

RENAISSANCE BOARDWALK DEVELOPMENT AGREEMENT ADDENDUM

EFFECTIVE DATE: September 12, 2022

BETWEEN: THE CITY OF VANCOUVER,
a Washington municipal corporation (the “City”)

AND
KIRKLAND DEVELOPMENT, LLC,
a Nevada limited liability company (the “Developer”)

BACKGROUND

A. WHEREAS, this Renaissance Boardwalk Development Agreement Addendum (this “Addendum”) is entered into by the parties in order to facilitate performance of the requirements of Section 4.2, Preparation of Development Approvals, of the Development Agreement;

B. WHEREAS, City and Developer are party to that certain Renaissance Boardwalk Development Agreement dated July 12, 2021 recorded in Clark County, Washington on September 8, 2021 with the recording number 5960178 on parcels with the Property Identification Numbers 502290000, 475850000, 38279908, 502300000, 502259000 (“RBDA”);

C. WHEREAS, Section 4.2.1 of the RBDA specifically requires the Developer to conduct development of the project site in a single phase not to exceed thirty-six (36) months from approval of the first building permit in accordance with Exhibit G – Project Schedule of the RBDA;

D. WHEREAS, the City and the National Park Service Fort Vancouver Historic Reserve (“FOVA”) are concurrently entering into a Cooperative Management Agreement (CMA) and a Waterfront Cooperative Management Area (WCMA) Implementation Agreement both of even date herewith (collectively the “NPS Agreements”), to collaboratively improve the FOVA Project Site, as shown on the attached Exhibit A;

E. WHEREAS, the FOVA Project Site is located adjacent to the RBDA Project Site and includes vacant land suitable as a temporary construction staging area and the Developer requires a temporary construction staging area located in close proximity to the RBDA Project Site in order to fulfill the Project Schedule;

F. WHEREAS, pursuant to the NPS Agreements, FOVA is willing to allow use of the Temporary Construction Staging Area, as shown on the attached Exhibit B, for that purpose in exchange for completion of the FOVA Project Work, as defined in the NPS Agreements; and

G. WHEREAS, the Developer is willing to perform the FOVA Project Work in exchange for use of the Temporary Construction Staging Area and the City is willing to grant Developer use of the Temporary Construction Staging Area in order to facilitate and ensure the expedited RBDA Project Schedule in exchange for Developer's performance of the FOVA Project Work.

NOW THEREFORE, in exchange for good and valuable consideration and subject to the terms of the RBDA, the parties hereto agree as follows:

AGREEMENT

1. Contingency. This Addendum is contingent upon the City and FOVA entering into the NPS Agreements and is subject to all the terms and conditions thereof. Until the FOVA Project Work is complete, the City shall not initiate termination of the NPS Agreements without Developer's advance consent, which consent shall not be unreasonably withheld.

2. Temporary Construction Staging Area. Developer shall have access to the Temporary Construction Staging Area for a period of thirty-six (36) months, commencing on the date of approval of the first building permit for the RBDA Project Site and concurrent with the timing specified in Section 4.2.1 of the RBDA and the RBDA Project Schedule. Developer shall be responsible for any and all costs associated with Developer's use of the Temporary Construction Staging Area.

3. FOVA Project Work: Developer shall have a period of twelve (12) months from issuance of the RBDA Project Site certificate of occupancy to complete the FOVA Project Work in accordance with the terms and provisions of the NPS Agreements.

4. Permits and Approvals. Developer shall be responsible for timely obtaining any third-party approvals not already provided by the NPS Agreements, and all City permits necessary to utilize the Temporary Construction Staging Area and to complete the FOVA Project Work.

5. Consideration and Donation. Developer shall not pay the City or FOVA any fee for use of the Temporary Construction Staging Area, the cost of which is estimated at \$100,000, provided that Developer timely completes the FOVA Project Work at Developer's sole cost and expense. The cost of the FOVA Project Work is estimated at approximately \$900,000, therefore Developer will incur a net expense of approximately \$800,000 for use of the Temporary Construction Staging Area in exchange for completion of the FOVA Project Work ("Net Cost"). Such Net Cost shall constitute a donation to the City, which the City may receive and accept pursuant to the provisions of Vancouver Municipal Code Chapter 3.26 – Donations of Property to City.

6. Prevailing Wage. Because the FOVA Project Work is being performed for the public benefit on federal lands, Developer must ensure that all work performed on the FOVA Project Work is paid at prevailing wage and completed in compliance with the Davis-Bacon Act.

7. Construction Bond. For the duration of Developer's use of the Temporary Construction Staging Area and until the FOVA Project Work is complete, Developer will establish and maintain (i) security in favor of the United States in the form of a performance bond of the City's obligations under the NPS Agreement, or where a contractor obtains the performance bond, the contractor's performance of its contract with the Developer; and (ii) a payment bond assuring payment of all persons supplying labor and material in the execution of the work undertaken for the FOVA Project Work in an amount equal to at least 100 percent of the total project costs.

8. Notice: Developer shall provide notice to the City and FOVA prior to commencing the FOVA Project Work and shall coordinate with FOVA for any archeological monitoring that FOVA may require and provide for the performance of such work.

9. Compliance. In fulfilling the terms of this Addendum, Developer shall continuously comply with all federal laws and all obligations imposed on Developer as a contractor under the NPS Agreements.

[SIGNATURE PAGE FOLLOWS]

CITY OF VANCOUVER:

KIRKLAND DEVELOPMENT, LLC:

By: _____

By: _____

By: Eric Holmes, City Manager

By: Dean Kirkland, Chairman

APPROVED AS TO FORM

By: _____

By: Jonathan Young, City Attorney

ATTEST

By: _____

By: Natasha Ramras, City Clerk

[NOTARY ACKNOWLEDGEMENTS ON FOLLOWING PAGE]

**EXHIBIT A
CMA PROJECT SITE**



EXHIBIT B
TEMPORARY CONSTRUCTION STAGING AREA

