions by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, or by any other means permitted by law, so long as any public portion of such meeting is open to public attendance.

(d) Copies of the minutes of the public portion of all regular or special meetings of the Managing Members shall be available to any person or organization that requests them as required by state law.

(e) The Managing Members shall establish bylaws to guide the procedural protocols of the Managing Members.

6.3 CEO Hiring. The Managing Members shall select an initial CEO, who shall perform duties for the PDA pursuant to an agreement with an initial term of five years. Additional contract extension(s) are allowed, if approved by both Managing Members. Such agreement shall set out the CEO performance expectations, with quantifiable regional metrics where appropriate, and shall provide for not less than an annual performance evaluation. The Managing Members will undertake the selection of successor CEOs, which shall require the approval of both Managing Members.

6.4 CEO and Management Dual Role – Acknowledgement and Limit on Term. Managing Members affirm that initially the Port of Tacoma chief executive officer may also serve as the CEO. The Managing Members acknowledge the duality of these responsibilities, for both the CEO and other PDA executive management team members. The Managing Members require therefore that the Managing Members, the CEO and other PDA executive team members with dual responsibilities shall, with all good faith, conduct themselves in an open and transparent manner, disclose any area of potential or real conflict of interest, and promote the best interests of the PDA. No individual shall hold dual executive management responsibilities in the PDA for a period of more than five years. If the initial CEO is replaced before the five year term described above, the Managing Members shall select a new CEO, who shall be independent from the management of either Homeport.

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6.5 CEO Authority. The CEO is the principal executive officer of the PDA, has general charge and supervision of the business of the PDA, and shall see that all orders, actions, and resolutions of the Managing Members are carried out. The CEO will be responsible for the executive management of the PDA and shall report directly to the Managing Members acting in their governing capacity. The CEO has the authority to establish the reporting structure within the PDA and to take such actions, subject to this Charter, as are in accordance with the Delegation of Authority Master Policy, and shall have such other authority and shall perform such other duties as set forth in this Charter or the Delegation of Authority Master Policy, or, to the extent consistent with this Charter, such other authorities and duties as prescribed by the Managing Members.

6.6 Litigation Management Involving PDA and or Homeports. When the PDA or a Homeport is sued or notified of a potential claim related to acts, omissions, assets or operations with potential liability reasonably anticipated to be in excess of $100,000, and the Homeport reasonably identifies such claim as a PDA responsibility, or the PDA reasonably identifies such claim as a Homeport responsibility, the Executive recipient of the suit or claim shall notify the other affected Executive and its Legal Counsel(s) of such claim as soon as practicable. The PDA CEO and Homeport Executive Director and their Legal counsel(s) shall promptly advise Managing Members of such claim and of the Executives' determination of which entity shall assume lead responsibility and whether and to what extent one entity will defend and/or indemnify the other. If the Executives cannot reach agreement, the matter shall be referred to the Managing Members for a vote. Thereafter, litigation shall be managed in accordance with the requirements the Delegation of Authority Master Policy Resolution of the entity assuming lead responsibility.

6.7 Other Officers. The Managing Members may designate one or more officers of the PDA management, and shall so designate officers of the PDA as required by law. Any officer so designated shall have such authority and perform such duties as the Managing Members may, from time to time, delegate to him or her.

6.8 Removal and Resignation. The CEO and any other officer of the PDA management may be removed as such, with or without cause, by the Managing Members (subject to any severance provisions in any applicable agreement with the PDA as to such person), and may resign as such at any time upon written notice to the PDA. Such resignation shall be made in writing and shall take effect at the time specified therein or, if no time is specified therein, at the time of its receipt by the PDA. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

6.9 Fiduciary Duties; Authority.

(a) The CEO and each other officer of the PDA management shall discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the CEO or such other officer reasonably believes to be in the PDA's best interest. Such duties are intended to be analogous to and may be further defined as the duties of care and loyalty of such officers in a Washington for profit corporation, or as further defined by contract between the PDA or specific Managing Member, as applicable, and the CEO which governs the CEO's duties to the PDA.

(b) The Managing Members shall have only the contractual duties to the PDA and to each other set forth in this Charter, and each Managing Member and the PDA hereby waives and disclaims any and all fiduciary duties that may be implied to apply pursuant to the relationship created by this Charter. Nothing in this Charter alters or affects the fiduciary or other duties the elected commissioners and management of each Managing Member have to such Managing Member.

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(c) No Managing Member acting independently shall have the authority under this Charter to manage the business and affairs of the PDA or contract for or incur on behalf of the PDA any debts, liabilities, or other obligations, and no such independent action of a Managing Member will be binding on the PDA in the absence of any authority from the Managing Members to take such action on behalf of the PDA.

ARTICLE VII
DISPUTE RESOLUTION

7.1 General. The PDA and the Managing Members waive any right to seek recourse in court for any dispute regarding the PDA, this Charter, or the transactions or other documents contemplated by this Charter, and agree that resolution efforts under this Article VII shall be the exclusive remedies available for resolution of such disputes.

7.2 Notice of Dispute. The resolution procedures in this Article VII may be invoked only for a Dispute. To invoke such procedures, a Managing Member shall provide written notice of the Dispute to the other Managing Member (the date on which such notice first becomes effective, the "**Dispute Notice Date**").

7.3 Resolution Efforts; Mediation; **Arbitration**.

(a) Discussions. The Managing Members shall call a special meeting for the sole purpose of addressing the Dispute as soon as practicable (and in any event within 15 days) after the Dispute Notice Date. The Managing Members shall attempt to resolve in good faith such Dispute within 15 days after the date of such special meeting. Such efforts shall consist of discussion of the Dispute by the Managing Members or by responsible lead representatives of and chosen by each Managing Member.

(b) Mediation. If the Dispute is not resolved under Section 7.3(a) above, thereafter either Managing Member may elect to invoke mediation by a neutral party selected either by the Managing Members or by such lead representatives. If mediation is invoked, the Managing Members agree to submit such Dispute to mediation under any format or rule to which the Managing Members mutually agree, and if no agreement can be reached, then in accordance with the Comprehensive Arbitration Rules of JAMS, The Resolutions Experts (a provider of dispute resolution services) (the "**JAMS Rules**"). The Managing Members may use any mediator upon whom they mutually agree. The cost of any mediator shall be paid by the PDA, unless the Managing Members agree otherwise.

7.4 Deadlocked Dispute. If the Managing Members are unable to resolve a Dispute under Section 7.3(b) (Mediation) above within 60 days after the Dispute Notice Date (the "**Mediation Period**"), then either Managing Member may declare that such Dispute has become a deadlocked Dispute. For any deadlocked Dispute, subject to Sections 7.5 and 7.6, the PDA shall continue to conduct its business without engaging in expenditures or other new activity associated with such Dispute.

7.5 Arbitration.

If the Managing Members are unable to resolve the Dispute under Section 7.3(b) (Mediation) above within the Mediation Period and such Dispute relates to a Licensed Property Agreement or to distribution matters upon dissolution pursuant to Section 10.3, then, within 60 days after the Mediation Period, either Managing Member may elect that such Dispute be submitted to, and settled by, binding arbitration under this Section 7.5. If the Managing Members are unable to agree upon the format and rules for such arbitration within 75 days after the applicable Dispute Notice Date, the JAMS Rules shall apply to such arbitration. If the Managing Members are unable to agree on an arbitrator able to conduct arbitration in Washington within 90 days after the applicable Dispute Notice Date, the Managing Members shall

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request that JAMS furnish to each Managing Member a list of three such potential arbitrators, who shall be former federal court judges, and each Managing Member may each strike one name, thereby nominating the remaining person as the arbitrator. If more than one name remains as of 100 days after the Dispute Notice Date, JAMS may choose the arbitrator from the list of remaining names.

(a) Any arbitration decision shall be in writing, binding and shall specify the factual and legal basis for the decision. Judgment upon any decision rendered by the arbitrator may be entered in any court with jurisdiction. The arbitrator shall expeditiously resolve the applicable Dispute with reference to the intent of the Managing Members and the PDA in entering into the Licensed Property Agreement at issue, with the aim that such intent be fulfilled as completely as possible.

7.6 Dissolution. If, after following the procedures set forth in Section 7.3, no resolution of a Dispute is reached, and only after the expiration of a period of 20 years after the PDA Effective Date (the "**Initial Period**"), then, after two special meetings in open session regarding such Dispute with a comment period between such special meetings of at least 30 days, either Managing Member may elect (by vote) that the PDA be wound up and dissolved in accordance with this Charter.

ARTICLE VIII
MANAGING MEMBER REPRESENTATIONS AND WARRANTIES

8.1 Representations and Warranties of the Managing Members. Each Managing Member hereby represents and warrants to each other Managing Member and to the PDA that on the date hereof:

(a) Existence; Authority; Enforceability. Such Managing Member has the necessary power and authority to enter into this Charter and to carry out its obligations hereunder. Such Managing Member is duly organized and validly existing under the laws of the State of Washington, and the execution of this Charter, and the consummation of the transactions contemplated herein, have been authorized by all necessary corporate or other action, and no other act or proceeding, corporate or otherwise, on its part is necessary to authorize the execution of this Charter or the consummation of any of the transactions contemplated hereby. This Charter has been duly executed by such Managing Member and constitutes its legal, valid, and binding obligation, enforceable against it in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law), and any implied covenant of good faith and fair dealing.

(b) Absence of Conflicts. The execution and delivery by such Managing Member of this Charter and the performance of its obligations hereunder do not and will not (i) conflict with, or result in the breach of, any provision of the constitutive documents of such Managing Member; (ii) result in any violation, breach, conflict, default, or event of default (or an event that with notice, lapse of time, or both, would constitute a default or event of default), or give rise to any right of acceleration or termination or any additional payment obligation, under the terms of any material contract, agreement, or permit to which such Managing Member is a party or by which such Managing Member's assets or operations are bound or affected that would have a material adverse effect on the PDA and its operations as contemplated in this Charter; or (iii) violate, in any material respect, any law applicable to such Managing Member or the PDA.

(c) Consents. Other than the consent of the Federal Maritime Commission and any consents that have already been obtained, no consent, waiver, approval, authorization, exemption, registration, license, or declaration is required to be made or obtained by such Managing Member in connection with (i) the execution, delivery, or performance of this Charter or (ii) the operation of the PDA as contemplated herein.

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8.2 Entitlement to Rely on Representations and Warranties. The foregoing representations and warranties may be relied upon by the PDA, and by the other Managing Member, in connection with the entering into of this Charter.

ARTICLE IX
EXCULPATION AND INDEMNIFICATION

9.1 Exculpation of Covered Persons.

(a) Exculpation. Except as otherwise provided by the Port Development Authority Act and this Charter and any other agreement contemplated herein, the debts, obligations, and liabilities of the PDA, whether arising in contract, tort, or otherwise, shall be solely the debts, obligations, and liabilities of the PDA, and no Covered Person shall be obligated personally for any such debt, obligation, or liability of the PDA solely by reason of being a Covered Person. This Charter is not intended to, and does not, create or impose any fiduciary duty on any Covered Person other than as set forth in Section 6.9(a).

(b) Standard of Care. No Covered Person shall be liable to the PDA or any other Covered Person for any loss, damage, or claim incurred by reason of any action taken or omitted to be taken by such Covered Person in good-faith reliance on the provisions of the Port Development Authority Act or this Charter, so long as such action or omission does not constitute fraud, gross negligence, bad faith, or willful misconduct by such Covered Person.

(c) Good Faith Reliance. A Covered Person shall be fully protected in relying in good faith upon the records of the PDA and upon such information, opinions, reports, or statements (including financial statements and information, opinions, reports, or statements as to the value or amount of the assets, liabilities, net income, or net losses of the PDA or any facts pertinent to the existence and amount of assets from which distributions might properly be paid) of the following Persons or groups: (i) the other Managing Member; (ii) the CEO or one or more officers or employees of the PDA; (iii) any attorney, independent accountant, appraiser, or other expert or professional employed or engaged by or on behalf of the PDA; or (iv) any other Person selected in good faith by or on behalf of the PDA, in each case as to matters that such relying Person reasonably believes to be within such other Person's professional or expert competence.

9.2 Indemnification.

(a) To the fullest extent permitted by the Port Development Authority Act or other applicable law and including as subject to any requirements of RCW 4.96.041, if applicable, as the same now exists or may hereafter be amended, substituted, or replaced (but, in the case of any such amendment, substitution, or replacement only to the extent that such amendment, substitution, or replacement permits the PDA to provide broader indemnification rights than permitted to the PDA to provide prior to such amendment, substitution, or replacement), and subject further to the provisions of Section 9.2(b), the PDA:

(i) shall indemnify, hold harmless, defend, pay and reimburse any Special Covered Person for Damages, subject to compliance with and the requirements of RCW 4.96.041, and

(ii) may indemnify, hold harmless, defend, pay, and reimburse any Covered Person (other than Special Covered Person) against any and all Damages.

(b) The indemnification provisions of Section 9.2(a) require that such Special Covered Person or Covered Person became subject to such Damages by reason of:

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(i) Any act or omission or alleged act or omission performed or omitted to be performed on behalf of the PDA or any Managing Member in connection with the business of the PDA; or

(ii) The fact that such Person is or was acting in connection with the business of the PDA as CEO or other employee or agent of the PDA, any Managing Member, or any of their respective controlling Affiliates, or that such Person is or was serving at the request of the PDA as a partner, member, manager, director, officer, commissioner, or agent of any Person including the PDA; such Person acted in good faith, in compliance with this Charter and, with respect to any criminal proceeding, had no reasonable cause to believe his conduct was unlawful, and (2) such Person's conduct did not constitute fraud, gross negligence, bad faith, willful misconduct, or knowing violation of law, in either case as determined by a final, nonappealable order of a court of competent jurisdiction. In connection with the foregoing, the termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that such Person did not act in good faith or, with respect to any criminal proceeding, had reasonable cause to believe that such Person's conduct was unlawful, or that such Person's conduct constituted fraud, gross negligence, or willful misconduct.

(c) Reimbursement. The PDA may promptly reimburse (and/or advance to the extent reasonably required) each Special Covered Person or Covered Person for reasonable legal or other expenses (as incurred) of such Person in connection with investigating, preparing to defend, or defending any claim, lawsuit, or other proceeding relating to any Damages for which such Person may be indemnified pursuant to this Section 9.2; provided that if it is finally judicially determined that such Person is not entitled to the indemnification under this Section 9.2, then such Person shall promptly reimburse the PDA for any reimbursed or advanced expenses.

(d) Indemnity Process Not Exclusive. The process to seek indemnification provided by this Section 9.2 shall not be deemed exclusive of any other rights to indemnification to which those seeking indemnification may be entitled under any agreement or otherwise. The provisions of this Section 9.2 shall continue to afford a process to seek protection to each Covered Person regardless of whether such Covered Person remains in the position or capacity pursuant to which such Covered Person became entitled to seek indemnification under this Section 9.2 and shall inure to the benefit of the executors, administrators, legatees, and distributees of such Covered Person.

(e) Insurance. To the extent available on commercially reasonable terms, the PDA may purchase, at its expense, insurance to cover Damages covered by the foregoing indemnification provisions and to otherwise cover Damages for any breach or alleged breach by any Covered Person of such Covered Person's duties in such amount and with such deductibles as the Managing Members may determine; provided that the failure to obtain such insurance shall not affect the right to seek indemnification of any Covered Person under the indemnification provisions contained herein, including the right to be reimbursed or advanced expenses or otherwise indemnified for Damages hereunder. If any Covered Person recovers any amounts in respect of any Damages from any insurance coverage, then such Covered Person shall, to the extent that such recovery is duplicative, reimburse the PDA for any amounts previously paid to such Covered Person by the PDA in respect of such Damages.

(i) Property Insurance. Each Homeport shall have an obligation to purchase first-party property insurance policies for the improvements and assets owned by the PDA within the respective Homeport. The insurance policies shall be for replacement value, and the individual Homeport shall be the first Named Insured with the PDA designated as Insured and included as a loss payee as its interests may appear.

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(ii) **Casualty Insurance**. To the extent policy terms and conditions permit, each casualty policy purchased by the PDA and the individual Homeports shall list the remaining two entities as Additional Insureds.

(f) **Funding of Indemnification Obligation**. Notwithstanding anything contained herein to the contrary, any indemnity by the PDA relating to the matters covered in this Section 9.2 shall be provided out of and to the extent of PDA assets only, and no Managing Member shall have liability on account thereof or shall be required to make additional Capital Contributions to help satisfy such indemnity by the PDA.

(g) **Savings Clause**. If this Section 9.2 or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the PDA may nevertheless indemnify and hold harmless each Covered Person pursuant to this Section 9.2 to the fullest extent permitted by any applicable portion of this Section 9.2 that shall not have been invalidated and to the fullest extent permitted by applicable laws or regulations.

(h) **Amendment**. The provisions of this Section 9.2 shall be binding between the PDA, on the one hand, and each Covered Person who served in such capacity at any time while this Section 9.2 is in effect, on the other hand, pursuant to which the PDA and each such Covered Person intend to be legally bound. No amendment, modification or repeal of this Section 9.2 that adversely affects the rights of a Covered Person to seek indemnification for Damages incurred or relating to a state of facts existing prior to such amendment, modification or repeal shall apply in such a way as to eliminate or reduce such Covered Person's entitlement to seek indemnification for such Damages without the Covered Person's prior written consent, unless prohibited by state law.

ARTICLE X
DISSOLUTION, LIQUIDATION, AND TERMINATION

10.1 **Managing Member Dissolution Actions**. No Managing Member shall take any action to dissolve, terminate, or liquidate the PDA (other than in connection with an agreement pursuant to Section 10.2(a)(i) or an election pursuant to Section 10.2(a)(ii)) or to require re-valuation, apportionment, appraisal or partition of the PDA or any of its assets, or to file a bill for an accounting, except as specifically provided in this Charter, and each Managing Member, to the fullest extent permitted by applicable law, hereby waives any rights to take any such actions under applicable law, including any right to petition a court for judicial dissolution.

10.2 **Events Causing Dissolution**.

(a) The PDA shall be dissolved and its affairs shall be wound up upon the first of the following to occur:

(i) a determination by both Managing Members to dissolve the PDA;

(ii) the election by a Managing Member that the PDA be dissolved upon the declaration by a Managing Member (after following the procedures set forth in Article VII, including the condition that the Initial Period must have first elapsed) that there is a deadlocked Dispute;

(iii) A dissolution called by a Managing Member at any time as provided in Section 4.2(c)(ii), relating to its bond obligations, subject to compliance with the processes outlined in the Section 4.2(c)(ii) to achieve bond covenant compliance if possible including exhausting the Dispute Resolution process of Article VII.

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(iv) And any dissolution required by operation of law.

(b) Dissolution of the PDA shall be effective as of the day on which the event occurs giving rise to the dissolution, but the PDA shall not terminate until there has been a winding up of the PDA's business and affairs, and the PDA's assets have been distributed as provided in Section 10.3 and under law.

10.3 Distribution.

(a) Properties. In the event of dissolution of the PDA, and as part of the wind down process, the CEO shall present a full account of the Licensed Properties, Post-Formation Improvements, PDA-Owned Personal Property, and liabilities of the PDA to the Managing Members. The Managing Members shall direct the CEO to hire an independent third party consultant to calculate the values for each Licensed Property and Post-Formation Improvement using the formulas described in this Section 10.3(a), which shall determine the credits/debits due to the Managing Members upon dissolution, provided however, all such credit/debit allocations may be revised by vote of the Managing Members.

(i) Licensed Properties and Post-Formation Improvements. The PDA shall through its CEO relinquish all operation, use, and management of each Licensed Property and Post-Formation Improvement back to the Managing Member that owns the applicable Licensed Property, and authorizes the CEO to execute all instruments to accomplish same.

(A) For Licensed Property that was leased and where the original lease commenced before the Effective Date and remains substantially intact (with no subsequent amendments materially affecting cash flows), the Homeport where such Licensed Property is not located shall receive a final valuation credit in an amount equal to that Homeport's Membership Interest in the net book value of any Post-Formation Improvements located on that Licensed Property.

(B) For Licensed Property with lease(s) that were entered into after the Effective Date, the Homeport where the Licensed Property is not located shall receive a final valuation credit in an amount equal to that Homeport's Membership Interest in the net present value of the remaining lease cash flows, over the remaining lease term (excluding extension options).

(C) For Licensed Property with lease(s) that were in existence as of the Effective Date and that were amended after the Effective Date resulting in materially affected positive cash flow (including term extensions) after the Effective Date the Homeport where the Licensed Property is not located shall receive a final valuation credit in an amount equal to the greater of (1) that Homeport's Membership Interest in the net book value of any Post-Formation Improvements on that Licensed Property, and (2) that Homeport's Membership Interest in the net present value of the difference between the amended lease cash flows and the original lease cash flows, over the remaining lease term (excluding extension options).

(D) For Licensed Property that is vacant or not under long-term lease upon dissolution, the Homeport where such Licensed Property is not located shall receive a final valuation credit in an amount equal to that Homeport's Membership Interest in the net book value of any Post-Formation Improvements located on that Licensed Property.

(E) For Licensed Property with lease(s) that were in existence as of the Effective Date and that were amended after the Effective Date resulting in materially affected negative cash flow (including term reduction) after the Effective Date, the Homeport where the Licensed

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Property is located shall receive a final valuation credit in an amount equal to that Homeport's Membership Interest in the net present value of the difference between the amended lease cash flows and the original lease cash flows, over the remaining lease term (excluding extension options).

(ii) PDA-Owned Personal Property. Each Managing Member shall give notice to the other Managing Member of any of the tangible PDA-Owned Personal Property that such Managing Member desires be distributed to it.

(A) If neither Managing Member wants a specified item of PDA-Owned Personal Property and Section 10.3(a)(ii)(C) below does not apply, then the Managing Members shall dispose of such PDA-Owned Personal Property through the statutory process for surplusing of personal property pursuant to RCW 53.57.030.

(B) If only one Managing Member wants a specified item of PDA-Owned Personal Property, then the Managing Members shall surplus such PDA-Owned Personal Property to such Managing Member at its fair market value.

(C) If both Managing Members want a specified item of PDA-Owned Personal Property, and fail to agree as to which Managing Member shall receive such PDA-Owned Personal Property, then the Managing Members shall dispose of such PDA-Owned Personal Property through the statutory process for surplusing of personal property pursuant to RCW 53.57.030.

(iii) The Managing Members shall dispose of the PDA's intangible assets using equitable apportionment principles if not possible to dispose of such items on a pro rata basis in accordance with Membership Interests.

(b) Payment of Liabilities; Reserve for Contingencies. Before any distribution of any PDA-Owned Personal Property to the Managing Members or the distribution of any proceeds from the sale of any PDA-Owned Personal Property to the Managing Members pursuant to this Section 10.3, the PDA shall first pay the debts and liabilities of the PDA and the expenses of liquidation and establish any reserve that the Managing Members shall deem reasonably necessary for any anticipated liabilities or obligations of the PDA, including liabilities pursuant to PDA agreements not otherwise transferred in connection with the winding up of the PDA (collectively, "**Contingencies**"). Such reserve may be paid over by the Managing Members to any attorney-at-law, or acceptable party, as escrow agent, to be held for disbursement to payment of any Contingencies and, at the expiration of such period as shall be deemed advisable by the Managing Members for distribution of the balance in the manner hereinafter provided in this Section 10.3. The establishment of such reserve may also involve the use of a liquidating trust, bonds, and tail period insurance coverage. After the application of Section 10.3(a), any remaining cash shall be distributed to the Managing Members in accordance with Membership Equity after making the allocations provided for in Section 10.3(c) and adjusting Membership Equity for any distributions or sales pursuant to Section 10.3(a).

(c) Other. Net Income and Losses shall be determined for the period of winding up (including any amounts attributable to the sale or distribution of assets set forth in this Section 10.3 and allocated in accordance therewith). No Managing Member shall have an obligation to make a contribution or additional contribution to restore any negative balance in its Membership Equity, with the exception of any amounts owed by one Managing Member to the other for amounts owed to reconcile values of Post-Formation Improvements as provided in Section 10.3(a)(i).

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10.4 Accounting on Liquidation. Upon liquidation of the PDA, a proper accounting shall be made by the PDA's accountants of the PDA's assets, liabilities, and results of operations through the last day of the month in which the PDA is terminated. Allocations of Net Income and Losses upon liquidation of the PDA shall be as provided in Section 10.3.

10.5 Termination. At such time as the distributions provided for in Section 10.3 have been made, the PDA and this Charter shall terminate. Upon the termination of this Charter, no party shall have any liability or obligation to any other party hereunder, provided that:

(a) termination of this Charter shall not relieve a party from liability for any breach of this Charter on or before the date of termination,

Article IX shall survive termination of this Charter in accordance with its terms, and

(b) the provisions of Section 5.10 shall survive the dissolution of the PDA and shall remain binding on all Managing Members for a period of time necessary to resolve with the applicable taxing authorities all matters (including any litigation) regarding state or local taxation, as the case may be, of the PDA,

ARTICLE XI
MISCELLANEOUS

11.1 Records. The books and records of the PDA shall be available for inspection by the Managing Members at any appropriate office and place of business of the PDA. The PDA shall maintain its records in a manner consistent with RCW 40.14 and in compliance with RCW 42.56, the Public Records Act ("**PRA**"). The PDA shall by resolution adopt and enforce PRA rules and regulations as deemed necessary or advisable by the Managing Members and shall appoint a public records officer for the PDA.

11.2 Third Party Beneficiaries. Except as provided in Article IX, this Charter does not create any rights, claims, or benefits inuring to any Person that is not a party hereto, and it does not create or establish any third party beneficiary hereto.

11.3 Binding Effect. Except as otherwise provided in this Charter to the contrary, this Charter shall be binding upon and inure to the benefit of the Managing Members, and their legal representatives, successors, and permitted assigns.

11.4 Severability. If any provision of this Charter shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The Managing Members agree to use good faith efforts to replace such invalid or unenforceable provision of this Charter with a valid and enforceable provision that will achieve, to the extent possible, the purposes of such invalid or unenforceable provision. If the Managing Members cannot reach a mutually agreeable and enforceable replacement for such invalid, illegal, or unenforceable provision, the balance of the Charter shall be interpreted as if such provision were so excluded so as reasonably to effectuate the intent of the Managing Members.

11.5 Notices. Unless otherwise specified herein, all notices, consents, approvals, reports, designations, requests, waivers, elections, and other communications authorized or required to be given pursuant to this Charter shall be in writing and shall be given or made (and shall be deemed to have been

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duly given or made upon receipt) by personal hand-delivery, by facsimile transmission, by electronic mail, by mailing the same in a sealed envelope, registered first-class mail, postage prepaid, return receipt requested, or by air courier guaranteeing overnight delivery, sent to the addresses on **Schedule 3** hereto (as such may be updated by notice from time to time).

11.6 Usage Generally; Interpretation.

(a) The captions and headings of this Charter are for convenience of reference only and shall not affect the interpretation of this Charter.

(b) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(c) The words "hereof," "herein," "hereunder," and similar words refer to this Charter as a whole and not to any particular provision of this Charter.

(d) The term "including" is not limiting and means "including but not limited to."

(e) Whenever the context requires, any pronouns used herein shall include the corresponding masculine, feminine, or neuter forms.

(f) All references herein to Articles, Sections, recitals, paragraphs, Exhibits, and Schedules shall, unless the context requires a different construction, be deemed to be references to the Articles, Sections, recitals, paragraphs, Exhibits, and Schedules of this Charter.

(g) Any statute or law defined or referred to herein means such statute or law as from time to time amended, modified, or supplemented, including by succession of comparable successor statutes.

11.7 Entire Agreement. This Charter embodies the entire charter of the PDA and supersedes all prior agreements and understandings between the Managing Members with respect to the subject matter hereof.

11.8 Counterparts. This Charter may be executed in any number of counterparts, including by electronic transmission or facsimile, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

11.9 Amendments. The terms and provisions of this Charter may only be modified or amended at any time and from time to time by mutual agreement of the Managing Members.

11.10 Further Assurances. Each Managing Member shall execute and deliver any additional documents and instruments and perform any additional acts that the Managing Members determine to be necessary or appropriate to effectuate and perform the provisions of this Charter.

11.11 Governing Law.

(a) Governing Law. This Charter shall be governed and construed in accordance with the laws of the State of Washington, without regard to the conflicts of law principles thereof. Generally, in the event of a conflict, the following sources of authority shall prevail in descending order of supremacy: (i) Federal law and regulation, including those of the Federal Maritime Commission; (ii) state law and regulation, including the Joint Powers, the Port Development Authority Act, and the

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Interlocal Cooperation Act; (iii) this Charter; (iv) any policies of the PDA, including the Delegation of Authority Master Policy.

(b) Waiver of Jury Trial. Each of the parties to this Charter acknowledges and agrees that any controversy arising under this Charter is likely to involve complicated and difficult issues. As a result each party to this Charter irrevocably and unconditionally waives any right that such party may have to resort to the Courts for a judicial remedy and to a trial by jury in respect to litigation arising out of this Charter or any of the transactions related hereto. Each party to this Charter understands and has considered the implications of this waiver and makes this waiver voluntarily.

11.12 Registered Office. The registered office of the PDA in the State of Washington is PO Box 2985, Tacoma, WA 98401-2985. The PDA shall by resolution designate a registered agent appointed to accept service of process and the name, address, and business hours of the PDA office of risk management for purposes of claims pursuant to RCW 4.92.

11.13 Fees and Expenses. Except as specifically set forth herein, each Managing Member shall be responsible for its pro rata portion, in accordance with its Membership Interests, of any legal and other fees and expenses incurred by such party in connection with the negotiation and preparation of this Charter and the transactions contemplated hereby.

11.14 Waivers. No waiver of any breach of any of the terms of this Charter shall be effective unless such waiver is made expressly in writing and executed and delivered by the party against whom such waiver is claimed. No waiver of any breach shall be deemed to be a further or continuing waiver of such breach or a waiver of any other or subsequent breach. Except as otherwise expressly provided herein, no failure on the part of any party to exercise, and no delay in exercising, any right, power, or remedy hereunder, or otherwise available in respect hereof at law or in equity, shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power, or remedy by such party preclude any other or further exercise thereof, or the exercise of any other right, power, or remedy.

11.15 Dispute Resolution Process Sole Remedy. It is hereby agreed and acknowledged that it will be impossible to measure in money the damages that would be suffered if the parties fail to comply with any of the obligations herein imposed on them and that, in the event of any such failure, an aggrieved person will be irreparably damaged and will not have an adequate remedy at law. Therefore, parties agree that all disputes are subject to the dispute resolution provisions of Article VII.

[*remainder of page intentionally blank*]

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THE NORTHWEST SEAPORT ALLIANCE CHARTER SIGNATURE PAGE

IN WITNESS HEREOF, the Managing Members, and, for purposes of Section 4.2, Section 5.5, Section 5.8, Section 11.15, Article VII, and Article IX, the PDA, have duly executed this Third Amended Charter as of the date above written.

PDA- THE NORTHWEST SEAPORT ALLIANCE, A WASHINGTON PORT DEVELOPMENT AUTHORITY, MANAGING MEMBERS:

Port of Seattle	**Port of Tacoma**
Commission Hamdi Mohamed	Commissioner John McCarthy
Commissioner Toshiko Grace Hasegawa	Commissioner Kristen Ang
Commissioner Ryan Calkins	Commission President Deanna Keller
Commission President Sam Cho	Commissioner Dick Marzano
Commissioner Fred Felleman	Commissioner Donald G. Meyer

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SCHEDULE 1

WORKING CAPITAL CONTRIBUTIONS AND MEMBERSHIP INTERESTS

Name	Amount of Initial Cash Capital Contributions[1]	Amount of Additional Capital Contributions	Membership Interests
Port of Tacoma	$ 25.500 million	0	[50]%
Port of Seattle	$ 25.500 million.	0	[50]%
Total	$ 51.000 million	0	100%

[1] Such amounts were determined by the Managing Members to establish equal initial Membership Interests after taking into account the valuations of the Licensed Properties as set forth in Schedule 2. This is also called Working Capital" for clarity.

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SCHEDULE 2

LICENSED PROPERTIES AND MAPS

Port of Tacoma Properties

	Port of Tacoma Description of Licensed Property	**Approx. Acreage**	**Port Parcel (s)**
1.	General Central Peninsula including: • Husky Terminal, 1101 Port of Tacoma Road • Olympic Container Terminal, 710 Port of Tacoma Road • Terminal 7, 2311 E. 11th Street • General Central Peninsula (GCP)-Maintenance facility, 802 Port Center Road • North Intermodal Yard	214	27
2.	Pierce County Terminal, 2 berth terminal, using the attached Pierce County Intermodal Yard, 4015 SR 509 North Frontage Road	190	13, 16
3.	Washington United Terminal, 2 berth terminal, using the WUT on dock intermodal yard, 1815 Port of Tacoma Road (including Lot F)	157	25, 30
4.	West Sitcum Terminal (APM), 2 berth terminal using the South Intermodal Yard, 1675 Lincoln Ave	156	40, 41A, 41B, 41C
5.	Tote Terminal, 3 RO/RO Ramps, with no on-dock rail, 500 Alexander Road	56	1A, 124
6.	Blair Terminal, one berth terminal, 3003 Marshall Ave	15	24
7.	Log Dock, one berth terminal, 3401 Taylor Way	26	105
8.	3701 Taylor Way	30	86
9.	Union Pacific, Auto parking using the South Intermodal Yard, 1110 & 1401 Milwaukee Way	52	69

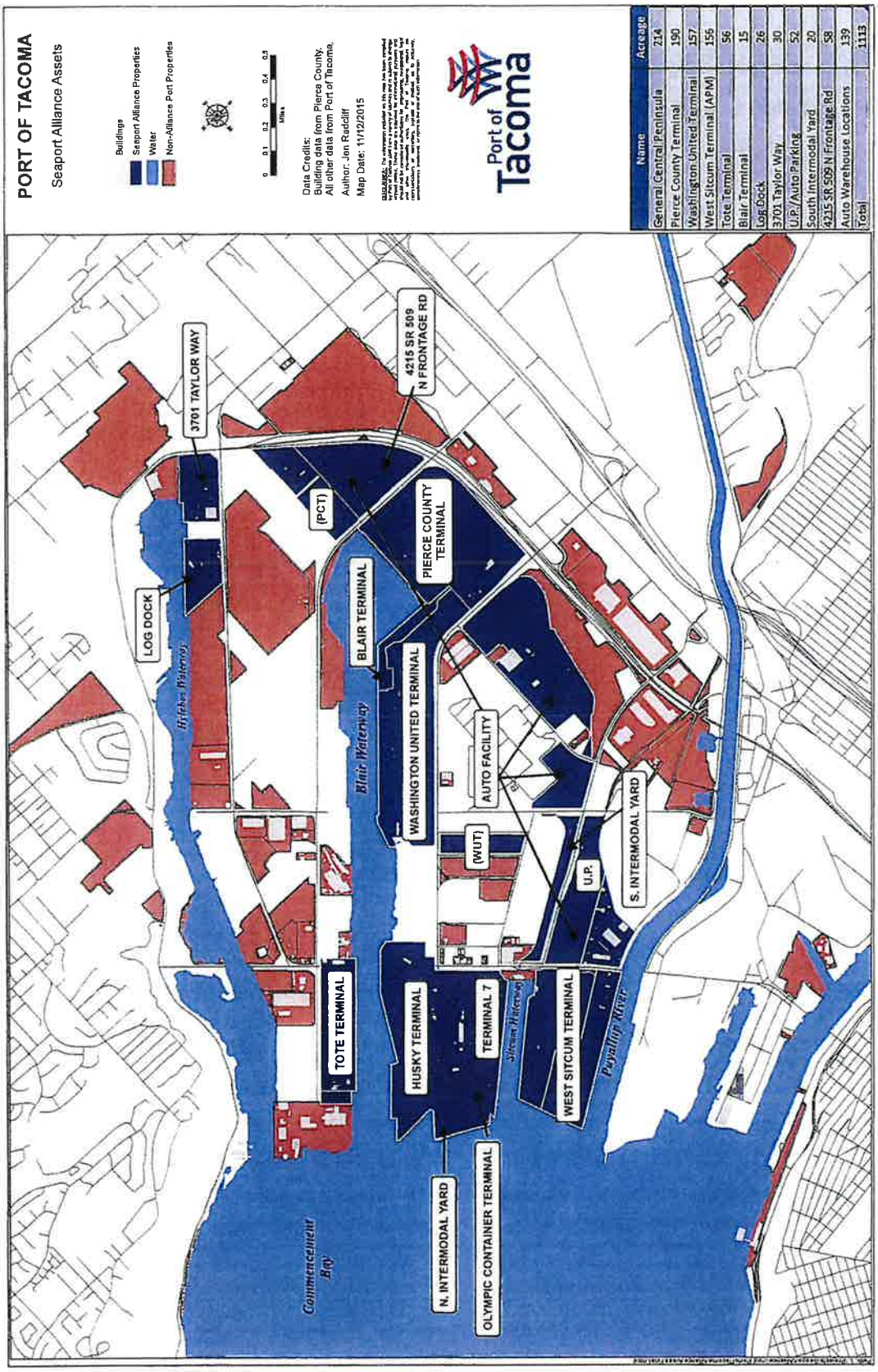
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10.	The Business(es) located on the South Intermodal Yard, a near-dock rail facility supporting UP domestic rail business, 1101 Milwaukee (excludes underlying property which is owned in fee by City of Tacoma)	20	69A
11.	4215 SR 509 N. Frontage Rd	58	15
12.	Auto Warehouse business and primary locations. Main facility at 2810 Marshall, #B, and other locations listed above. (Excludes Non-Auto Warehouse and yard space in parcels 33A and 33C)	139	33A, 33C, 38
13.	Break Bulk business using licensed properties listed above and Non-licensed EB1 terminal as a temporary location		
	Total Acres	1113	

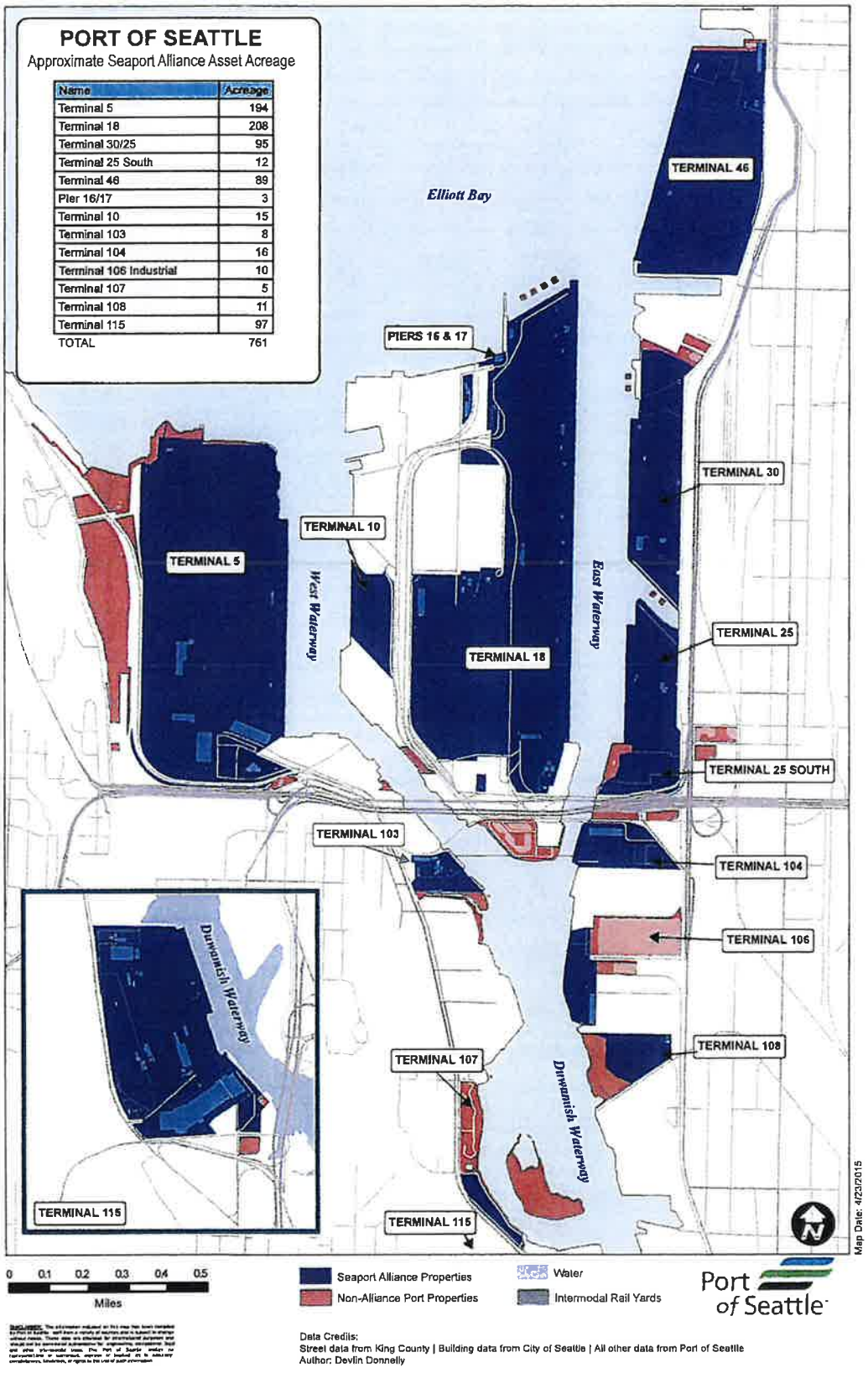
	Port of Seattle Description of Licensed Property	**Acreage**	**Owner**
1.	Terminal 5	194	Port of Seattle
2.	Terminal 18	208	Port of Seattle
3.	Terminal 30/25	95	Port of Seattle
4.	Terminal 25 South	9	Port of Seattle
5.	Terminal 46	89	Port of Seattle
6.	Pier 16/17	3	Port of Seattle
7.	Terminal 10	15	Port of Seattle
8.	Terminal 103	8	Port of Seattle
9.	Terminal 104	16	Port of Seattle
10.	Terminal 106 Industrial	10	Port of Seattle
11.	Terminal 107	5	Port of Seattle
12	Terminal 108	11	Port of Seattle
13.	Terminal 115	97	Port of Seattle
	Total Acres	760	

See MAPS attached.

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SCHEDULE 3

ADDRESSES OF PDA AND MANAGING MEMBERS

PDA	PO Box 2985, Tacoma, WA 98401-2985
Port of Tacoma	1 Sitcum Plaza, Tacoma, WA 98421
Port of Seattle	P.O. Box 1209, Seattle, WA 98111

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THE NORTHWEST SEAPORT ALLIANCE CHARTER

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