

**Agenda Action
Item # 2**

MEMORANDUM

DATE: May 6, 2025
TO: Commissioners
FROM: Rob Fix
CC: Brian Gouran
Holly Stafford
Mike Hogan
SUBJECT: Settlement Agreement and Second Stockpile and Material Removal Agreement

ACTION REQUESTED:

Motion to approve the Settlement Agreement and Second Stockpile and Material Removal Agreement (the "Agreements") with Harcourt Developments Residential Bellingham LLC, Harcourt Developments Construction LLC, and Harcourt Bellingham LLC (collectively, "Harcourt").

On October 19, 2021, the *Restated and Amended Port of Bellingham and Harcourt Bellingham LLC Master Development Agreement for a Portion of the Waterfront District Bellingham, Washington, USA* (the Restated MDA) was fully executed by Harcourt Bellingham, LLC and the Port. The purpose of the Restated MDA was to create a procedure for Harcourt to acquire and develop property within a portion of the Waterfront District from the Port. The first project Harcourt was to complete under the Restated MDA was the "Building Two Project," consisting of what is more commonly known as Buildings A, B, and C. The Restated MDA contained a Master Development Schedule, with certain milestones for project completion, including obtaining occupancy permits for Buildings A and B by October 19, 2023.

On August 20, 2020, prior to executing the Restated MDA, the Port granted Harcourt a temporary Construction License allowing Harcourt to access a portion of property owned by the Port and to temporarily stage material in support of completion of the Building Two Project. The Construction License provided that it would terminate upon the happening of any number of events, including twenty-four (24) months from the date of the Construction License, or August 21, 2022. While the Port extended the Construction License in spans of approximately one month in order to give the parties time to negotiate a new license, the Construction License terminated on October 31, 2022. Although the Port attempted to negotiate a new construction license with Harcourt for a new access area, none was entered into.

Harcourt relied on the Construction License to, in part, utilize a portion of the Port Property known as the "Boardmill Property" to stockpile material excavated from the Building Two Project Property. Any soil excavated from the Building Two Project Property was presumed to be contaminated and could only be stockpiled for reuse for two years, at which time it needed to be disposed of off-site. This is the "Stockpiled Material."

The October 19, 2023, the Building A and B completion deadline passed without Harcourt having obtained a certificate of occupancy for either building. The Port then issued a Notice of Default of the Restated MDA to Harcourt on October 20, 2023, based on a number of grounds. Harcourt disputed the defaults.

The litigation procedural history is lengthy. The Port filed a lawsuit in Whatcom County Superior Court for a declaratory judgment on the issue of whether the Port was reasonable in denying Harcourt's request for a development schedule extension in February 2024. The Port also informed Harcourt that, because the Construction License had terminated, Harcourt could no longer utilize Port Property without an agreement that would provide the Port with adequate insurance and indemnifications.

Harcourt responded by filing a separate lawsuit and moving for a temporary restraining order (TRO) to prevent the Port from barring Harcourt from accessing Port Property pending arbitration of all of the parties' disputes. Whatcom County Superior Court later consolidated the two lawsuits, denied Harcourt's Motion for TRO, denied Harcourt's motion to compel arbitration, and granted the Port's Motion for TRO, thus allowing the Port to prohibit Harcourt from using Port Property. The Court also denied Harcourt's Motions for Reconsideration on the Court's denials of Harcourt's motions. Harcourt then filed notices of appeal of the two denials of its Motions for Reconsideration with the Washington State Division I Court of Appeals.

On October 8, 2024, the Port and Harcourt entered into the Stockpile and Material Removal and Arbitration Agreement (the First Removal Agreement). The First Removal Agreement outlined Harcourt's obligations for timely removal of the Stockpiled Material from Port Property and defined the scope of issues to be arbitrated by the parties, as well as those issues that were not subject to arbitration. Harcourt was to withdraw and dismiss its notices of appeal to the Division I Court of Appeals and agreed to not move for reconsideration of the Port's TRO or the stipulated order on preliminary injunction to the Court of Appeals, which it did.

The parties have undergone extensive discovery production in preparation for a one week Arbitration scheduled at the Judicial Arbitration and Mediation Services' Seattle location starting July 21, 2025. Rather than continue down the arbitration or litigation route, the Port and Harcourt have come to an agreement on resolution of their disputes. These agreements are memorialized in the "Settlement Agreement" and "Second Stockpile Removal Agreement," summarized below.

The Settlement Agreement

- The Port and Harcourt mutually terminate the Restated MDA as of the date of full execution of the Settlement Agreement. Harcourt shall have no right to develop any property within the Master Development Area, aside from finishing the projects on the Building Two Project Property, which it owns;
- The parties mutually release each other from claims alleged or that could have been alleged; however, the Port reserves the right to pursue Harcourt for violations of the Model Toxics Control Act and future violations of the Settlement Agreement or Second Stockpile Removal Agreement; and
- The lawsuits, counterclaims, and arbitration action will be dismissed.

Second Stockpile Removal Agreement

- Harcourt will remove all of the Stockpiled Material from Port Property within twelve months of full execution. Failure to do would be an incurable default;

- Additionally, by June 30, 2025, Harcourt will remove the Stockpiled Material from the area the Port needs for parking for the Northwest Tune-Up event. Failure to do so would be an incurable default;
- Harcourt may continue to access Port property to construct its Building Two Project, so long as it does not breach the Second Stockpile Removal Agreement.
- Harcourt shall execute a Confession of Judgment and Agreed Order Granting Permanent Injunction, which the Port's attorney will hold and may immediately file with the Whatcom County Superior Court upon a future default by Harcourt related to the Stockpiled Material removal. This includes the Port's ability to enter a judgment for the cost of removing the Stockpiled Material.

Entering into these agreements will provide the Port with the certainty of full termination of the Restated MDA without the cost of additional attorneys' fees or the risk of an adverse ruling at arbitration.

FISCAL IMPACT:

There is no direct fiscal impact from these Agreements.

STRATEGIC PURPOSE:

These Agreements support 2025 Strategic Budget Key Corporate Goal No. 1: Ongoing Development in the Waterfront District.

RECOMMENDATION:

Legal and staff recommends approval.

Attachment: Settlement Agreement and Second Stockpile and Material Removal Agreement

SETTLEMENT AGREEMENT

This **SETTLEMENT AGREEMENT** (hereinafter the "Agreement") is made and entered into this ____ day of _____, 2025, by and between the **PORT OF BELLINGHAM**, a Washington municipal corporation (the "Port"), and **HARCOURT BELLINGHAM LLC**, a Washington limited liability company ("Harcourt Bellingham"), **HARCOURT DEVELOPMENTS RESIDENTIAL BELLINGHAM LLC**, a Washington limited liability company ("Harcourt Developments"), and **HARCOURT DEVELOPMENTS CONSTRUCTION LLC**, a Washington limited liability company ("Harcourt Construction"). Harcourt Bellingham, Harcourt Developments, and Harcourt Construction shall collectively be referred to herein as "Harcourt."

WHEREAS, on May 19, 2015, the Port and Harcourt Bellingham executed a Master Development Agreement, which was amended four (4) times (collectively, the "2015 MDA");

WHEREAS, on or about June 17, 2016, Harcourt Construction was formed;

WHEREAS, the 2015 MDA provided that Harcourt Bellingham may form Single Purpose Entities or SPEs, as that term is defined in the 2015 MDA, to develop Projects in the Master Development Area, subject to the terms of the 2015 MDA. On or about May 1, 2018, Harcourt Bellingham formed Harcourt Developments as an SPE to own and construct the Building Two Project;

WHEREAS, Harcourt Developments purchased Waterfront SBSP No. 1 Lot 1, Bellingham, Washington, from the Port to develop certain real property as what is known as the "Building Two Project" under the terms of the 2015 MDA (the "Building Two Project Property");

WHEREAS, on August 21, 2020, Harcourt Construction and the Port entered into a temporary, non-exclusive Construction License, based on the form attached to the 2015 MDA as Exhibit 5.8.1, (the "Construction License") providing Harcourt Construction limited access to certain Port property for the uses described in the Construction License;

WHEREAS, as part of its activities, Harcourt Construction, and/or its agents, excavated soil from the Building Two Project footprint that it stockpiled on Port property, allegedly in accordance with the Construction License (the "Stockpiled Material"). According to the Consent Decree filed in Whatcom County Superior Court Cause No. 14-2-02700-8 and the Contaminated Materials Management Plan exhibited thereto, the Stockpiled Material is presumed to be contaminated by hazardous substances at levels exceeding applicable Washington Model Toxics Control Act ("MTCA") cleanup levels;

WHEREAS, on October 19, 2021, the Port and Harcourt Bellingham entered into an agreement entitled *Restated and Amended Port of Bellingham and Harcourt Bellingham LLC Master Development Agreement for a Portion of the Waterfront District Bellingham, Washington, USA* (the "Restated MDA"). The Restated MDA amended, restated, and superseded the 2015 MDA in its entirety, such that the 2015 MDA was of no force and effect and could not be relied upon by either party. The Restated MDA concerned approximately seven and seven tenths (7.7) acres of property that became the new Master Development Area, as that term is defined in the Restated MDA, and envisioned that Harcourt Bellingham would develop the Master Development Area through a series of Projects on individual Parcels, as those terms are defined in the Restated MDA;

WHEREAS, the Restated MDA provided that, so long as Harcourt Bellingham and its SPEs were operating and developing the Master Development Area in compliance with and pursuant to the terms and conditions of the Restated MDA, including, without limitation, the Port-approved Project Memorandum(s) and Project Schedule(s), as those terms are defined in the Restated MDA, Harcourt Bellingham could continue to receive the benefits of the Restated MDA. An Event of Default by an SPE would have the same effect as an Event of Default by Harcourt Bellingham as described in the Restated MDA;

WHEREAS, Harcourt reviewed the Building Two Project plans and believed that the Building Two Project could more expeditiously be developed under the then-current circumstances and conditions as a two (2)-phase project with Buildings A and B as Phase 1, to be completed by October 19, 2023, and Building C as Phase 2, to be completed by December 31, 2024. These completion dates were of critical importance and were material conditions of the Restated MDA;

WHEREAS, on October 17, 2023, Harcourt Bellingham sent the Port a letter notifying it of the "force majeure events" of government orders related to COVID-19 after October 19, 2021, that allegedly caused delays in Substantial Completion of Buildings A and B;

WHEREAS, Harcourt did not obtain a temporary occupancy permit for Building A or Building B by October 19, 2023. On or about October 20, 2023, the Port issued a Notice of Default of the Restated MDA to Harcourt Bellingham, alleging eight (8) defaults, including non-compliance of the Master Development Schedule for failing to obtain a temporary occupancy permit for Building A and Building B by October 19, 2023 (the "Notice of Default");

WHEREAS, on or about November 7, 2023, Harcourt Bellingham issued a "Notice of Dispute Resolution Demand, Notice of Breach and Notice of Default Section 4.1.3 Extension Request" to the Port, alleging a number of Port defaults, including those arising from public statements made about the Notice of Default that the Port issued to Harcourt Bellingham and interference with Harcourt's contracts;

WHEREAS, on December 5, 2023, Harcourt Bellingham requested an extension of the Master Development Schedule due to an alleged delay by "Corex [sic] & City of Bellingham." On February 7, 2024, the Port informed Harcourt Bellingham that its request for an extension of the Master Development Schedule was denied;

WHEREAS, on March 1, 2024, the Port filed a Complaint for Declaratory Judgement in the Whatcom County Superior Court (the "Court") (Whatcom County Superior Cause No. 24-2-00398-37) seeking a declaratory judgment against Harcourt Bellingham and Harcourt Developments regarding the Port's denial of a request for Master Development Schedule extension (the "Port's Lawsuit");

WHEREAS, on April 4, 2024, Harcourt filed a Complaint for a Temporary Restraining Order and a Motion for Temporary Restraining Order against the Port (Whatcom County Superior Cause No. 24-2-00635-37), seeking injunctive relief to a continuing right to access Port property in order to construct the Building Two Project pursuant to the terms of the Construction License ("Harcourt's Lawsuit"). The Port's answer to Harcourt's Lawsuit included counterclaims for (i) breach of the Construction License; (ii) trespass; (iii) contribution under MTCA; and (iv) declaratory judgment regarding Harcourt Construction's access to Port property (the "Port's Counterclaims");

WHEREAS, on May 3, 2024, the Port's Lawsuit and Harcourt's Lawsuit were consolidated under Whatcom County Superior Court Cause No. 24-2-00398-37 (the "Consolidated Lawsuit");

WHEREAS, on June 24, 2024, the Court issued an Order Denying Harcourt's Motion for Temporary Restraining Order, concluding that the Construction License terminated on October 31, 2022, and that Harcourt Construction had no right to access the Port's property as defined in the Construction License;

WHEREAS, by letter dated July 18, 2024, Harcourt Bellingham and Harcourt Construction wrote to the Port, alleging that the Port was in default of its obligations to Harcourt Bellingham and Harcourt Developments under the Restated MDA when the Port allegedly refused "to allow Harcourt access to Port property to complete construction of three condominium buildings (the Project) under the Restated MDA, as well as to complete removal of a dirt stockpile located on Port property." The letter also claimed that the Port failed to act in good faith and to deal with Harcourt in a fair manner. By a second (2nd) letter dated July 18, 2024, Harcourt Developments and Harcourt Construction alleged that the Port was in default of its obligations under the Construction License, under the same set of facts as the other letter dated July 18, 2024. Collectively, the allegations in these two (2) letters, as well as the allegations in Harcourt's November 7, 2023, letter, are the "Harcourt Default Claims";

WHEREAS, on September 13, 2024, the Court entered the Port's Order Granting Temporary Restraining Order and Requiring Harcourt to Show Cause, allowing the Port to restrain Harcourt and their agents from trespassing on Port property, in light of the terminated Construction License;

WHEREAS, on October 15, 2024, the Port and Harcourt entered into a Stockpile and Material Removal and Arbitration Agreement (the "Original Stockpile Agreement"). As part of the Original Stockpile Agreement, the Parties entered into a Stipulation Staying Litigation of Certain Causes of Action and Issuance of a Preliminary Injunction, which was entered by the Court on October 18, 2024, in the Consolidated Lawsuit (the "Stipulated Stay"). Pursuant to the Original Stockpile Agreement and the Stipulated Stay, the parties began arbitrating their dispute with JAMS (the "Arbitration"), sharing the costs of the Arbitration (the "Arbitration Costs");

WHEREAS, Harcourt did not obtain a temporary occupancy permit for Building C by December 31, 2024. On March 4, 2025, the Port's counsel wrote to Harcourt's counsel to reserve the Port's rights regarding additional defaults under the Restated MDA that Harcourt had committed since the Port issued its October 20, 2023, Notice of Default (the "Default Reservation Letter"). In particular, the Port's Default Reservation Letter alleged Harcourt's failure to complete Building C by December 31, 2024; Harcourt's continued failure to provide the Port with proof of insurance; additional liens; Harcourt's failure to provide requested financial assurance; and Harcourt's breach of the Original Stockpile Agreement by failing to meet the agreed-to weekly minimum soil removal amount for three (3) of the five (5) months the Original Stockpile Agreement had been in effect and failing to provide the Port with proof of the stockpile removal contractor's insurance; and

WHEREAS, under the terms and conditions of this Agreement, the parties desire to resolve their disputes as set forth below.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. **RESTATED MDA TERMINATION.** The Restated MDA is hereby mutually terminated effective on the Termination Date (defined below), subject to Section 2 of this Agreement. Except as otherwise provided for in this Agreement, each party mutually discharges each of the other parties from any and all duties and/or obligations arising out of or created by virtue of the Restated MDA. As part of the termination of the Restated MDA, Harcourt relinquishes all of its future development rights under the Restated MDA exclusive of Harcourt's rights to develop real property that it already owns in fee, namely the Building Two Project and the Building Two Project Property, and the already developed Granary Building.

1.1 **Ancillary Agreements - Termination.** All Construction Licenses, Access Agreements, and Leases entered into by the Port and Harcourt Bellingham, Harcourt Developments, and/or Harcourt Construction pursuant to or arising from the 2015 MDA or Restated MDA, which have not already been terminated, are also terminated on the Termination Date.

1.2 **Termination Date.** The "Termination Date" is the date of full execution of this Agreement.

1.3 **Construction License.** The parties acknowledge and confirm that the Construction License terminated on October 31, 2022, and was of no further force and effect after that date.

2. **SURVIVAL.** Notwithstanding anything to the contrary herein, all responsibilities and obligations of the Parties, and any SPEs, related to indemnification in Sections 9.1.1, 9.1.2, 16.3, 16.4, and 16.6 of the Restated MDA shall survive the Termination Date. As stated in Section 15.4 of the Restated MDA, neither Party to the Restated MDA shall be entitled to an award of damages for breach of the Restated MDA. Harcourt shall not object to the Port's decision, in its sole discretion, to include the Master Development Area within a Port designated Redevelopment Opportunity Zone pursuant to RCW 70A.305.150.

2.1 **Ancillary Agreements – Survival.** The (i) Amended and Restated Environmental Indemnification and Environmental Easement Agreement recorded under Whatcom County Auditor File No. 2022-0303185; and (ii) all Interim Parking Licenses entered into pursuant to or arising from the 2015 MDA or Restated MDA, which have not already terminated, shall survive the Termination Date.

3. **THE SECOND STOCKPILE REMOVAL AGREEMENT.** Concurrently with the execution of this Agreement, the parties shall execute the Second Stockpile and Material Removal Agreement attached hereto as **Exhibit A**. Upon full execution of the Second Stockpile and Material Removal Agreement, the Original Stockpile Agreement shall terminate and be of no further force or effect.

4. **RELEASE OF CLAIMS AND DISMISSAL OF ACTIONS.**

4.1 **Harcourt's Release of the Port.** Harcourt, for and in part consideration of and as an inducement for the Port to enter into this Agreement, hereby forever releases and discharges the Port, its Commissioners, employees, affiliates, attorneys, lenders, insurers, and

SETTLEMENT AGREEMENT – 4

agents, from any and all claims, controversies, actions, causes of action, demands, judgments, orders, damages, costs, expenses, and liabilities (collectively, "**Claims**") arising from or related to the Restated MDA, whether known or unknown, including, without limitation, Claims alleged in (i) the Harcourt Default Claims; (ii) Harcourt's Lawsuit; and (iii) the Arbitration. This release includes, without limitation, a release of Harcourt's attorneys' fees and costs, expenses (including expert expenses), and Arbitration Costs. Specifically excluded and excepted from this release are Claims arising from allegations of (i) any future Port violation of the Second Stockpile and Material Removal Agreement; or (ii) any future Port violation of this Agreement.

4.2 The Port's Release of Harcourt. The Port, for and in part consideration of and as an inducement for Harcourt to enter into this Agreement, hereby forever releases and discharges Harcourt, its members, employees, affiliates, attorneys, lenders, insurers, and agents, from any and all Claims arising from or related to the Restated MDA, whether known or unknown, including, without limitation, Claims alleged in (i) the Notice of Default dated October 20, 2023; (ii) the Port's Lawsuit; (iii) the Port's Counterclaims; (iv) the Arbitration; and (v) the Default Reservation Letter. This release includes, without limitation, a release of the Port's attorneys' fees and costs, expenses (including expert expenses), and Arbitration Costs. Specifically excluded and excepted from this release are Claims arising from allegations of (i) Harcourt's breach of an Environmental Indemnification Agreement; (ii) the Port's counterclaims alleged in the Harcourt Lawsuit arising from the Stockpiled Material; (iii) Harcourt's noncompliance with MTCA; (iv) any future Harcourt violation of the Second Stockpile and Material Removal Agreement; or (v) any future Harcourt violation of this Agreement.

5. NO ADMISSION OF LIABILITY. Neither this Agreement nor the act of entering into it shall be construed as an admission of any nature.

6. FURTHER ACTS AND DOCUMENTATION. The parties hereto agree to conduct such further acts and execute such other paperwork and/or agreements that may be necessary to achieve the purpose of this Agreement; provided, however, that all fees and costs for such further acts and paperwork and/or agreement execution shall be borne by the party requesting the same.

6.1 Lawsuit Dismissal. Within three (3) business days of (i) full execution of this Agreement and the Second Stockpile and Material Removal Agreement; and (ii) Harcourt providing an executed Confession of Judgment and Agreed Order Granting Permanent Injunction, attached hereto as **Exhibit B** and as referenced in the Second Stockpile and Material Removal Agreement, to the Port's counsel, Harcourt's counsel shall execute the following pleadings and provide the same to the Port's counsel (collectively, the "Lawsuit Stipulations"):

a. Stipulation for Order of Dismissal of the Consolidated Lawsuit, attached hereto as **Exhibit C**; and

b. Order of Dismissal of the Consolidated Lawsuit, attached hereto as **Exhibit D**.

Within three (3) business days of the Port's counsel receiving Harcourt's counsel's signature on all of the Lawsuit Stipulations, the Port's counsel shall also execute the Lawsuit Stipulations and file the same in Whatcom County Superior Court for entry.

- 6.2 **Arbitration Dismissal.** Within three (3) business days of (i) full execution of this Agreement and the Second Stockpile and Material Removal Agreement; and (ii) Harcourt providing an executed Confession of Judgment and Agreed Order Granting Permanent Injunction, attached hereto as **Exhibit B** and as referenced in the Second Stockpile and Material Removal Agreement, to the Port's counsel, Harcourt's counsel shall execute the following pleadings and provide the same to the Port's counsel:

a. Stipulation for Order of Dismissal With Prejudice of the Arbitration, attached hereto as **Exhibit E**.

Within three (3) business days of the Port's counsel receiving Harcourt's counsel's signature on the Order of Dismissal of Arbitration, the Port's counsel shall also execute the Lawsuit Stipulations and file the same in the JAMS portal for entry. Any JAMS fees shall continue to be borne equally by the parties, such that JAMS fees for the arbitration are split evenly between the parties.

7. **Successors and Assigns.** This Agreement is entered into for the benefit of the parties and shall not be assigned.

8. **NO THIRD-PARTY BENEFICIARIES.** This Agreement has no third-party beneficiaries.

9. **MODIFICATION.** This Agreement may not be amended or modified in any manner except by an instrument in writing signed by a duly authorized representative of each party hereto in the same manner as such party has authorized this Agreement.

10. **NEUTRAL AUTHORSHIP.** Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of all Parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor or against the Party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

11. **NOTICES.** All notices, which may be or are required to be given pursuant to this Agreement shall be in writing and delivered to the parties at the following addresses:

To the Port: Port of Bellingham
Attn: Brian Gouran
1801 Roeder Avenue
Bellingham, WA 98227-7107
United States

To Harcourt: Harcourt Bellingham LLC
Attn: Patrick Power
1211 Granary Avenue
Bellingham, WA 98225-3089
United States

Any such notices shall be either (i) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) days after deposit, postage prepaid in the U.S. mail; (ii) sent by a nationally recognized overnight courier, in which case notice shall be deemed

delivered when actually delivered pursuant to the records of such courier; (iii) sent by e-mail transmission to the party, receipt of which has been confirmed by telephone, and by regular mail, in which case notice shall be deemed delivered on the day of such confirmed receipt; or (iv) hand delivered, in which case notice shall be deemed delivered when actually delivered.

12. **EXECUTION IN COUNTERPARTS.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one (1) and the same Agreement.

13. **WAIVER.** No waiver by any party of any provision of this Agreement or any breach thereof shall be of any force or effect unless in writing by the party granting the waiver, and no such waiver shall be construed to be a continuing waiver. The waiver by one (1) party of the performance of any covenant, condition, or promise shall not invalidate this Agreement, nor shall it be considered a waiver by such party of any other covenant, condition, or promise hereunder. The waiver by either or both parties of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time. No failure by either party to insist upon the strict performance of any term of this Agreement or to exercise any right or remedy shall constitute a waiver.

14. **APPLICABLE LAW AND JURISDICTION.** This Agreement shall be interpreted under and pursuant to the laws of the State of Washington without regard to choice of law provisions. In the event any action is brought to enforce any of the provisions of this Agreement, the parties agree to be subject to the sole jurisdiction and venue in Whatcom County Superior Court.

15. **ATTORNEYS' FEES AND COSTS.** In the event any proceeding is instituted to interpret or enforce any provision or resolve any dispute under this Agreement, including, without limitation, any action in which a declaration of rights is sought, the prevailing party in such dispute, whether it be resolved by litigation or otherwise, shall be entitled, in addition to such other relief as may be granted to it, to recover its attorneys' fees and costs, including without limitation, any arbitration or mediation fees.

16. **SEVERABILITY.** In case any one (1) or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

17. **ENTIRE AGREEMENT.** The entire agreement between the parties with respect to the subject matter herein is contained in this Agreement. This Agreement supersedes all of the Parties' previous understandings and agreements, written and oral, with respect to the subject matter herein.

IN WITNESS WHEREOF, the Port has caused this instrument to be signed by its President and Secretary, by authority of the Port Commission of the Port of Bellingham, and Harcourt has caused this to be signed thereunto, duly authorized, the day and year last written below.

[Signatures on Subsequent Page]

PORT OF BELLINGHAM

President

Date: _____

Secretary

Date: _____

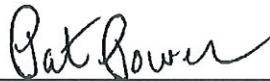
**HARCOURT DEVELOPMENTS
RESIDENTIAL BELLINGHAM LLC**


By: PATRICK POWER
Its: DIRECTOR
Date: 30 APRIL 2025

**HARCOURT DEVELOPMENTS
CONSTRUCTION LLC**


By: PATRICK POWER
Its: DIRECTOR
Date: 30 APRIL 2025

HARCOURT BELLINGHAM LLC


By: PATRICK POWER
Its: DIRECTOR
Date: 30 APRIL 2025

[Notary Blocks on Subsequent Pages]

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this day personally appeared before me _____ and _____
_____ to me known to be the **PRESIDENT and SECRETARY** of the
PORT OF BELLINGHAM, and acknowledged the said instrument to be the free and voluntary
act and deed of said corporation, for the uses and purposes therein mentioned, and on oath
stated that they were authorized to execute the said instrument on behalf of the corporation.

GIVEN under my hand and official seal this _____ day of _____, _____.

Print Name: _____
NOTARY PUBLIC in and for the
State of Washington, Residing at _____
My Commission Expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this day personally appeared before me *Pat Row*, to me
known to be the *D. Nelson* of **HARCOURT DEVELOPMENTS**
RESIDENTIAL BELLINGHAM LLC, and acknowledged the said instrument to be the free and
voluntary act and deed of said limited liability company, for the uses and purposes therein
mentioned, and on oath stated that they were authorized to execute the said instrument on
behalf of the limited liability company.

GIVEN under my hand and official seal this _____ day of _____, 202__.

Print Name: _____
NOTARY PUBLIC in and for the
State of Washington, Residing at _____
My Commission Expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this day personally appeared before me Pat Row, to me known to be the Director of **HARCOURT DEVELOPMENTS CONSTRUCTION LLC**, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument on behalf of the limited liability company.

GIVEN under my hand and official seal this _____ day of _____, 202__.

Print Name: _____
NOTARY PUBLIC in and for the
State of Washington, Residing at _____
My Commission Expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this day personally appeared before me Pat Row, to me known to be the Director of **HARCOURT BELLINGHAM LLC**, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument on behalf of the limited liability company.

GIVEN under my hand and official seal this _____ day of _____, 202__.

Print Name: _____
NOTARY PUBLIC in and for the
State of Washington, Residing at _____
My Commission Expires: _____

**EXHIBIT A
SECOND STOCKPILE AND
MATERIAL REMOVAL AGREEMENT**

EXHIBIT B
CONFESSION OF JUDGMENT AND
AGREED ORDER GRANTING PERMANENT INJUNCTION

1
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5
6 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
7 **IN AND FOR THE COUNTY OF WHATCOM**

8 PORT OF BELLINGHAM, a Washington
9 municipal corporation,

No.

10 Plaintiff,

11 v.

**CONFESSION OF JUDGMENT AND
AGREED ORDER GRANTING
PERMANENT INJUNCTION**

12 HARCOURT BELLINGHAM, LLC, a
13 Washington limited liability company;
14 HARCOURT DEVELOPMENTS RESIDENTIAL
BELLINGHAM LLC, a Washington limited
liability company; HARCOURT
DEVELOPMENTS CONSTRUCTION, LLC;

15 Defendants.

16 **JUDGMENT SUMMARY**

17 Creditor:

Port of Bellingham (the "Port")

18 Debtors:

19 Harcourt Developments Construction
20 LLC ("Harcourt Construction")
21 Harcourt Developments Residential
22 Bellingham LLC ("Harcourt
Developments")
Harcourt Bellingham LLC ("Harcourt
Bellingham") (collectively "Harcourt")

23 Principal Judgment:

24 To be determined by declaratory
25 judgment action under RCW
70A.305.080 supported by declaration
of the Port detailing final remediation
costs.

26 Attorneys' Fees Since Date of
27 Default by Harcourt under the
28 Second Removal Agreement:

\$ _____

CONFESSON OF JUDGMENT – 1

CSD | ATTORNEYS
AT LAW
1500 Railroad Avenue, Bellingham, WA 98225
tel 360.671.1796 • fax 360.671.3781

Costs Since Date of Default by
Harcourt under the Second
Removal Agreement:

\$ _____

Attorneys for Judgment Creditor:

Holly M. Stafford, WSBA #40674
T. Todd Egland, WSBA #48788
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**I. FACTS AND STIPULATION SUPPORTING
CONFESSION OF JUDGMENT AND PERMANENT INJUNCTION**

1.1 Harcourt Developments purchased Waterfront SBSP No. 1 Lot 1 from the Port to develop certain real property commonly known to the Parties as the "Building Two Project." The Building Two Project is further defined in the *Restated and Amended Port of Bellingham and Harcourt Bellingham LLC Master Development Agreement for a Portion of the Waterfront District Bellingham, Washington, USA*, dated October 19, 2021 (the "Restated MDA").

1.2 The Port owns certain real property within the Waterfront District depicted as the black striped area adjacent to the Building Two Project (the "Port Property").

1.3 The Building Two Project area is subject to a Consent Decree entered into by the Washington State Department of Ecology ("Ecology") and the Port under Whatcom County Superior Court Cause No. 14-2-02700-8 (the "Consent Decree") for the Pulp/Tissue Mill Remedial Action Unit ("RAU") of the Georgia-Pacific West environmental site, which includes, without limitation, the Cleanup Action Plan ("CAP") and the Contaminated Materials Management Plan Pulp/Tissue Mill Remedial Action Unit, G-P West Site, dated June 19, 2014 (the "CMMP"), attached as an exhibit to the Consent Decree. Additionally, the Building Two Project area is

CONFESSION OF JUDGMENT – 2

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1 subject to an environmental covenant (the "Environmental Covenant") recorded under Whatcom
2 County Auditor's File No. 2017-0100510.

3 1.4 In conjunction with Harcourt Developments' development of the Building Two
4 Project, on or about August 21, 2020, the Port and Harcourt Construction entered into a temporary,
5 non-exclusive Construction License (the "Construction License") so that Harcourt Construction
6 could utilize certain Port property for access, temporary staging of material, equipment and
7 portable offices, and parking and marshalling during development of the Building Two Project in
8 what was identified in the Construction License as the Construction License Area (the
9 "Construction License Area").

10 1.5 Harcourt Construction relied upon the Construction License to, in part, utilize a
11 portion of Port Property known as the "Boardmill Property" for project materials handling, including
12 stockpiling material excavated from the Building Two Project footprint. Pursuant to the CMMP, this
13 stockpiled material is presumed to be contaminated by hazardous substances at levels exceeding
14 applicable Model Toxics Control Act ("MTCA") cleanup levels and is to be reused or disposed of
15 after two (2) years. The material excavated from the Building Two Project area and placed on Port
16 Property is herein referred to as the "Stockpiled Material."

17 1.6 The Parties engaged in litigation in Whatcom County Superior Court under
18 Consolidated Cause No. 24-2-00398-37 (the "Consolidated Lawsuit"), among other things,
19 regarding Harcourt's continued right to access Port property for the purposes identified in the
20 Construction License. On June 24, 2024, Whatcom County Superior Court Judge Robert E. Olson
21 issued an Order Denying Motion for Temporary Restraining Order in Whatcom County Cause No.
22 24-2-00635-37 (the "Order"), which concluded in part, "The [Construction] License terminated on
23 October 31, 2022." Moreover, "[a]s of October 31, 2022, Harcourt no longer had the right to utilize
24 the [Construction] License Area....".

25 1.7 On September 13, 2024, Judge Olson granted the Port's Motion for Temporary
26 Restraining Order and Requiring Harcourt to Show Cause, enjoining Harcourt from trespassing on
27 the Port's property.
28

1.8 The Port and Harcourt agreed to a Stipulation Staying Litigation of Certain Causes of Action and Issuance of Preliminary Injunction on October 17, 2024 (the "Stipulation"). In that Stipulation, Harcourt and the Port agreed to submit contractual claims to JAMS arbitration, while certain non-contract claims were stayed pending the arbitration. Along with the Stipulation, the Parties concurrently entered into the Stockpile and Material Removal and Arbitration Agreement ("First Removal Agreement"), which, among other things, required Harcourt to remove the Stockpiled Material twelve (12) months from execution of the First Removal Agreement.

1.9 On _____, 2025, the Parties entered into (1) a Settlement Agreement resolving the JAMS arbitration; (2) a Second Stockpile and Material Removal Agreement ("Second Removal Agreement"); (3) a Stipulation for Order of Dismissal of the Consolidated Lawsuits; and (4) a Stipulation for Order of Dismissal With Prejudice of the Arbitration. As part of the settlement, Harcourt requested continued access to Port Property for the purpose of completing construction of the Building Two Project, which consists of the construction of three (3) condominium buildings (Buildings A, B, and C) and related works, and removal of Harcourt Property.

1.10 In addition, the Second Removal Agreement provides as follows:

Harcourt, or others working on its behalf, shall, in conformance with the terms of the Consent Decree, CAP, CMMP, and Environmental Covenant: (i) completely remove the Stockpiled Material from Port Property; (ii) dispose of the Stockpiled Material at a licensed and approved off-site disposal facility; and (iii) repair, replace, or install new cap materials and/or erosion controls as needed to ensure the protectiveness of the RAU-wide cap impacted by deposit or removal of the Stockpiled Material. Collectively, this is referred to herein as the "Work." Complete removal of the Stockpiled Material shall be evidenced by full visualization of the RAU-wide cap described in the CAP and CMMP from the area where Stockpiled Material had been deposited. Because the Stockpiled Material was not disposed of within two (2) years, completion of the Work shall be memorialized in a "Remedial Action Report" in compliance with WAC 173-340-515(4)(b) and WAC 173-340-850 or any other documentation required by the Department of Ecology. The Work shall be completed within twelve (12) months of the full execution of this Agreement (the "Stockpile Removal Period").

1.11 Material, equipment, and/or portable offices belonging to Harcourt or its agents ("Harcourt Property") remain on Port Property.

1.12 In the event any dispute under the Settlement Agreement, Second Removal

1 Agreement, or this Confession of Judgment and Agreed Order Granting Permanent Injunction
2 ("Confession of Judgment and Permanent Injunction") arises, the prevailing party is entitled to
3 recover its attorneys' fees and costs for enforcement of the Settlement Agreement, Second
4 Removal Agreement, and/or this Confession of Judgment and Permanent Injunction.

5 1.13 Harcourt has breached the Second Removal Agreement by failing to remove the
6 Stockpiled Material as required.

7 II. CONFESSION OF JUDGMENT AND PERMANENT INJUNCTION

8 2.1 Harcourt hereby stipulates and confesses to Judgment and entry of a Permanent
9 Injunction without a hearing as follows:

10 a. For an award of damages for all remediation costs for the Boardmill Property
11 in connection with Harcourt's failure to remove the Stockpiled Material, including, without limitation,
12 the costs of excavation, loading, transporting, and disposing of the Stockpiled Material at an
13 appropriate facility, and the Port's reasonable attorneys' fee and costs, which shall be fixed by a
14 claim for declaratory relief under RCW 70A.305.080 filed by the Port and supported by a
15 declaration of the Port once those costs are finally determined based upon completion of the scope
16 of Work described in the Second Stockpile Removal Agreement.

17 b. For an award of the Port's reasonable attorneys' fees and costs pursuant to
18 the Second Removal Agreement and this Confession of Judgment and Permanent Injunction since
19 the date of default by Harcourt under the Second Removal Agreement.

20 c. Pursuant to Chapter 7.40 RCW and CR 65(d), Harcourt, and their agents,
21 servants, employees, attorneys, and all persons in active concert or participation with Harcourt who
22 receive actual notice of this Confession of Judgment and Permanent Injunction by personal service
23 or otherwise, are enjoined from trespassing on the Port's property.

24 d. Harcourt shall remove all property owned or controlled by Harcourt from Port
25 property within fourteen (14) days of entry of this Confession of Judgment and Permanent
26 Injunction.

27 e. Violation of the terms of this Confession of Judgment and Permanent
28 Injunction may result in a finding of civil contempt against any person violating this Confession of

CONFESSON OF JUDGMENT – 5

1 Judgment and Permanent Injunction.

2 f. Nothing herein shall waive, preclude, or prevent the Port from seeking relief
3 for any cause of action occurring after the date of this order.

4 g. A permanent injunction shall issue without a bond.

5 2.2 This Confession of Judgment and Permanent Injunction is being left in the
6 possession of CSD Attorneys at Law P.S., for *ex parte* entry with Whatcom County Superior Court
7 upon default by Harcourt of the Second Removal Agreement without further notice to Harcourt.

8 **III. STIPULATION TO ENTRY OF DECREE AND JUDGMENT**

9 3.1 Harcourt hereby acknowledges and represent as follows: (i) it has personally read
10 this Confession of Judgment and Permanent Injunction and understands its contents; (ii) it has had
11 the opportunity to have this Confession of Judgment and Permanent Injunction reviewed by their
12 attorneys; and (iii) that upon default under the Second Removal Agreement, Harcourt authorizes
13 the Port, upon declaration from its authorized representative, to amend the foregoing amount of the
14 Principal Judgment and attorneys' fees if necessary for accuracy, and to enter this Confession of
15 Judgment and Permanent Injunction in Whatcom County Superior Court without further notice to
16 Harcourt.

17 3.2 Harcourt further acknowledges and represents that it is voluntarily, knowingly, and
18 intelligently waiving its right to appeal or seek discretionary review of this Confession of Judgment
19 and Order.

20

21 *[Signatures and Notary on Subsequent Page]*

22

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1 DATED this 30 day of April, 2025.

2 HARCOURT DEVELOPMENTS
3 CONSTRUCTION LLC

4 Pat Power
5 By: Patrick Power
6 Its: Director

7 HARCOURT DEVELOPMENTS RESIDENTIAL
8 BELLINGHAM LLC

9 Pat Power
10 By: Patrick Power
11 Its: Director

12 HARCOURT BELLINGHAM LLC

13 Pat Power
14 By: Patrick Power
15 Its: Director

16 STATE OF WASHINGTON)
17) ss.
18 COUNTY OF WHATCOM)

19 On this day personally appeared before me _____ to me known to be the
20 entity or entities described in and who executed the within and foregoing instrument, and
acknowledged that it signed the same as its free and voluntary act and deed, for the uses and
purposes therein mentioned.

21 GIVEN under my hand and official seal this _____ day of _____, 20__.

22
23
24
25 Print Name: _____
26 NOTARY PUBLIC in and for the
27 State of Washington, Residing at _____
28 My Commission Expires: _____

CONFESSON OF JUDGMENT - 7

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AT LAW
1500 Railroad Avenue, Bellingham, WA 98225
tel 360.671.1796 • fax 360.671.3781

1 IV. ATTORNEY VERIFICATION

2 I, T. TODD EGLAND, attorney for Plaintiff Port of Bellingham ("Plaintiff") in the above-
3 entitled action, hereby state that the amount attorneys' fees and costs incurred by the Port
4 subsequent to the date of the default by Harcourt under the Second Removal Agreement, and this
5 Confession of Judgment and Permanent Injunction total _____
6 Dollars and _____ Cents (\$ _____), and that the amount of
7 costs incurred during the same time period total _____ Dollars
8 and _____ Cents (\$ _____); and acknowledge that
9 payments have been received from Harcourt subsequent to the date of the execution of this
10 Confession of Judgment and Permanent Injunction in the amount of _____
11 _____ Dollars and _____ Cents (\$ _____),
12 of which payments have been credited to the amount due to the Port and are not included in this
13 Confession of Judgment and Permanent Injunction.

14
15 DATED this ____ day of _____, 202__, in Bellingham, Washington.

16
17 CSD ATTORNEYS AT LAW P.S.

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19
20 T. Todd Egland, WSBA #48788
21 Attorneys for Plaintiff
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V. DECREE AND JUDGMENT

THIS MATTER having come before the Court on the foregoing Confession of Judgment,
and good cause appearing for entry of Judgment as confessed here; **NOW, THEREFORE;**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

- (a) Judgment in favor of the Port is entered against Harcourt;
- (b) Harcourt's right to access the Port's property is terminated, effective immediately;
- (c) Attorneys' fees in the amount of _____ Dollars

and _____ Cents (\$ _____); and

- (d) Costs in the amount of _____ Dollars and
_____ Cents (\$ _____).

DONE IN OPEN COURT this _____ day of _____, 202__.

JUDGE/COURT COMMISSIONER

EXHIBIT C
STIPULATION FOR ORDER OF DISMISSAL
OF THE CONSOLIDATED LAWSUIT

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6 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
7 **IN AND FOR THE COUNTY OF WHATCOM**

8 PORT OF BELLINGHAM, a Washington
municipal corporation,

No. 24-2-00398-37

9 Plaintiff,

10 v.

11 HARCOURT BELLINGHAM, LLC, a
Washington limited liability company, and
12 HARCOURT DEVELOPMENTS RESIDENTIAL
BELLINGHAM LLC, a Washington limited
13 liability company;

14 Defendants.

15
16 HARCOURT DEVELOPMENTS
CONSTRUCTION, LLC, a Washington limited
17 liability company, HARCOURT
DEVELOPMENTS RESIDENTIAL
18 BELLINGHAM LLC, a Washington limited
liability company; and HARCOURT
19 BELLINGHAM, LLC, a Washington limited
liability company,

No. 24-2-00635-37

20 Plaintiffs,

21 v.

22 PORT OF BELLINGHAM, a Washington
municipal corporation,

**STIPULATION FOR ORDER OF
DISMISSAL OF CONSOLIDATED
LAWSUITS**

Judge Robert E. Olson

23 Defendant.
24

25 **I. STIPULATION**

26 Pursuant to CR 41(a)(1)(A), the Port of Bellingham (the "Port") and Harcourt Developments
27 Construction LLC ("Harcourt Construction"), Harcourt Developments Residential Bellingham LLC
28

1 ("Harcourt Developments"), and Harcourt Bellingham LLC ("Harcourt Bellingham") (collectively,
2 "Harcourt"), by and through their undersigned counsel of record, hereby stipulate to the dismissal
3 of the actions under the above-captioned caused numbers, without an award of attorneys' fees and
4 costs to any party, as follows:

5 1. The Port's causes of action for declaratory judgment and attorneys' fees brought
6 under Case No. 24-2-00398-37 and counterclaims for breach of contract, trespass, and declaratory
7 relief regarding trespass under Cause No. 24-2-00635-37 shall be dismissed with prejudice.
8 Nothing herein prevents the Port from bringing a claim for an alleged future trespass, including
9 without limitation ongoing trespass.

10 2. Harcourt's causes of action for temporary restraining order and order compelling
11 mediation and arbitration brought under Cause No. 24-2-00635-37 shall be dismissed with
12 prejudice; and

13 3. The Port's counterclaims for contribution under the Model Toxics Control Act
14 ("MTCA") and declaratory relief under MTCA under Cause No. 24-2-00635-37 are dismissed
15 without prejudice.
16

17 **IT IS SO STIPULATED THROUGH COUNSEL OF RECORD** this ____ day of _____,
18 2025.

19 *Presented By:*

20 CSD ATTORNEYS AT LAW P.S.

Stipulated and Agreed to By:

ASHBAUGH BEAL LLP

21
22
23 _____
24 Holly M. Stafford, WSBA #40674
25 T. Todd Egland, WSBA #48788
26 Sara B. Frase, WSBA #56922
27 Attorneys for Port of Bellingham
28

Robert S. Marconi, WSBA #16369
Richard H. Skalbana, WSBA #17316
Attorneys for Harcourt

EXHIBIT D
ORDER OF DISMISSAL OF THE CONSOLIDATED LAWSUIT

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6 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
7 **IN AND FOR THE COUNTY OF WHATCOM**

8 PORT OF BELLINGHAM, a Washington
municipal corporation,

No. 24-2-00398-37

9 Plaintiff,

10 v.

11 HARCOURT BELLINGHAM, LLC, a
Washington limited liability company, and
12 HARCOURT DEVELOPMENTS RESIDENTIAL
BELLINGHAM LLC, a Washington limited
13 liability company;

14 Defendants.

15
16 HARCOURT DEVELOPMENTS
CONSTRUCTION, LLC, a Washington limited
17 liability company, HARCOURT
DEVELOPMENTS RESIDENTIAL
18 BELLINGHAM LLC, a Washington limited
liability company; and HARCOURT
19 BELLINGHAM, LLC, a Washington limited
liability company,

No. 24-2-00635-37

20 Plaintiffs,

21 v.

22 PORT OF BELLINGHAM, a Washington
municipal corporation,

23 Defendant.

ORDER OF DISMISSAL

Judge Robert E. Olson

24
25 **I. ORDER**

26 **THIS MATTER** having come before the Court upon the parties' Stipulation for Order of
27 Dismissal, and good cause appearing; **NOW, THEREFORE,**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Port's causes of action for declaratory judgment and attorneys' fees brought under Case No. 24-2-00398-37 and its counterclaims for breach of contract, trespass, and declaratory relief regarding trespass under Cause No. 24-2-00635-37 are hereby **DISMISSED** with prejudice and without an award of attorneys' fees or costs to any party. Nothing herein prevents the Port from bringing a claim for an alleged future trespass, including, without limitation, ongoing trespass;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Harcourt's causes of action for temporary restraining order and order compelling mediation and arbitration brought under Cause No. 24-2-00635-37 are hereby **DISMISSED** with prejudice and without an award of attorneys' fees or costs to any party; and

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Port's counterclaims for contribution under the Model Toxics Control Act ("MTCA") and declaratory relief under MTCA under Cause No. 24-2-00635-37 are hereby **DISMISSED** without prejudice and without an award of attorneys' fees or costs to any party.

DONE IN EX PARTE this _____ day of _____, 2025.

JUDGE/COURT COMMISSIONER

Presented By:

CSD ATTORNEYS AT LAW P.S.

Stipulated and Agreed to By:

ASHBAUGH BEAL LLP

Holly M. Stafford, WSBA #40674
T. Todd Eglund, WSBA #48788
Sara B. Frase, WSBA #56922
Attorneys for Port of Bellingham

Robert S. Marconi, WSBA #16369
Richard H. Skalbania, WSBA #17316
Attorneys for Harcourt

EXHIBIT E
STIPULATION FOR ORDER OF DISMISSAL
WITH PREJUDICE OF THE ARBITRATION

IN ARBITRATION AT JAMS

HARCOURT BELLINGHAM LLC,
HARCOURT DEVELOPMENTS
RESIDENTIAL BELLINGHAM LLC, AND
HARCOURT DEVELOPMENTS
CONSTRUCTION LLC,

Claimants,

v.

PORT OF BELLINGHAM

Respondent.

CASE REF. NO. 1160026241

**STIPULATION FOR ORDER OF
DISMISSAL WITH PREJUDICE OF THE
ARBITRATION**

I. STIPULATION

The Port of Bellingham (the "Port") and Harcourt Developments Construction LLC ("Harcourt Construction"), Harcourt Developments Residential Bellingham LLC ("Harcourt Developments"), and Harcourt Bellingham LLC ("Harcourt Bellingham") (collectively, "Harcourt"), through their respective counsel of record, hereby stipulate to the dismissal with prejudice of all claims and causes of action in the above-captioned arbitration, without an award of costs, attorneys' fees, or expert fees to any party.

SO STIPULATED THROUGH COUNSEL OF RECORD this ____ day of May, 2025

CSD ATTORNEYS AT LAW P.S.

Holly M. Stafford, WSBA #40674
T. Todd Egland, WSBA #48788
Sara B. Frase, WSBA #56922

STIPULATION AND [PROPOSED] ORDER
OF DISMISSAL WITH PREJUDICE- 1

CSD | ATTORNEYS
AT LAW

1500 Railroad Avenue, Bellingham, WA 98225
tel 360.671.1796 • fax 360.671.3781

1 *Attorneys for Port of Bellingham*
2 ASHBAUGH BEAL LLP

3
4 _____
5 Robert S. Marconi, WSBA #16369
6 Richard H. Skalbania, WSBA #17316
7 Brittney S. Rivers, WSBA #54068
8 *Attorneys for Harcourt*

9
10 **I. Order**

11 Pursuant to the parties' foregoing Stipulation, it is hereby **ORDERED, ADJUDGED, and**
12 **DECREED**, that all of the claims and causes of action in the above captioned arbitration are hereby
13 dismissed with prejudice and without an award of costs, attorneys' fees, or expert fees to any party.

14 Dated this _____ day of May, 2025.

15 _____
16 ARBITRATOR DOUGLAS OLES

17 Presented by:

18 CSD ATTORNEYS AT LAW P.S.

19 _____
20 Holly M. Stafford, WSBA #40674
21 T. Todd Eglund, WSBA #48788
22 Sara B. Frase, WSBA #56922
23 *Attorneys for Port of Bellingham*

24 ASHBAUGH BEAL LLP

25 _____
26 Robert S. Marconi, WSBA #16369
27 Richard H. Skalbania, WSBA #17316
28 Brittney S. Rivers, WSBA #54068
29 *Attorneys for Harcourt*

30 STIPULATION AND [PROPOSED] ORDER
31 OF DISMISSAL WITH PREJUDICE- 2

CSD | ATTORNEYS
AT LAW

1500 Railroad Avenue, Bellingham, WA 98225
tel 360.671.1796 • fax 360.671.3781

SECOND STOCKPILE AND MATERIAL REMOVAL AGREEMENT

This **SECOND STOCKPILE AND MATERIAL REMOVAL AGREEMENT** (the "**Agreement**") is made this _____ day of _____, 2025, by and between the **PORT OF BELLINGHAM**, a Washington municipal corporation (the "**Port**"), and **HARCOURT DEVELOPMENTS RESIDENTIAL BELLINGHAM LLC**, a Washington limited liability company ("**Harcourt Developments**"), **HARCOURT DEVELOPMENTS CONSTRUCTION LLC**, a Washington limited liability company ("**Harcourt Construction**"), and **HARCOURT BELLINGHAM LLC**, a Washington limited liability company ("**Harcourt Bellingham**"). Harcourt Developments, Harcourt Construction, and Harcourt Bellingham shall collectively be referred to herein as "**Harcourt**."

WHEREAS, Harcourt Developments purchased Waterfront SBSP No. 1 Lot 1 from the Port (the "**Building Two Project Property**") to develop certain real property as what is known as the "**Building Two Project**." The Building Two Project is further defined in the *Restated and Amended Port of Bellingham and Harcourt Bellingham LLC Master Development Agreement for a Portion of the Waterfront District Bellingham, Washington, USA*, dated October 19, 2021 (the "**Restated MDA**");

WHEREAS, the Port owns certain real property within the Waterfront District depicted as the black striped area adjacent to the Building Two Project on **Exhibit A** attached hereto (the "**Port Property**");

WHEREAS, the Building Two Project Property is subject to a Consent Decree entered into by the Washington State Department of Ecology ("**Ecology**") and the Port under Whatcom County Superior Court Cause No. 14-2-02700-8 (the "**Consent Decree**") for the Pulp/Tissue Mill Remedial Action Unit ("**RAU**") of the Georgia-Pacific West environmental site, which includes, without limitation, the Cleanup Action Plan ("**CAP**") and the *Contaminated Materials Management Plan Pulp/Tissue Mill Remedial Action Unit, G-P West Site*, dated June 19, 2014 (the "**CMMP**"), exhibited to the Consent Decree. Additionally, the Building Two Project area is subject to an environmental covenant (the "**Environmental Covenant**") recorded under Whatcom County Auditor's File No. 2017-0100510;

WHEREAS, in conjunction with Harcourt Developments' development of the Building Two Project, on or about August 21, 2020, the Port and Harcourt Construction entered into a temporary, non-exclusive Construction License (the "**Construction License**") so that Harcourt Construction could utilize certain Port property for access, temporary staging of material, equipment and portable offices, and parking and marshalling during development of the Building Two Project in what was identified in the Construction License as the Construction License Area (the "**Construction License Area**");

WHEREAS, Harcourt Construction relied upon the Construction License to, in part, utilize a portion of Port Property known as the "**Boardmill Property**" for project materials handling, including stockpiling material excavated from the Building Two Project footprint. The Boardmill Property is depicted on **Exhibit B** attached hereto. Pursuant to the CMMP, this stockpiled material is presumed to be contaminated by hazardous substances at levels exceeding applicable Model Toxics Control Act ("**MTCA**") cleanup levels and is to be reused or disposed of after two (2) years. The material excavated from the Building Two Project area and placed on Port Property is herein referred to as the "**Stockpiled Material**";

WHEREAS, the Construction License provided that it was to remain in effect until the first of any number of events, including twenty-four (24) months from the date of the Construction License;

WHEREAS, on June 24, 2024, Whatcom County Superior Court Judge Robert E. Olson issued an *Order Denying Motion for Temporary Restraining Order* in Whatcom County Cause No. 24-2-00635-37 (the "Order"), which concluded in part, "The [Construction] License terminated on October 31, 2022." Moreover, "[a]s of October 31, 2022, Harcourt no longer had the right to utilize the [Construction] License Area....";

WHEREAS, the Order further denied Harcourt's *Motion for Temporary Restraining Order* and ordered that the *Order Granting Motion for Temporary Restraining Order* entered on April 8, 2024, and the *Order on Harcourt's Motion for Temporary Restraining Order* entered on May 10, 2024, were dissolved, rescinded, and of no further force and effect after 4:30 p.m. on June 28, 2024;

WHEREAS, on September 13, 2024, Judge Olson granted the Port's *Motion for Temporary Restraining Order and Requiring Harcourt to Show Cause*, enjoining Harcourt from trespassing on the Port's property;

WHEREAS, material, equipment, and/or portable offices belonging to Harcourt or its agents ("Harcourt Property") remain on Port Property;

WHEREAS, Harcourt has requested access to Port Property for the purpose of completing construction of the Building Two Project, which consists of the construction of three (3) condominium buildings (Buildings A, B, and C) and related works, and removal of Harcourt Property;

WHEREAS, concurrently with the execution of this Agreement, the parties have executed a settlement agreement (the "Settlement Agreement"), attached hereto as **Exhibit C**; and

NOW, THEREFORE, the Port and Harcourt agree as follows:

1. **STOCKPILE REMOVAL.** Harcourt, or others working on its behalf, shall, in conformance with the terms of the Consent Decree, the CAP, the CMMP, and the Environmental Covenant: (i) completely remove the Stockpiled Material from Port Property; (ii) dispose of the Stockpiled Material at a licensed and approved off-site disposal facility; and (iii) repair, replace, or install new cap materials and/or erosion controls as needed to ensure the protectiveness of the RAU-wide cap impacted by deposit or removal of the Stockpiled Material. Collectively, this is referred to herein as the "Work." Complete removal of the Stockpiled Material shall be evidenced by full visualization of the RAU-wide cap described in the CAP and CMMP from the area where Stockpiled Material had been deposited. Because the Stockpiled Material was not disposed of within two (2) years, completion of the Work shall be memorialized in a "Remedial Action Report" in compliance with WAC 173-340-515(4)(b) and WAC 173-340-850 or any other documentation required by the Department of Ecology. The Work shall be completed within twelve (12) months of the full execution of this Agreement (the "Stockpile Removal Period"). Failure to complete the Work within the Stockpile Removal Period shall constitute an incurable material default of this Agreement.

SECOND STOCKPILE AND
MATERIAL REMOVAL AGREEMENT - 2

1.1 Material Term. Completion of the Work within the Stockpile Removal Period is a material term of this Agreement. Failure to complete the Work within the Stockpile Removal Period constitutes an incurable default under this Agreement.

1.2 Performance of Work. Harcourt shall ensure that all Work is performed in a workmanlike manner and at no cost and expense to the Port. All Work shall be conducted in compliance with all applicable federal, state, and local laws and regulations. The Port shall not be responsible for the health and safety of Harcourt's employees, agents, consultants, and contractors while on Port Property. Harcourt shall not permit any damage to Port Property as a result of the performance of the Work, except as otherwise may be required to perform the Work. Except as otherwise provided in this Section, Harcourt shall repair, as soon as is reasonably practicable, any damage caused to Port Property resulting from the performance of the Work. Harcourt shall take all reasonable and necessary safety and security precautions, and shall maintain a neat and orderly workplace in connection with the performance of the Work under this Agreement, including, but not limited to, promptly removing all soil and purge water from Port Property, and leaving the Port Property in a clean and usable condition.

1.3 Due Care. Harcourt and its contractors shall exercise due care and professional judgment to prevent the contamination of underlying groundwater and/or soils from overlying contaminated media. Harcourt and its contractors shall assume that all of the Stockpiled Material is contaminated at levels exceeding applicable MTCA cleanup levels.

1.4 Data. Harcourt shall provide the Port with copies of all data, data interpretations, and data reports generated from the Work performed at the Port Property, including, without limitation, the finalized Remedial Action Report.

1.5 Tune-Up Parking. Harcourt shall remove all of the Stockpiled Material from the Port Property outlined in the black box in the attached **Exhibit D** (the "Tune-Up Parking Area") by June 30, 2025. Harcourt may move the Stockpiled Material in the Tune-Up Parking Area to the Port Property outlined in the red box in the attached **Exhibit D** before removing it in accordance with Section 1, above, but is not required to do so. In the event that Harcourt has not completed this portion of the Work by June 30, 2025, the Port may remove the Stockpiled Material from the Tune-Up Parking Area at Harcourt's sole cost and expense and shall constitute an incurable breach of this Agreement.

2. GRANT OF ACCESS. The Port hereby grants a temporary non-exclusive license to Harcourt to allow Harcourt, at its cost, to access (i) the Boardmill Property to conduct the Work and for Harcourt to access Port Property to remove the Harcourt Property; and (ii) Port Property depicted in **Exhibit A** to undergo construction of the Building Two Project buildings (Buildings A, B, and C) and related works; and for no other use, subject to the terms and conditions set forth herein.

2.1 No Interest in Real Property. This license shall not be deemed to transfer any interest in the underlying Boardmill Property or Port Property.

2.2 Duration of Access to the Boardmill Property. The access granted to Harcourt to use the Boardmill Property shall remain in full force and effect until the earlier of the following: (i) completion of the Work described herein; (ii) expiration of the Stockpile Removal

Period; or (iii) upon fifteen (15) days' written notice by the Port to Harcourt of a breach of any term of this Agreement.

2.3 Duration of Access to Port Property Other Than the Boardmill Property.

The access granted to Harcourt to access Port Property other than the Boardmill Property shall remain in full force and effect until the earlier of the following: (i) completion of the construction of the Building Two Project buildings (Buildings A, B, and C) and related works, and removal of all of the Harcourt Property from Port Property; (ii) expiration of the Stockpile Removal Period; or (iii) upon fifteen (15) days' written notice by the Port to Harcourt of a breach of any term of this Agreement.

2.4 Use, Occupation, and Enjoyment of Port Property. In performing the Work or removal of Harcourt Property, Harcourt shall not unreasonably interfere with the Port or Boardmill Group LLC's use, occupation, or enjoyment of Port Property, except to the extent reasonably necessary to perform the Work.

2.5 Cooperation. The Port shall reasonably cooperate with Harcourt's efforts to effectuate the Work and remove the Harcourt Property, shall not unreasonably withhold permission to carry out these activities, and shall not interfere with such activities as may be necessary for Harcourt to exercise its rights or fulfill its obligations under this Agreement. The Port's commitment to reasonable cooperation does not prohibit the Port from seeking injunctive or other relief to enforce its rights under this Agreement, including, without limitation, seeking to enforce the Permanent Injunction attached to the Confession of Judgment referenced herein. Neither the Port nor its agents have authority to direct the Work, Harcourt's construction activities, or Harcourt Property removal. However, the Port does have authority to stop the Work, Harcourt's construction activities, or Harcourt Property removal taking place on Port Property if these actions are being conducted in violation of this Agreement, including, but not limited to, if safety rules are not observed. In the event that a safety rule is not observed, all work will be allowed to re-commence as soon as the issue is addressed to the Port's satisfaction. Any information provided by the Port or its agents is for recommendation purposes only and shall not be relied upon as direction for the performance of the Work or Harcourt Property removal. The Port shall not be liable for any damage to the extent caused by Harcourt, or any person or entity working on Harcourt's behalf, to underground utilities, structures, fixtures, or improvements.

2.6 Authorization. Harcourt represents and warrants that it holds legal title to and is authorized to remove the Harcourt Property from Port Property for which Harcourt claims ownership.

2.7 Site Condition and Assumption of Risk. Harcourt represents and warrants that it understands (i) that Port Property is adjacent to an active construction site; (ii) that Port Property has not been assessed for safety and is, therefore, presumed dangerous; (iii) that other persons, materials, machinery, or equipment may be present and operating at Port Property and adjacent property; (iv) that access to Port Property is being arranged at the request of the Harcourt; and (v) that the ability to enter Port Property is of substantial personal benefit to Harcourt and thereby provides adequate consideration for this Agreement. The Port is not liable for any injury or death to the extent caused by, related to, or arising from Harcourt's use of Port Property.

2.8 Construction License. The parties shall enter into a Construction License in the form attached hereto as **Exhibit E** so that Harcourt may continue to construct the Building Two Project only if (i) Harcourt has completed the Stockpiled Material removal in conformance with Section 1, including, without limitation, completing the Work within the Stockpile Removal Period; and (ii) this Agreement terminates pursuant to Section 4(i) or 4(ii). The obligation of the parties to enter into the Construction License shall survive termination of this Agreement pursuant to Sections 4(i) and/or Section 4(ii).

3. HARCOURT'S OBLIGATIONS. Harcourt shall (i) only allow use of the Boardmill Property to conduct the Work; (ii) keep Port Property in a neat and clean condition, and keep said area clear of all trash and debris except as reasonably required for completion of the Work and the completion of the Building Two Project; (iii) comply with the Consent Decree, the CAP, the CMMP, and the Environmental Covenant on Port Property; (iv) conform to and abide by all rules, codes, laws, and regulations in connection with the use of the Port Property and not permit Port Property to be used in violation of any lawful rule, code, law, regulation, or other authority; (v) keep Port Property free and clear of all liens and charges whatsoever arising from Harcourt or its contractors' use of Port Property; (vi) upon termination or expiration of the access, to remove all improvements, material, and equipment from the Boardmill Property and repair any damage within or outside of the Boardmill Property, unless the Port has, in writing, authorized or directed that such improvements are to remain; and (vii) complete the Work on Port Property within the Stockpile Removal Period in accordance with the terms of this Agreement. Harcourt shall ensure that its agents are in compliance with these obligations as well. Harcourt's failure to fulfill any of its agreements described herein shall constitute a material breach of the terms of this Agreement, subjecting it to all legal and equitable rights and remedies that are hereby reserved by the Port, including, without limitation, termination.

4. TERM. This Agreement shall be in effect from the Effective Date until the occurrence of the earlier of the following: (i) the expiration of the Stockpile Removal Period; (ii) the completion of the Work and removal of Harcourt Property; (iii) the completion of construction of the Building Two Project (Buildings A, B, and C) and related works; or (iv) upon fourteen (14) days' written notice from either the Port or Harcourt to the other of a breach of the terms or conditions of this Agreement by the party receiving notice. The notice is not intended to create a cure period; however, the non-breaching party may, but is not required to, accept a cure in writing pursuant to the Modification Section of this Agreement.

5. RIGHT TO OBSERVE. The Port reserves the right for itself, and its consultants and agents, to observe all Work and Harcourt Property removal, including, without limitation, excavation and sampling activities, while in progress. The Port reserves the right to obtain split samples of all samples collected. The Port will not be responsible for incremental costs incurred by Harcourt or its contractor as a result of providing sample splits to the Port or its consultants or agents.

6. GOVERNMENTAL AUTHORIZATION FOR WORK. Harcourt shall obtain and maintain all necessary permits from the relevant governments and agencies, and shall comply with all current laws, ordinances, orders, rules, regulations, permits, the Consent Decree, the CAP, the CMMP, and the Environmental Covenant with respect to its performance of the Work during the duration of such Work, including, without limitation, notification requirements.

7. **WASTE GENERATION AND MANAGEMENT.** Harcourt shall be the designated generator of any waste produced in the performance of the Work and shall be fully responsible at its cost for the preparation and execution of any manifests required for the management of such waste.

8. **HARCOURT RELEASE.** In exchange for the access provided herein, Harcourt, on behalf of itself, shall irrevocably and unconditionally waive, release, and forever discharge the Port and its Commissioners, employees, and agents from the costs and expenses incurred in conducting the Work and the Harcourt Property removal, including, without limitation, the actual cost of the Work and Harcourt Property removal.

9. **PORT RELEASE.** Upon Harcourt's completion of the Work and provision of the final Remedial Action Report or any other documentation required by Ecology memorializing the completion of the Work in conformance with MTCA, the Port shall irrevocably and unconditionally waive, release, and forever discharge Harcourt and their members, employees, and agents from any claims for contribution under MTCA for the Stockpiled Material removed and disposed of in accordance with this Agreement.

10. **SECURITY AND ENFORCEMENT.** On a date even herewith, Harcourt shall execute the Confession of Judgment and Agreed Order Granting Permanent Injunction attached hereto as Exhibit F, and shall provide the same to the Port's counsel. Such Confession of Judgment and Agreed Order Granting Permanent Injunction shall be held in the file of CSD Attorneys at Law P.S., and will not be filed with the Whatcom County Superior Court unless the Port is authorized as a result of Harcourt's breach of this Agreement, as provided herein.

10.1 If Harcourt defaults as described in Section 1 of this Agreement, the Port shall be entitled to remove and dispose of any portion of the Stockpiled Material and exercise any or all of its remedies, all of which shall be cumulative, including, but not limited to:

a. File the Confession of Judgment and Agreed Order Granting Permanent Injunction; and/or

b. Pursue any collection or other legal remedies available to the Port, including, without limitation, filing a complaint against Harcourt in Whatcom County Superior Court under RCW 70A.305.080.

10.2 The Port will not bring a MTCA claim against Harcourt based upon the mere existence of the Stockpiled Material on Port property unless (i) Harcourt defaults as described in Section 1 of this Agreement; or (ii) the Port faces a claim arising under MTCA from any third-party concerning the Stockpiled Material.

11. **INDEMNIFICATION.** Harcourt shall release, indemnify, save, defend, and hold harmless the Port, its Commissioners, employees, and agents from and against any and all claims, controversies, actions, causes of action, demands, judgments, orders, damages, costs, expenses, and liabilities (collectively, "Claims") for any bodily injury, including without limitation death, or property damage arising from the performance of the Work on, or Harcourt Property removal from, Port Property by Harcourt, its consultants, contractors, subcontractors, and agents, except to the extent caused by the negligent acts or omissions or willful misconduct of the Port.

12. **LIMITED WAIVER OF TITLE 51. TO THE EXTENT AN EMPLOYEE, AGENT, OR CONTRACTOR OF HARCOURT BRINGS ANY CLAIM AGAINST THE PORT FOR INJURIES OR DAMAGES ARISING OR RESULTING FROM THE ACCESS TO THE PORT PROPERTY, HARCOURT HEREBY WAIVES IMMUNITY FROM ANY ACTION OF THE PORT SEEKING INDEMNIFICATION FROM OR CONTRIBUTION FOR THE CLAIM, AND HARCOURT SPECIFICALLY WAIVES IMMUNITY UNDER TITLE 51 RCW OR ANY SIMILAR WORKERS' COMPENSATION SCHEME FOR ANY SUCH INDEMNIFICATION OR CONTRIBUTION CLAIM OF THE PORT.**

PP
Harcourt Developments
Initial

Port Initial

PP
Harcourt Construction
Initial

PP
Harcourt Bellingham
Initial

13. **INSURANCE.** Harcourt's contractors shall, prior to accessing Port Property, and during the entire term of this Agreement, procure and maintain a Commercial General Liability ("CGL") insurance policy written on an occurrence basis with the insurer's duty to defend outside of the limits of the policy, covering all claims for personal injury (including, without limitation, death) and property damage with limits of not less than Two Million Dollars (\$2,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) aggregate, naming the Port as an additional insured by way of a policy endorsement at least as broad as Insurance Services Office ("ISO") Form CG 20 10. Any deductible shall be no greater than Twenty-Five Thousand Dollars (\$25,000.00) and defense costs shall satisfy the deductible. All deductibles are the responsibility of the named insured. The CGL coverage shall be at least as broad as ISO Form CG 00 01. Additionally, said parties shall maintain auto liability insurance with a combined single limit of One Million Dollars (\$1,000,000.00) for bodily injury and property damage, as well as workers' compensation insurance within statutory limits. Harcourt shall provide certificates of insurance, declaration pages, and endorsement pages, and, if requested, copies of any policy to the Port. Receipt of such documents by the Port does not constitute approval by the Port of the terms of such policy. Furthermore, the CGL policy of insurance required herein shall (i) be written as a primary policy; (ii) expressly provide that such insurance may not be materially changed, amended, or canceled with respect to the Port except upon forty-five (45) days' prior written notice from the insurance company to the Port; (iii) contain an express waiver of any right of subrogation by the insurance company against the Port and its commissioners, employees, or agents; (iv) contain a separation of insured's provision such that the policy applies separately to each insured that is subject of a claim or suit; and (v) not contain a cross-claim, cross-suit, or other exclusion that eliminates coverage by one insured against another.

14. **LOSS OR DAMAGE OF PERSONAL PROPERTY.** The Port shall not be responsible to Harcourt, and/or its contractors, suppliers, or third parties, for any property loss or damage done to property on Port Property occasioned by reason of any fire, storm, or other casualty

SECOND STOCKPILE AND
MATERIAL REMOVAL AGREEMENT - 7

whatsoever. It shall be Harcourt's responsibility to provide its own protection against casualty losses of whatsoever kind or nature, regardless of whether or not such loss is occasioned by the acts or omissions of the Port, Harcourt, a third party, or act of nature.

15. **ENVIRONMENTAL INDEMNIFICATION.** Harcourt shall defend (with legal counsel suitable to Port), indemnify, and hold the Port harmless from any and all Claims arising from (i) failure to comply with the Environmental Covenant recorded against Port Property; (ii) failure to comply with the CMMP on the Boardmill Property; or (iii) the release of Hazardous Substances on the Port Property caused, in whole or in part, by the activity of Harcourt, and/or its contractors, or any other person or entity on the Port Property arising from this Agreement. The term "Hazardous Substances" as used herein shall mean any substance heretofore or hereafter designated as hazardous under the Resource Conservation and Recovery Act, 42 USC Sec. 6901 *et seq.*; the Federal Water Pollution Control Act, 33 USC Sec. 1251 *et seq.*; the Clean Air Act, 42 USC Sec. 7401 *et seq.*; the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 USC Sec. 9601 *et seq.*; or the Hazardous Waste Cleanup-Model Toxics Control Act, RCW 70A.305 *et seq.*, all as amended and subject to all regulations promulgated thereunder.

16. **SUCCESSORS AND ASSIGNS.** This Agreement is entered into for the benefit of the parties and shall not be assigned.

17. **NO THIRD-PARTY BENEFICIARIES.** This Agreement has no third-party beneficiaries.

18. **MODIFICATION.** This Agreement may not be amended or modified in any manner except by an instrument in writing signed by a duly authorized representative of each party hereto in the same manner as such party has authorized this Agreement.

19. **NEUTRAL AUTHORSHIP.** Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of all parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

20. **NOTICES.** All notices, which may be or are required to be given pursuant to this Agreement, shall be in writing and delivered to the parties at the following addresses:

To the Port:	Port of Bellingham Attn: Brian Gouran 1801 Roeder Avenue Bellingham, WA 98227-7107 United States
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To Harcourt Developments:	Harcourt Developments Residential Bellingham LLC Attn: Louis Parr 1211 Granary Avenue Bellingham, WA 98225-3089 United States
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To Harcourt
Construction:

Harcourt Developments Construction LLC
Attn: Louis Parr
1211 Granary Avenue
Bellingham, WA 98225-3089
United States

To Harcourt
Bellingham:

Harcourt Bellingham LLC
Attn: Louis Parr
1211 Granary Avenue
Bellingham, WA 98225-3089
United States

Any such notices shall be either (i) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) days after deposit, postage prepaid in the U.S. mail; (ii) sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered when actually delivered pursuant to the records of such courier; (iii) sent by e-mail transmission to the party, receipt of which has been confirmed by telephone, and by regular mail, in which case notice shall be deemed delivered on the day of such confirmed receipt; or (iv) hand delivered, in which case notice shall be deemed delivered when actually delivered.

21. **CAPTIONS.** The captions of the Sections of this Agreement are only to assist the parties in reading and understanding this Agreement, and shall have no effect upon the construction or interpretation of any part thereof.

22. **TIME IS OF THE ESSENCE.** Time is of the essence of this Agreement and all of the terms, provisions, covenants, and conditions thereof.

23. **WAIVER.** No waiver by any party of any provision of this Agreement or any breach thereof shall be of any force or effect unless in writing by the party granting the waiver, and no such waiver shall be construed to be a continuing waiver. The waiver by one (1) party of the performance of any covenant, condition, or promise shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition, or promise hereunder. The waiver by either or both parties of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time. No failure by either party to insist upon the strict performance of any term of this Agreement or to exercise any right or remedy shall constitute a waiver.

24. **APPLICABLE LAW AND JURISDICTION.** This Agreement shall be interpreted under and pursuant to the laws of the State of Washington without regard to choice of law provisions. In the event any action is brought to enforce any of the provisions of this Agreement, it shall be subject to the sole jurisdiction and venue in Whatcom County Superior Court. This Agreement shall not be subject to the dispute resolution provisions of the Restated MDA, nor shall it be considered as falling within the scope of, arising out of, or relating to the Restated MDA for purposes of considering whether there is an enforceable agreement to mediate or arbitrate any disputes arising from this Agreement.

25. **ATTORNEYS' FEES.** In the event any proceeding is instituted to interpret or enforce any provision or resolve any dispute under this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission or enforcement of the Confession of Judgment and Agreed Order Granting Permanent Injunction, the prevailing party in such dispute, whether it be resolved by litigation or otherwise, shall be entitled, in addition to such other relief as may be granted to it, a reasonable sum as and for its attorneys' fees and costs.

26. **SURVIVAL.** All provisions of this Agreement requiring performance past its termination, including, without limitation, those related to indemnification, shall survive the termination of this Agreement as separate obligations until fully performed.

27. **SEVERABILITY.** In case any one (1) or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

28. **AUTHORITY TO SIGN.** Each person signing this Agreement represents and warrants that they have full power and authority to bind the party on whose behalf they sign and that upon execution and delivery of this Agreement by each of the parties, this Agreement shall constitute as against each party a valid and binding obligation, enforceable in accordance with its terms.

29. **EXECUTION IN COUNTERPARTS.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original, and all of which taken together shall constitute one (1) and the same Agreement.

30. **ENTIRE AGREEMENT.** The entire agreement between the parties with respect to the subject matter herein is contained in this Agreement; this supersedes all of their previous understandings and agreements, written and oral, with respect to the subject matter herein.

IN WITNESS WHEREOF, the parties hereto have executed this document as of the day and year last written below ("Effective Date").

[Signatures on Subsequent Page]

PORT OF BELLINGHAM

President

Date: _____

Secretary

Date: _____

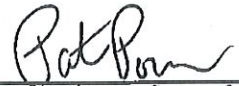
**HARCOURT DEVELOPMENTS
RESIDENTIAL BELLINGHAM LLC**


By: _____

Its: _____

Date: _____

**HARCOURT DEVELOPMENTS
CONSTRUCTION, LLC**


By: _____

Its: _____

Date: _____

HARCOURT BELLINGHAM, LLC


By: _____

Its: _____

Date: _____

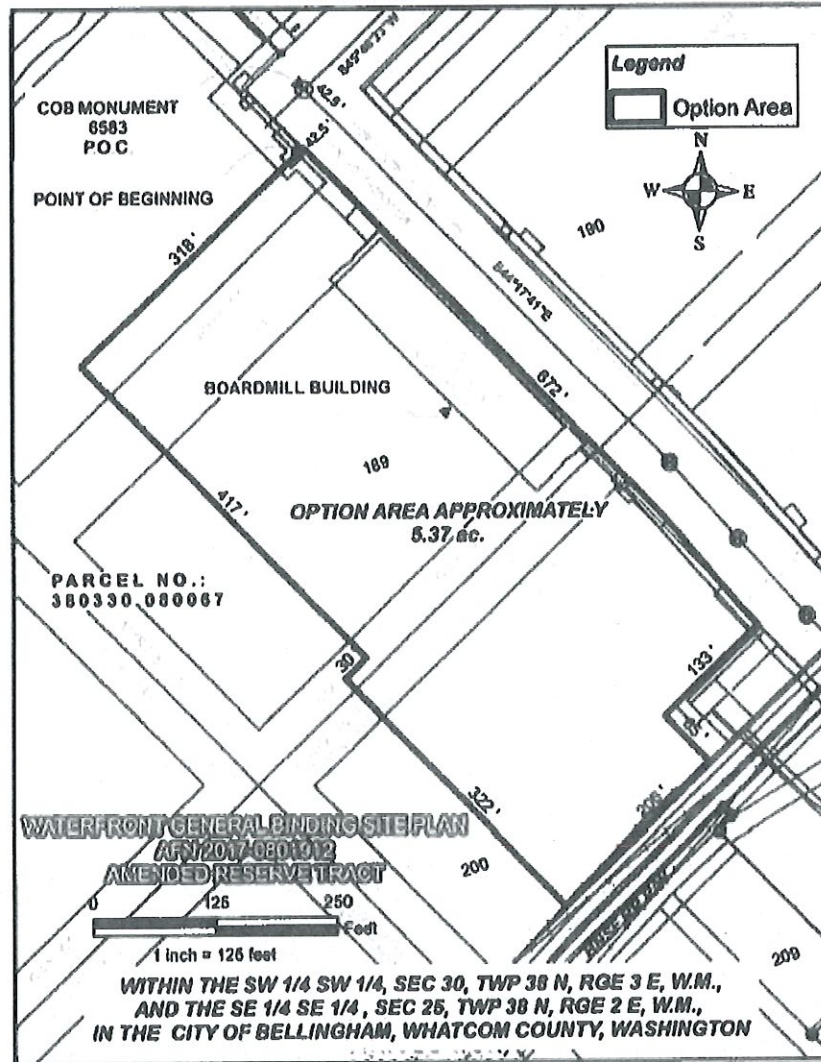
**EXHIBIT A
PORT PROPERTY**



**SECOND STOCKPILE AND
MATERIAL REMOVAL AGREEMENT – 12**

**EXHIBIT B
BOARDMILL PROPERTY**

**EXHIBIT C
DEPICTION OF OPTION AREA**



SECOND STOCKPILE AND
MATERIAL REMOVAL AGREEMENT - 13

EXHIBIT C
FULLY EXECUTED SETTLEMENT AGREEMENT

**EXHIBIT D
THE TUNE-UP PARKING AREA**



**SECOND STOCKPILE AND
MATERIAL REMOVAL AGREEMENT – 15**

**EXHIBIT E
FORM OF CONSTRUCTION LICENSE**

**EXHIBIT C
FORM OF
CONSTRUCTION LICENSE**

CONSTRUCTION LICENSE

THIS CONSTRUCTION LICENSE (the "License") is made this ____ day of _____, 20____, by and between the Port of Bellingham, a Washington municipal corporation (the "Port") and _____, a Washington _____ ("Project Owner").

WHEREAS, the Port owns certain real property within the Waterfront District as further depicted on Exhibit "A" hereto (the "Port Property");

WHEREAS, Project Owner [owns/leases] from the Port and is developing certain real property adjacent to the Port's property as further described on Exhibit "A" hereto (the "Project Property"); and

WHEREAS, Project Owner requires use of a portion of the Port Property (the "License Area") for temporary staging of material, equipment and portable offices during development on the Project Property (the "Authorized Uses");

WHEREAS, the Port and the Washington State Department of Ecology ("Ecology") have entered into that certain Pulp/Tissue Mill RAU Consent Decree dated December 22, 2014, which was filed in Whatcom County Superior Court Cause No. 14-2-02700-8 (the "Consent Decree")

[OR]

WHEREAS, the Port and Washington State Department of Ecology ("Ecology") have entered into that certain Chlor-Alkali RAU Consent Decree dated _____, 2015 which was filed in Whatcom County Superior Court Cause No. _____ (the "Consent Decree").

WHEREAS, the Project Owner understands that the License Area is and will be subject to (i) that certain Contaminated Materials Management Plan as appended to the Consent Decree and (ii) that certain Environmental Covenant required pursuant to the Consent Decree

NOW, THEREFORE, the Port and Project Owner agree as follows:

1. **Grant of License.** The Port hereby grants a temporary non-exclusive license to Project Owner, to allow Project Owner, at its cost, to utilize the License Area as depicted in Exhibit "A" for the Authorized Uses and for no other use.

1.1. **No Interest in Real Property.** This License shall not be deemed to transfer any interest in the underlying Port Property. Rather, it grants a permission to Project Owner to use the Port's Property under the terms and conditions and for the purposes set forth herein.

2. **License Fee.** This License is provided in conjunction with the development of the project on the Project Property which is of substantial benefit to the Port and considered by the

Port and the Project Owner in the [purchase/leases] of the Project Property. Therefore, this License is supported by adequate consideration.

2.1. Leasehold Excise Tax. Project Owner shall be responsible for payment of any applicable Washington state leasehold excise tax due as a result of this License.

3. Duration of License. This License shall remain in full force and effect until the earlier of the following: (i) abandoned in writing by Project Owner, or (ii) the Project has been substantially completed which is defined as the issuance of a temporary or permanent certificate of occupancy, (iii) it is terminated, upon thirty (30) days written notice, by the Port due to Project Owner's breach of any of the terms of this License, or (iv) 24 months from the date of the full execution of this License.

3.1. Extension of License Term. The Port will reasonably extend the duration of this License to accommodate the completion of the Project provided that the Project Owner is not in default of the Revised Master Development Agreement. The extension may include a change in the size of the License Area.

4. Project Owner's Obligations. Project Owner agrees to (i) only allow use of the License Area for the Authorized Uses, (ii) keep the License Area in a neat and clean condition and to keep said area clear of all trash and debris except as reasonably required for the Authorized Uses, (iii) comply with the Environmental Covenant and the Contaminated Materials Management Plan on the License Area, (iv) conform to and abide by all rules, codes, laws, and regulations in connection with the use of the License Area and not to permit the Port's Property to be used in violation of any lawful rule, code, law, regulation, or other authority, (v) keep the Port's Property free and clear of all liens and charges whatsoever arising from Project Owner's use of the Port's Property, (vi) upon termination or expiration of the License, to remove all improvements, material and equipment from the Construction License Area and repair any damage within or outside of the Construction License Area, unless the Port has in writing authorized or directed that such improvements are to remain.

5. Improvements. Project Owner shall not make or install any improvements or fixtures on the Port's Property without the Port's prior written consent, which shall be granted or withheld in the Port's sole discretion.

6. Signs. No signs shall be installed or placed on the Port's Property without the express written permission of the Port.

7. Project Owner's Indemnification of the Port. Project Owner will indemnify, save, defend, and hold the Port harmless from any claim of personal injury or property damage resulting from the use of the License Area by the Project Owner, its employees, its contractors, its suppliers, its subcontractors and all their respective employees.

8. Insurance. Project Owner shall, prior to utilizing the License Area and during the entire term of this License, procure and maintain a comprehensive general liability policy covering all claims for personal injury (including death) and property damage (including all real and personal property located on the License Area arising from Property Owner's activities. The limits of liability shall be not less than One Million Dollars (\$1,000,000) for each occurrence and in the aggregate. The foregoing insurance policy shall name the Port as an additional insured. The Project Owner shall provide certificates of insurance and, if requested, copies of any policy to the Port. Receipt of such certificate or policy by Port does not constitute approval by Port of the

terms of such policy. Furthermore, the policy of insurance required herein shall: (i) be written as a primary policy, (ii) expressly provide that such insurance may not be materially changed, amended or canceled with respect to Port except upon forty-five (45) days' prior written notice from the insurance company to the Port and (iii) contain an express waiver of any right of subrogation by the insurance company against the Port, its commissioners, employees, or agents.

8.1. **Contractor Insurance.** Prior to and during any period where the Project Owner allows its contractors to utilize the License Area each such contractor shall obtain and maintain the insurance noted in paragraph 8 above and shall name the Port as an additional insured under the contractor's policy.

9. **Loss or Damage of Personal Property.** The Port shall not be responsible to the Project Owner or its contractors or suppliers for any property loss or damage done to property on the License Area occasioned by reason of any fire, storm or other casualty whatsoever. It shall be the Project Owner's responsibility to provide its own protection against casualty losses of whatever kind or nature, regardless of whether or not such loss is occasioned by the acts or omissions of the Port, the Project Owner, a third party, or act of nature.

10. **Environmental Indemnification.** Project Owner shall defend (with legal counsel suitable to Port), indemnify, and hold Port harmless from any and all claims, demands, judgments, orders or damages resulting from (i) failure to comply with the Environmental Covenant recorded against the License Area, (ii) failure to comply with the Contaminated Materials Management Plan on the License Area or (iii) the release of Hazardous Substances on the License Area caused in whole or in part by the activity of the Project Owner, its contractors or any other person or entity on the License Area during the term of this License. The term "Hazardous Substances," as used herein, shall mean any substance heretofore or hereafter designated as hazardous under the Resource Conservation and Recovery Act, 42 USC Sec. 6901 et seq.; the Federal Water Pollution Control Act, 33 USC Sec. 1257 et seq.; the Clean Air Act, 42 USC Sec. 2001 et seq.; the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 USC Sec. 9601 et seq.; or the Hazardous Waste Cleanup-Model Toxics Control Act, RCW 70.105D, all as amended and subject to all regulations promulgated thereunder.

11. **Successors and Assigns.** This License is granted for the benefit of Project Owner and shall not be assigned.

12. **No Third Party Beneficiaries.** This License has no third party beneficiaries.

13. **Modification.** This License may not be amended or rescinded in any manner except by an instrument in writing signed by a duly authorized representative of each party hereto in the same manner as such party has authorized this License.

14. **Notices.** All notices, which may be or are required to be given pursuant to this License shall be in writing and delivered to the parties at the following addresses:

To the Port:

To Project Owner:

Any such notices shall be either (i) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) days after deposit, postage prepaid in the U.S. mail, (ii) sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered when actually delivered pursuant to the records of such courier, or (iii) sent by email transmission to the party and its counsel, receipt of which has been confirmed by telephone, and by regular mail, in which case notice shall be deemed delivered on the day of such confirmed receipt, or (iv) hand delivered, in which case notice shall be deemed delivered when actually delivered.

15. **Execution in Counterparts.** This License may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same License.

16. **Waiver.** No waiver by any party of any provision of this License or any breach thereof shall be of any force or effect unless in writing by the party granting the waiver and no such waiver shall be construed to be a continuing waiver. The waiver by one party of the performance of any covenant, condition, or promise shall not invalidate this License nor shall it be considered a waiver by such party of any other covenant, condition, or promise hereunder. The waiver by either or both parties of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time.

17. **Applicable Law and Jurisdiction.** This License shall be interpreted under and pursuant to the laws of the State of Washington without regard to choice of law provisions. In the event any action is brought to enforce any of the provisions of this License, the parties agree to be subject to the sole jurisdiction and venue in Whatcom County Superior Court.

18. **Attorneys' Fees.** In the event any proceeding is instituted to interpret or enforce any provision or resolve any dispute under this License, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, each party shall bear their own costs and attorney fees.

19. **Severability.** In case any one or more of the provisions contained in this License shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this License shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

20. **Entire Agreement.** The entire agreement between the parties with respect to the subject matter herein is contained in this License; this supersedes all of their previous understandings and agreements, written and oral, with respect to the subject matter herein.

PORT OF BELLINGHAM

By:
Its:

EXHIBIT "A"
PORT PROPERTY, PROJECT PROPERTY, & LICENSE AREA

**EXHIBIT F
CONFESSION OF JUDGMENT
AND AGREED ORDER GRANTING PERMANENT INJUNCTION**

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHATCOM**

PORT OF BELLINGHAM, a Washington
municipal corporation,

Plaintiff,

v.

HARCOURT BELLINGHAM, LLC, a
Washington limited liability company;
HARCOURT DEVELOPMENTS RESIDENTIAL
BELLINGHAM LLC, a Washington limited
liability company; HARCOURT
DEVELOPMENTS CONSTRUCTION, LLC;

Defendants.

No.

**CONFESSION OF JUDGMENT AND
AGREED ORDER GRANTING
PERMANENT INJUNCTION**

JUDGMENT SUMMARY

Creditor:	Port of Bellingham (the "Port")
Debtors:	Harcourt Developments Construction LLC ("Harcourt Construction") Harcourt Developments Residential Bellingham LLC ("Harcourt Developments") Harcourt Bellingham LLC ("Harcourt Bellingham") (collectively "Harcourt")
Principal Judgment:	To be determined by declaratory judgment action under RCW 70A.305.080 supported by declaration of the Port detailing final remediation costs.
Attorneys' Fees Since Date of Default by Harcourt under the Second Removal Agreement:	\$ _____

CONFESSION OF JUDGMENT - 1

Costs Since Date of Default by
Harcourt under the Second
Removal Agreement: \$ _____

Attorneys for Judgment Creditor: Holly M. Stafford, WSBA #40674
T. Todd Eglund, WSBA #48788
Sara B. Frase, WSBA #56922
CSD Attorneys at Law, P.S.
1500 Railroad Ave.
Bellingham, WA 98225
P: (360) 306-3018
E: teglund@csdlaw.com

Attorneys for Judgment Debtors: Robert S. Marconi, WSBA #16369
Richard H. Skalbania, WSBA #17316
Ashbaugh Beal LLP
920 Fifth Avenue, Suite 3400
Seattle, WA 98104
P: (206) 386-5900
E: bmaraconi@ashbaughbeal.com

**I. FACTS AND STIPULATION SUPPORTING
CONFESSION OF JUDGMENT AND PERMANENT INJUNCTION**

1.1 Harcourt Developments purchased Waterfront SBSP No. 1 Lot 1 from the Port to develop certain real property commonly known to the Parties as the "Building Two Project." The Building Two Project is further defined in the *Restated and Amended Port of Bellingham and Harcourt Bellingham LLC Master Development Agreement for a Portion of the Waterfront District Bellingham, Washington, USA*, dated October 19, 2021 (the "Restated MDA").

1.2 The Port owns certain real property within the Waterfront District depicted as the black striped area adjacent to the Building Two Project (the "Port Property").

1.3 The Building Two Project area is subject to a Consent Decree entered into by the Washington State Department of Ecology ("Ecology") and the Port under Whatcom County Superior Court Cause No. 14-2-02700-8 (the "Consent Decree") for the Pulp/Tissue Mill Remedial Action Unit ("RAU") of the Georgia-Pacific West environmental site, which includes, without limitation, the Cleanup Action Plan ("CAP") and the Contaminated Materials Management Plan Pulp/Tissue Mill Remedial Action Unit, G-P West Site, dated June 19, 2014 (the "CMMP"), attached as an exhibit to the Consent Decree. Additionally, the Building Two Project area is

CONFESSION OF JUDGMENT – 2

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tel 360.671.1796 • fax 360.671.3781

1 subject to an environmental covenant (the "Environmental Covenant") recorded under Whatcom
2 County Auditor's File No. 2017-0100510.

3 1.4 In conjunction with Harcourt Developments' development of the Building Two
4 Project, on or about August 21, 2020, the Port and Harcourt Construction entered into a temporary,
5 non-exclusive Construction License (the "Construction License") so that Harcourt Construction
6 could utilize certain Port property for access, temporary staging of material, equipment and
7 portable offices, and parking and marshalling during development of the Building Two Project in
8 what was identified in the Construction License as the Construction License Area (the
9 "Construction License Area").

10 1.5 Harcourt Construction relied upon the Construction License to, in part, utilize a
11 portion of Port Property known as the "Boardmill Property" for project materials handling, including
12 stockpiling material excavated from the Building Two Project footprint. Pursuant to the CMMP, this
13 stockpiled material is presumed to be contaminated by hazardous substances at levels exceeding
14 applicable Model Toxics Control Act ("MTCA") cleanup levels and is to be reused or disposed of
15 after two (2) years. The material excavated from the Building Two Project area and placed on Port
16 Property is herein referred to as the "Stockpiled Material."

17 1.6 The Parties engaged in litigation in Whatcom County Superior Court under
18 Consolidated Cause No. 24-2-00398-37 (the "Consolidated Lawsuit"), among other things,
19 regarding Harcourt's continued right to access Port property for the purposes identified in the
20 Construction License. On June 24, 2024, Whatcom County Superior Court Judge Robert E. Olson
21 issued an Order Denying Motion for Temporary Restraining Order in Whatcom County Cause No.
22 24-2-00635-37 (the "Order"), which concluded in part, "The [Construction] License terminated on
23 October 31, 2022." Moreover, "[a]s of October 31, 2022, Harcourt no longer had the right to utilize
24 the [Construction] License Area....".

25 1.7 On September 13, 2024, Judge Olson granted the Port's Motion for Temporary
26 Restraining Order and Requiring Harcourt to Show Cause, enjoining Harcourt from trespassing on
27 the Port's property.
28

1.8 The Port and Harcourt agreed to a Stipulation Staying Litigation of Certain Causes of Action and Issuance of Preliminary Injunction on October 17, 2024 (the "Stipulation"). In that Stipulation, Harcourt and the Port agreed to submit contractual claims to JAMS arbitration, while certain non-contract claims were stayed pending the arbitration. Along with the Stipulation, the Parties concurrently entered into the Stockpile and Material Removal and Arbitration Agreement ("First Removal Agreement"), which, among other things, required Harcourt to remove the Stockpiled Material twelve (12) months from execution of the First Removal Agreement.

1.9 On _____, 2025, the Parties entered into (1) a Settlement Agreement resolving the JAMS arbitration; (2) a Second Stockpile and Material Removal Agreement ("Second Removal Agreement"); (3) a Stipulation for Order of Dismissal of the Consolidated Lawsuits; and (4) a Stipulation for Order of Dismissal With Prejudice of the Arbitration. As part of the settlement, Harcourt requested continued access to Port Property for the purpose of completing construction of the Building Two Project, which consists of the construction of three (3) condominium buildings (Buildings A, B, and C) and related works, and removal of Harcourt Property.

1.10 In addition, the Second Removal Agreement provides as follows:

Harcourt, or others working on its behalf, shall, in conformance with the terms of the Consent Decree, CAP, CMMP, and Environmental Covenant: (i) completely remove the Stockpiled Material from Port Property; (ii) dispose of the Stockpiled Material at a licensed and approved off-site disposal facility; and (iii) repair, replace, or install new cap materials and/or erosion controls as needed to ensure the protectiveness of the RAU-wide cap impacted by deposit or removal of the Stockpiled Material. Collectively, this is referred to herein as the "Work." Complete removal of the Stockpiled Material shall be evidenced by full visualization of the RAU-wide cap described in the CAP and CMMP from the area where Stockpiled Material had been deposited. Because the Stockpiled Material was not disposed of within two (2) years, completion of the Work shall be memorialized in a "Remedial Action Report" in compliance with WAC 173-340-515(4)(b) and WAC 173-340-850 or any other documentation required by the Department of Ecology. The Work shall be completed within twelve (12) months of the full execution of this Agreement (the "Stockpile Removal Period").

1.11 Material, equipment, and/or portable offices belonging to Harcourt or its agents ("Harcourt Property") remain on Port Property.

1.12 In the event any dispute under the Settlement Agreement, Second Removal

1 Agreement, or this Confession of Judgment and Agreed Order Granting Permanent Injunction
2 ("Confession of Judgment and Permanent Injunction") arises, the prevailing party is entitled to
3 recover its attorneys' fees and costs for enforcement of the Settlement Agreement, Second
4 Removal Agreement, and/or this Confession of Judgment and Permanent Injunction.

5 1.13 Harcourt has breached the Second Removal Agreement by failing to remove the
6 Stockpiled Material as required.

7 II. CONFESSION OF JUDGMENT AND PERMANENT INJUNCTION

8 2.1 Harcourt hereby stipulates and confesses to Judgment and entry of a Permanent
9 Injunction without a hearing as follows:

10 a. For an award of damages for all remediation costs for the Boardmill Property
11 in connection with Harcourt's failure to remove the Stockpiled Material, including, without limitation,
12 the costs of excavation, loading, transporting, and disposing of the Stockpiled Material at an
13 appropriate facility, and the Port's reasonable attorneys' fee and costs, which shall be fixed by a
14 claim for declaratory relief under RCW 70A.305.080 filed by the Port and supported by a
15 declaration of the Port once those costs are finally determined based upon completion of the scope
16 of Work described in the Second Stockpile Removal Agreement.

17 b. For an award of the Port's reasonable attorneys' fees and costs pursuant to
18 the Second Removal Agreement and this Confession of Judgment and Permanent Injunction since
19 the date of default by Harcourt under the Second Removal Agreement.

20 c. Pursuant to Chapter 7.40 RCW and CR 65(d), Harcourt, and their agents,
21 servants, employees, attorneys, and all persons in active concert or participation with Harcourt who
22 receive actual notice of this Confession of Judgment and Permanent Injunction by personal service
23 or otherwise, are enjoined from trespassing on the Port's property.

24 d. Harcourt shall remove all property owned or controlled by Harcourt from Port
25 property within fourteen (14) days of entry of this Confession of Judgment and Permanent
26 Injunction.

27 e. Violation of the terms of this Confession of Judgment and Permanent
28 Injunction may result in a finding of civil contempt against any person violating this Confession of

CONFESSON OF JUDGMENT – 5

1 Judgment and Permanent Injunction.

2 f. Nothing herein shall waive, preclude, or prevent the Port from seeking relief
3 for any cause of action occurring after the date of this order.

4 g. A permanent injunction shall issue without a bond.

5 2.2 This Confession of Judgment and Permanent Injunction is being left in the
6 possession of CSD Attorneys at Law P.S., for *ex parte* entry with Whatcom County Superior Court
7 upon default by Harcourt of the Second Removal Agreement without further notice to Harcourt.

8 **III. STIPULATION TO ENTRY OF DECREE AND JUDGMENT**

9 3.1 Harcourt hereby acknowledges and represent as follows: (i) it has personally read
10 this Confession of Judgment and Permanent Injunction and understands its contents; (ii) it has had
11 the opportunity to have this Confession of Judgment and Permanent Injunction reviewed by their
12 attorneys; and (iii) that upon default under the Second Removal Agreement, Harcourt authorizes
13 the Port, upon declaration from its authorized representative, to amend the foregoing amount of the
14 Principal Judgment and attorneys' fees if necessary for accuracy, and to enter this Confession of
15 Judgment and Permanent Injunction in Whatcom County Superior Court without further notice to
16 Harcourt.

17 3.2 Harcourt further acknowledges and represents that it is voluntarily, knowingly, and
18 intelligently waiving its right to appeal or seek discretionary review of this Confession of Judgment
19 and Order.

20
21 *[Signatures and Notary on Subsequent Page]*
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1 DATED this 30 day of April, 2025.

2 HARCOURT DEVELOPMENTS
3 CONSTRUCTION LLC

4 Patrick Power
5 By: Patrick Power
6 Its: Director

7 HARCOURT DEVELOPMENTS RESIDENTIAL
8 BELLINGHAM LLC

9 Patrick Power
10 By: Patrick Power
11 Its: Director

12 HARCOURT BELLINGHAM LLC

13 Patrick Power
14 By: Patrick Power
15 Its: Director

16 STATE OF WASHINGTON)
17) ss.
18 COUNTY OF WHATCOM)

19 On this day personally appeared before me _____ to me known to be the
20 entity or entities described in and who executed the within and foregoing instrument, and
21 acknowledged that it signed the same as its free and voluntary act and deed, for the uses and
22 purposes therein mentioned.

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GIVEN under my hand and official seal this _____ day of _____, 20____.

Print Name: _____
NOTARY PUBLIC in and for the
State of Washington, Residing at _____
My Commission Expires: _____

CONFESSON OF JUDGMENT – 7

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AT LAW
1500 Railroad Avenue, Bellingham, WA 98225
tel 360.671.1796 • fax 360.671.3781

1 IV. ATTORNEY VERIFICATION

2 I, T. TODD EGLAND, attorney for Plaintiff Port of Bellingham ("Plaintiff") in the above-
3 entitled action, hereby state that the amount attorneys' fees and costs incurred by the Port
4 subsequent to the date of the default by Harcourt under the Second Removal Agreement, and this
5 Confession of Judgment and Permanent Injunction total _____
6 Dollars and _____ Cents (\$ _____), and that the amount of
7 costs incurred during the same time period total _____ Dollars
8 and _____ Cents (\$ _____); and acknowledge that
9 payments have been received from Harcourt subsequent to the date of the execution of this
10 Confession of Judgment and Permanent Injunction in the amount of _____
11 _____ Dollars and _____ Cents (\$ _____),
12 of which payments have been credited to the amount due to the Port and are not included in this
13 Confession of Judgment and Permanent Injunction.

14
15 DATED this ____ day of _____, 202__, in Bellingham, Washington.

16
17 CSD ATTORNEYS AT LAW P.S.

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19
20 T. Todd Egland, WSBA #48788
21 Attorneys for Plaintiff

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V. DECREE AND JUDGMENT

THIS MATTER having come before the Court on the foregoing Confession of Judgment,
and good cause appearing for entry of Judgment as confessed here; **NOW, THEREFORE;**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

- (a) Judgment in favor of the Port is entered against Harcourt;
- (b) Harcourt's right to access the Port's property is terminated, effective immediately;
- (c) Attorneys' fees in the amount of _____ Dollars
and _____ Cents (\$ _____); and
- (d) Costs in the amount of _____ Dollars and
_____ Cents (\$ _____).

DONE IN OPEN COURT this _____ day of _____, 202__.

JUDGE/COURT COMMISSIONER