

After Recording Return To:

City of Bothell  
18415 – 101st Avenue NE  
Bothell, WA 98011  
Attn: City Clerk

DEVELOPMENT AGREEMENT (BLOCK D)

DEVELOPER: [ \_\_\_\_\_ ]

CITY: CITY OF BOTHELL, a Washington municipal corporation

Legal Description:  
Abbreviated form:  
Additional legal on Exhibit A (p. )

Assessor's Property Tax Parcel Account Number(s):

## TABLE OF CONTENTS

	<b>Page</b>
Section 1. Definitions.....	1
Section 2. Intent and Relations .....	4
2.1 Generally .....	4
2.2 Standards.....	5
Section 3. Project Use Components .....	5
Section 4. General Terms of Conveyance.....	5
Section 5. Development.....	5
5.1 Generally .....	5
5.2 Construction Obligations and Development Fees.....	5
Section 6. Disclaimer of Liability, Indemnity.....	7
6.1 Preparation of Site; Utilities.....	7
6.2 AS IS .....	8
6.3 Approvals and Permits .....	8
6.4 Indemnity .....	8
Section 7. Environmental Issues .....	9
Section 8. Guaranty of Completion.....	9
Section 9. Certificate of Performance .....	9
9.1 When Developer Entitled to Certificate of Performance .....	9
9.2 Effect of Certificate of Performance; Termination of Agreement.....	9
Section 10. Liens.....	10
Section 11. Insurance .....	10
11.1 Insurance Requirements .....	10
Section 12. Destruction or Condemnation .....	10
12.1 Total or Partial Destruction.....	10
12.2 Condemnation .....	10
Section 13. Default By Developer .....	11
13.1 Events of Default.....	11
13.2 Remedies For Developer Default.....	11
13.3 Copy of Notice of Default to Mortgagee .....	12
13.4 Mortgagee’s Option To Cure Defaults.....	12
Section 14. Default By City .....	12
Section 15. Miscellaneous.....	13
15.1 Representations and Warranties.....	13
15.2 Estoppel Certificates .....	13

15.3	Inspection .....	13
15.4	Entire Agreement .....	13
15.5	Modification .....	13
15.6	Successors and Assigns; Joint and Several .....	13
15.7	Notices .....	14
15.8	Counterparts .....	15
15.9	Waiver .....	15
15.10	Rights and Remedies Cumulative .....	15
15.11	Governing Law; Jurisdiction .....	15
15.12	No Joint Venture; No Third Party Rights .....	15
15.13	Provisions Surviving Termination .....	15
15.14	Conflict of Interest .....	15
15.15	Non-Discrimination .....	16
15.16	Attorneys' Fees .....	16
15.17	Captions; Exhibits .....	16
15.18	Fair Construction; Severability .....	16
15.19	Time of the Essence .....	16
15.20	Computation of Time .....	16
15.21	Waiver of Jury Trial .....	17

**Exhibits:**

Exhibit A	Legal Description of Property
Exhibit B	Form of Guaranty
Exhibit C	Form of Certificate of Performance
Exhibit D	Description of Developer Road Work and Utilities Work
Exhibit E-1	Identification of Frontage Improvements
Exhibit E-2	Existing City Utilities
Exhibit E-3	Developer Road Work Area
Exhibit E-4	Depiction of Neighboring Owner Improvement Area

**DEVELOPMENT AGREEMENT  
(BLOCK D)**

THIS DEVELOPMENT AGREEMENT (BLOCK D) (this “Agreement”) is dated as of \_\_\_\_\_, 2020, between the CITY OF BOTHELL, a Washington municipal corporation (“City”), and [\_\_\_\_\_, a \_\_\_\_\_] (“Developer”).

RECITALS

A. Pursuant to that certain Purchase and Sale Agreement (Block D) dated \_\_\_\_\_, 20\_\_ between City as seller and Developer, as buyer (the “Sale Agreement”), concurrently herewith Developer has acquired that certain real property legally described in Exhibit A attached hereto (the “Property”). As part of such acquisition, the parties are executing this Agreement as required by the Sale Agreement.

B. Developer’s proposal for its development of the Property in downtown Bothell was consistent with City’s goals for the Property and City, including the City of Bothell’s Comprehensive Plan and Downtown Subarea Plan.

C. As described in the Sale Agreement, City desires to foster the development of the Property, which is located in a key part of downtown Bothell, in a way that will contribute to public amenities and the economic revitalization of the City.

D. The development described in this Agreement will require applications to City in its capacity as the regulatory authority for land use, development and other applicable review and permitting before construction may be commenced.

E. The Project is a private undertaking to be contracted, constructed and operated by Developer with Developer’s resources and will provide a significant development of the Property with accompanying public amenities and economic redevelopment benefits to the public. The parties intend by this Agreement to set forth their mutual agreement and undertakings with regard to the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual undertaking and promises contained herein, and the benefits to be realized by each party, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

Section 1. Definitions. In addition to the terms defined in the Recitals above, the following terms shall have the meanings set forth below. Section references shall be to sections of this Agreement unless otherwise indicated.

“Agreed Order” means Agreed Order No. 15747 entered into by Seller and Ecology, effective May 31, 2018, to implement the CAP for the Bothell Former Hertz Site. *[This definition and all references to the Agreed Order in this Agreement can be removed if this Agreed Order is terminated by Ecology before this Agreement is executed.]*

“Business Day” means any day on which banks in Bothell, Washington are required to be open for business, excluding Saturdays and Sundays.

“CAP” means, collectively, the Cleanup Action Plans dated May 29, 2018, for the Bothell Former Hertz Site; July 19, 2019, for the Bothell Service Center Simon and Son Site; and, August 22, 2019, for the Former Wexler Property Site issued by Ecology pursuant to RCW § 70D.105D and WAC 173-340-380. The CAP specifies the cleanup standards and cleanup actions required by Ecology to remediate the Historic Contamination.

“Certificate of Performance” means a certificate issued by City to Developer pursuant to Section 9 of this Agreement.

“City Default” shall have the meaning given in Section 15.

“Consent Decree” means a judicially-approved agreement entered into by City and Ecology to implement the CAP. The Consent Decree was entered in King County Superior Court under Cause No. \_\_\_\_\_ on \_\_\_\_\_.

“Construction Documents” means, collectively, all plans, construction documents and other documentation that Developer is required to submit to City as part of the process to obtain site plan, environmental and land use approvals, as well as grading, utility, building and related permits for the Project (including for the Developer Road Work and Utilities Work), upon which Developer and Developer’s contractors will rely in building the Project, as approved by City for issuance of a vertical building permit for the Project.

“Design Regulations” means collectively, the City of Bothell’s Imagine Bothell...Comprehensive Plan, the City of Bothell Municipal Code, the City of Bothell Design and Construction Standards and Specifications, the City of Bothell Downtown Subarea Plan and Regulations, and other Legal Requirements that affect the Project and the Property.

“Developer Road Work” is defined in Section 5.2.2.

“Developer Road Work Area” means the portion of the public right of way in which Developer is to perform the Developer Road Work.

“Effective Date” means the date set forth in the first paragraph of this Agreement.

“Environmental Agreements” means, collectively, the Consent Decree, [the Agreed Order], the Restrictive Covenant and the Monitoring and Compliance Easement.

“Environmental Law” means any federal, state, municipal or local law, statute, ordinance, regulation, order or rule pertaining to health, industrial hygiene, environmental conditions or hazardous substances, including without limitation the Washington Model Toxics Control Act, RCW ch. 70.105D et seq. and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

“Event of Default” is defined in Section 14.1.

“Guarantor” means \_\_\_\_\_, which is the owner of a direct or indirect beneficial interest in Developer.

“Guaranty” is defined in Section 8.

“Governmental Authorities” means any board, bureau, commission, department or body of any local, municipal, county, state or federal governmental or quasi-governmental unit, or any subdivision thereof, or any utility provider serving the Property, having, asserting, or acquiring jurisdiction over or providing utility service to the Project, the Property and/or the management, operation, use, environmental cleanup or improvement thereof.

“Hazardous Substances” means any hazardous waste or other substances listed, defined, designated or classified as hazardous, dangerous, radioactive, toxic, solid waste or a pollutant or contaminant in any Environmental Law, including without limitation: (i) petroleum products and petroleum byproducts; (ii) polychlorinated biphenyls; and (iii) chlorinated solvents.

“Improvements” means all buildings and improvements to be constructed by Developer in, under or upon the Property or the Developer Road Work Areas as part of the Project, and all sidewalks, accessways, pedestrian areas, public amenities, parking areas, utility and utility distribution facilities, lighting, signage, landscaping and other infrastructure improvements to be built by Developer as part of the Project.

“Legal Requirements” means all local, county, state and federal laws, ordinances and regulations and other rules, orders, requirements and determinations of any Governmental Authorities now or hereafter in effect, whether or not presently contemplated, applicable to the Property, the Project or its ownership, operation or possession, including the Design Regulations, those relating to parking restrictions, building codes, zoning or other land use matters, The Americans With Disabilities Act of 1990, as amended (as interpreted and applied by the public agencies with jurisdiction over the Property), life safety requirements and Environmental Laws with respect to the handling, treatment, storage, disposal, discharge, use and transportation of Hazardous Substances. In addition, “Legal Requirements” includes the Environmental Agreements.

“Monitoring and Compliance Easement” means that certain easement executed by City and Developer and recorded on title to the Property contemporaneously with this Agreement.

“Mortgagee” means the holder of a first mortgage or deed of trust (“Mortgage”) encumbering Developer’s interest in any portion of the Property, the proceeds of which are used to finance or refinance the construction of the Improvements.

“Project” means the development of the Property to construct the Improvements consisting of [\_\_\_\_\_][*description to be provided by Developer*] and construction of the Developer Road Work and Utilities Work. The Project is more particularly described in Section 3. The Project includes all Improvements required by the Bothell Municipal Code to obtain the permits required to construct a project meeting the description this definition and in Section 3.

“Project Documents” means this Agreement and the Sale Agreement.

“Restrictive Covenant” means the environmental restrictive covenant required by Ecology and recorded against the Property under Auditor’s File No. \_\_\_\_\_, records of King County, Washington.

“Sale Agreement” is defined in Recital A.

“substantial completion” or “substantially complete” means that all of the following have occurred: (i) the Improvements required to be developed by Developer pursuant to this Agreement are complete according to approved Construction Documents, except for punchlist items that do not substantially prevent the use of the Improvements for their intended purposes; and (ii) City has issued a final certificate of completion or certificate of occupancy for the Project (excluding any commercial tenant improvements work to be completed).

“Utilities Work” is defined in Section 5.2.3.

## Section 2. Intent and Relations.

2.1 Generally. Developer will construct the Project in a manner that is consistent in all material respects with the Construction Documents and in accordance with this Agreement. Development on the Property and the Developer Road Work Area shall comply with all Legal Requirements and conform to the Project Schedule. Developer has sole responsibility for construction, obtaining all necessary permits and approvals and complying with all Legal Requirements as they relate to ownership, construction and operation of the Project.

Developer shall at its own cost furnish all Construction Documents, engineering, supervision, labor, material, supplies and equipment necessary for completion of the Project.

City and Developer shall coordinate to ensure that the Project, City's planned project to realign, improve and extend Main Street and any work on adjacent property owned by City do not conflict with each other from a civil engineering perspective (e.g., compatible sidewalk grades). City has entered into this Agreement relying on Developer's agreement that it will design and construct the Project in accordance with this Agreement.

2.2 Standards. Developer shall perform the terms of this Agreement according to the following standards:

2.2.1 All construction of the Project by Developer shall comply with, and be performed in accordance with, the Construction Documents, this Agreement and all Legal Requirements.

2.2.2 Developer agrees to diligently and with commercially reasonable efforts design the Project in accordance with the Design Regulations, the Project Documents, and City's requirements for permitting the Project and to construct and complete the Project in accordance with the Construction Documents and the Project Schedule, in a good and workmanlike manner and of good quality.

Section 3. Project Use Components. Developer shall design and build the Project with the following components: [\_\_\_\_\_]. [*Developer to provide Project description.*] The Project shall include parking on-site in a manner consistent with City code. The Project shall be designed to enhance the pedestrian environment, especially along the new wide multi-way boulevard and Main Street extension with pedestrian connections to internal parking, public spaces, outdoor seating areas and street-facing display windows in accordance with City code. The Project will serve as part of the gateway or entrance to downtown Bothell.

Section 4. General Terms of Conveyance. Conveyance and ownership of the Property shall remain subject to the provisions of this Agreement during the term hereof. This Agreement shall be recorded prior to the recording of any Mortgage on the Property and all subsequent owners and lessees of all or any portion of the Property shall take subject to this Agreement during its term.

Section 5. Development.

5.1 Generally. Developer shall construct and complete Improvements on the Property in a manner that is consistent in all material respects with the Construction Documents and all Legal Requirements, including the Environmental Agreements.

5.2 Construction Obligations and Development Fees.

5.2.1 In General.

(a) Permitting of the Improvements, Developer Road Work and Utilities Work will be Developer's responsibility. Developer shall submit the permit applications to the applicable Governmental Authorities. The Developer Road Work and Utilities Work shall be subject to requirements according to the Bothell Design and Construction Standards as adopted by BMC §§ 17.02 and 18.02.

(b) Developer is responsible for all excavation and disposal of soils and other materials it removes from the Property, Main Street and 98th Avenue NE in accordance with all Legal Requirements, including the Environmental Agreements. Developer acknowledges that the Environmental Agreements contain restrictions and requirements with respect to excavation and disposal of soils and materials and require that certain environmental remedial measures not be disturbed. In causing the construction of the Project to occur, Developer will not violate the Environmental Agreements. Notwithstanding the foregoing, nothing in this Section 5.2 or elsewhere in this Agreement shall relieve City of any of its obligations under the Environmental Agreements.

5.2.2 Developer Road Work. The "Developer Road Work" is the work described on Exhibit D under the heading "Developer Road Work" (with depictions on Exhibit E referenced therein) to construct the full of Main Street right of way Improvements in front of the Property, excluding any work within the area identified as the "Neighboring Owner Improvement Area" on Exhibit E-4. Developer shall construct the Developer Road Work as part of its construction of the Project and in accordance with the Design Regulations in effect at the time of permit applications and the City's construction documents for the applicable roadways.

The Developer Road Work also includes the work to build the frontage Improvements along Main Street fronting the Property and along 98th Avenue NE from Main Street to SR 522/Bothell Way NE, in accordance with the Construction Documents, as depicted on Exhibit E-1. These frontage Improvements are along the side of these streets adjacent to the Property and not on the other side of these streets.

To the extent the Developer Road Work consists of construction of Improvements (including sidewalks) in the City right of way, such work shall be performed under a right of way permit for which Developer will be responsible for applying (pursuant to BMC § 17.08). The Developer Road Work shall be done in accordance with the Construction Documents therefor approved by City for issuance of permits for the construction of the Project.

5.2.3 Utilities Work. Developer shall install and construct the utilities needed to serve the Property and perform the work described on Exhibit D under the headings "Utilities Work (to be performed by Developer)," (collectively, the "Utilities Work"). The Utilities Work will be done at Developer's expense. To the extent that Developer needs to do work in the public right of way, Developer will be required to work under the provisions of a right-of-way permit in accordance with BMC Chpt. 17.24 (Public

Utility Right of Way Placement Permit) and will need to coordinate all work with City for the infrastructure improvements.

5.2.4 Development and Other Fees. Developer is responsible for payment of all development, utility, hookup, capacity, permit, plan check, SEPA and other fees, charges and surcharges required by City in its regulatory capacity for the construction of the Project. At the times required by City in its regulatory capacity, Developer shall pay all fees and development charges required in connection with the issuance of the Project permits. These include: (i) a pre-application fee, required to be paid before the initial coordination meeting between City and Developer's architect and engineering representatives; (ii) plan check, fire plan check and traffic concurrency surcharge, at the time of application for the applicable item; (iii) other fees, at the time of permit issuance; (iv) transportation impact fees at time of building permit issuance; and (v) certain fees as provided below.

Without limiting the foregoing, Developer shall be responsible for the following fees, to be paid when required by the applicable City code and regulations:

(a) Developer shall pay the applicable stormwater facility charge for the downtown sub-basin area as described in BMC § 18.11.045 and may utilize the downtown stormwater conveyance system (with water quality treatment of run off) in lieu of constructing on-site stormwater detention.

(b) Developer shall pay a transportation mitigation fee in accordance with BMC § 17.045.

(c) Developer shall pay Six Hundred Seventy-Two Thousand Two Hundred Sixty-Eight Dollars (\$672,268) to City for the Multiway Boulevard frontage improvements.

(d) Developer shall pay One Hundred Seven Thousand Sixty Dollars (\$107,060) to City for the cost of construction of the 98th Avenue NE frontage improvements.

(e) Developer shall pay Twenty-Three Thousand Five Hundred Eighty-Three Dollars (\$23,583) to City for the cost of water and sewer main improvements on 98th Avenue NE.

## Section 6. Disclaimer of Liability, Indemnity.

6.1 Preparation of Site; Utilities. City shall not be responsible for any demolition or site preparation in connection with the Project. City makes no representations as to the availability or capacity of utility connections or service to the Property. Developer shall make arrangements for utility services directly with utility service providers (including City). Any costs of installation, connection, relocating or upgrading utilities shall be paid by Developer.

6.2 AS IS. City makes no warranties or representations as to the suitability of the soil conditions or any other conditions of the Property or improvements thereon for any Improvements to be constructed by Developer. Developer agrees, represents and warrants that it has not relied on representations or warranties, if any, made by City as to the physical or environmental condition of the Property or the improvements thereon for any Improvements to be constructed by the Developer.

6.3 Approvals and Permits. Developer acknowledges that City has not made any representation or warranty with respect to Developer's ability to obtain any permit or approval or to meet any other requirements for development of the Property or Project. Nothing in this Agreement is intended or shall be construed to require that City exercise its discretionary authority under its code or regulations to approve the permits for the Project or grant regulatory approvals. City is under no obligation or duty to supervise the design or construction of the Improvements pursuant to this Agreement. City's approval of the Construction Documents under this Agreement shall not constitute any representation or warranty, express or implied, as to the adequacy of the design or any obligation on City to insure that work or materials are in compliance with the Construction Documents or any building requirements imposed by any governmental entity (including City in its regulatory capacity). City is under no obligation or duty, and disclaims any responsibility, to pay for the cost of construction of the Improvements, the cost of which shall at all times remain the sole liability of Developer.

6.4 Indemnity. Developer shall indemnify, defend and hold City, its employers, officers and council members, harmless from and against all claim, liability, loss, damage, cost, or expense (including reasonable attorneys' fees, court costs, and amounts paid in settlements and judgment) (i) for injury to persons or damage to property arising from the construction of the Developer Road Work or the Utilities Work, or repairing or correcting the same as provided below, provided that the same occurs during the construction, repairing, or correcting of such work, and (ii) violation of the Environmental Agreements by Developer, its employees, agents or contractors. City shall not be entitled to indemnification under this section to the extent that such claim, liability, loss, damage, cost or expense is caused by the gross negligence or willful misconduct of City.

Promptly following receipt of notice thereof, an indemnitee hereunder shall give Developer written notice of any claim for which Developer is obligated to indemnify such indemnitee pursuant to this Section 6.4, and Developer shall thereafter defend such claim, at its sole cost, on behalf of such indemnitee. Failure to give prompt notice to Developer shall not constitute a bar to the indemnification hereunder unless such delay has prejudiced Developer in the defense of such claim. If Developer is required to defend any action or proceeding pursuant to this section to which action or proceeding an indemnitee is made a party, such indemnitee shall be entitled to appear, defend or otherwise take part in the matter involved, at its election and at its sole cost and expense, by counsel of its own choosing. Subject to the immediately preceding sentence, to the extent an indemnitee is indemnified under this section, Developer shall bear the cost of the indemnitee's defense, including

reasonable attorneys' fees and costs. No settlement of any monetary claim against City shall be made without City's written approval, not to be unreasonably withheld, conditioned, or delayed.

The provisions of this Section 6.4 shall survive termination of this Agreement. Notwithstanding the foregoing, upon termination of this Agreement, to the extent a party has given written notice to the other party that a matter requiring indemnification has arisen under this Section 6.4 before such termination, such obligation shall remain with the parties then-obligated therefor, and such obligation shall not be assumed or deemed assumed by a third party subsequent owner of the Property (not affiliated with Developer).

**Section 7. Environmental Issues.** As described in the Sale Agreement, the Property is subject to certain contamination and City conducted a clean-up on the Property. Developer will develop and construct the Project in a manner that does not interfere with the monitoring wells and other remediation systems or violate the Environmental Agreements.

**Section 8. Guaranty of Completion.** Contemporaneously with the execution of this Agreement, Developer has furnished an irrevocable and unconditional guaranty of performance by Guarantor, in the form of Exhibit B attached hereto (including any amendments, restatements or replacements thereof, the "Guaranty"), guaranteeing the full and faithful performance of Developer's obligations under this Agreement. The Guaranty shall terminate upon issuance by City of the Certificate of Performance described in Section 9.1. Neither the provisions of this Section 8, nor any Guaranty accepted by City pursuant hereto, shall be construed to excuse faithful performance by Developer or to limit liability of Developer under this Agreement.

**Section 9. Certificate of Performance.**

**9.1 When Developer Entitled to Certificate of Performance.** Upon substantial completion of the Project in accordance with this Agreement and satisfaction of the other conditions of this Section 9, within ten (10) Business Days of written request from Developer, City will furnish Developer with a recordable Certificate of Performance, substantially in the form attached hereto as Exhibit C hereto. Notwithstanding the foregoing, City shall not be required to issue the Certificate of Performance if Developer is not then in material compliance with the terms of this Agreement. In addition, if punchlist items remain when Developer requests the Certificate of Performance, City may require as a condition to the issuance thereof that Developer post a bond or provide other financial assurance reasonably satisfactory to City to insure completion of the punchlist items, and Developer agrees to proceed with all reasonable diligence to complete the punchlist items.

**9.2 Effect of Certificate of Performance; Termination of Agreement.** Issuance by City of a Certificate of Performance shall terminate this Agreement and each of its provisions except for the provisions described in Section 16.13 below that expressly survive termination of this Agreement. No party acquiring title to any portion of the Property after

issuance of the Certificate of Performance shall (because of such acquisition) have any obligations under this Agreement.

Section 10. Liens. NOTICE IS HEREBY GIVEN THAT CITY WILL NOT BE LIABLE FOR ANY LABOR, SERVICES, MATERIALS OR EQUIPMENT FURNISHED OR TO BE FURNISHED TO DEVELOPER OR ANYONE HOLDING AN INTEREST IN THE PROPERTY (OR ANY PART THEREOF) THROUGH OR UNDER DEVELOPER.

Section 11. Insurance. The requirements of this Section 11 shall apply until the Certificate of Performance is recorded unless otherwise noted in this section.

11.1 Insurance Requirements. Developer shall maintain and keep in force, or cause to be maintained and kept in force,

Commercial General Liability insurance with limits no less than \$3,000,000 each occurrence and a \$5,000,000 general aggregate limit. The Commercial General Liability insurance shall be written on an ISO occurrence form and shall cover liability arising from premises, operations, stop gap liability, independent contractors, personal injury and advertising injury, and liability assumed under an insured contract. Developer's Commercial General Liability insurance shall be endorsed to name City as an additional insured.

Section 12. Destruction or Condemnation.

12.1 Total or Partial Destruction. If the Improvements are totally or partially destroyed at any time during the term of this Agreement, Developer shall reconstruct or repair the damage consistent with the Construction Documents and Legal Requirements, including the Environmental Agreements. In any event, Developer shall at its cost secure the Property, clear the debris and generally make the Property as safe and attractive as practical given the circumstances.

If for any reason the Improvements are not reconstructed as provided above, without limiting any other rights or remedies that City has, no further development of the Property can occur without the prior approval of City. Until a Certificate of Performance is recorded, this Agreement shall continue to restrict future development of the Property and Developer or any successor of Developer must obtain City's approval of the development plan (and all other required regulatory approvals) before the Property is developed.

12.2 Condemnation. If during the term of this Agreement the whole or any substantial part of the Property is taken or condemned in the exercise of eminent domain powers (or by conveyance in lieu thereof), such that Developer can no longer materially meet its obligations under this Agreement, this Agreement shall terminate upon the date when possession of the Property or portion thereof so taken shall be acquired by the condemning authority. As used herein, "substantial" shall be defined as reasonably preventing the operation of the Project and conduct of Developer's activities as contemplated

hereby. If a taking occurs that is not substantial, this Agreement shall continue in full force and effect as to the part of the Property not taken.

### Section 13. Default By Developer.

13.1 Events of Default. Developer's failure to keep, observe, or perform any of its duties or obligations under this Agreement shall be a default by Developer hereunder, including, without limitation, any of the following specific events:

(a) The failure of Developer to construct the Project substantially in accordance with this Agreement.

(b) Any default in the performance of any other obligations of Developer hereunder.

(c) The making by Developer or Guarantor of an assignment for the benefit of creditors or filing a petition in bankruptcy or of reorganization under any bankruptcy or insolvency law or filing a petition to effect a composition or extension of time to pay its debts.

(d) The appointment of a receiver or trustee of all or any of the property of Developer or Guarantor, which appointment is not vacated or stayed within sixty (60) days, or the filing of a petition in bankruptcy against Developer or Guarantor or for the reorganization of either of them under any bankruptcy or insolvency law that not dismissed or stayed by the court within sixty (60) days after such filing.

Developer shall have thirty (30) days following written notice from City to cure such default. If such default cannot reasonably be cured within such 30-day period, then Developer shall have ninety (90) days after written notice from City within which to cure such default, provided that Developer commences to cure such default within thirty (30) days after written notice from City and thereafter diligently pursues such cure to completion. The failure to cure a default within the foregoing time periods shall be an "Event of Default" hereunder. Notwithstanding the foregoing, for the events described in Sections 13.1(d), (e), and (f) above, no cure period shall apply and the occurrence of any such event shall be an immediate Event of Default.

13.2 Remedies For Developer Default. If an Event of Default occurs, City shall have all cumulative rights and remedies under law or in equity, including but not limited to the following:

13.2.1 Damages. Developer shall be liable for all damages incurred by City, except that Developer shall not be liable for consequential, speculative or punitive damages incurred by City (except to the extent imposed on City by a third party claim as to which Developer has indemnified City hereunder).

13.2.2 Specific Performance. City shall be entitled to specific performance of Developer's obligations under this Agreement without any requirement to prove or establish that City does not have an adequate remedy at law. Developer hereby waives the requirement of any such proof and acknowledges that City would not have an adequate remedy at law for an Event of Default hereunder.

13.2.3 Injunction. City shall be entitled to restrain, by injunction, the actual or threatened commission or attempt of an Event of Default and to obtain a judgment or order specifically prohibiting a violation or breach of this Agreement without, in either case, being required to prove or establish that City does not have an adequate remedy at law. Developer hereby waives the requirement of any such proof and acknowledges that City would not have an adequate remedy at law for Developer's commission of an Event of Default hereunder.

13.2.4 Guaranty and Damages. City shall be entitled to draw upon, enforce and commence an action against Guarantor under the Guaranty.

13.3 Copy of Notice of Default to Mortgagee. If City delivers any notice or demand to the Developer with respect to any breach or default by the Developer in its obligations or covenants under this Agreement, City shall also send a copy of such notice or demand to each Mortgagee that provides a written request for such notice to City, at the last address of such holder shown in the records of City.

13.4 Mortgagee's Option To Cure Defaults. After any default under this Agreement by Developer, a Mortgagee shall (insofar as City is concerned) have the right, at its option, to cure or remedy such default within thirty (30) days after Developer's failure to cure the default breach before expiration of the applicable cure period. If the default is with respect to construction of the Improvements, nothing contained in this Agreement shall be deemed to prohibit the Mortgagee, either before or after foreclosure or action in lieu thereof, from undertaking or continuing the construction or completion of the Improvements, provided that the Mortgagee notifies City in writing of the Mortgagee's intention to complete the Project according to the approved final Construction Documents. Any Mortgagee who properly completes the Project shall be entitled, upon written request made to City, to issuance of a Certificate of Performance in accordance with Section 9 above.

Section 14. Default By City. City's failure to keep, observe, or perform any of its obligations under this Agreement shall be a default by City hereunder (a "City Default"). City shall have thirty (30) days following written notice from Developer to cure such City Default. If such City Default cannot reasonably be cured within such 30-day period, then City shall have one hundred twenty (120) days after written notice from Developer within which to cure such default, provided that City commences to cure such default within thirty (30) days after written notice from Developer and thereafter diligently pursues such cure to completion.

If a City Default occurs and is not cured within any applicable cure period, Developer shall have all rights and remedies under law or in equity, including damages incurred by Developer by reason of the City Default (except that City shall not be liable for consequential, punitive or speculative damages incurred by Developer). Developer shall have no recourse against City under this Agreement for City's actions as a regulatory authority, including with respect to the processing and issuance of permits and approvals.

## Section 15. Miscellaneous.

15.1 Representations and Warranties. Each party hereby represents and warrants to the other that: (a) it has full right, power and authority to enter into this Agreement and perform in accordance with its terms and provisions; (b) the individuals signing this Agreement on its behalf have the authority to bind and to enter into this transaction; and (c) it has taken all requisite action to legally authorize the execution, delivery, and performance of this Agreement.

15.2 Estoppel Certificates. City and Developer shall, within fifteen (15) days after written request by the other, execute and deliver, to the party requesting same or to any prospective mortgagee, assignee or tenant designated by Developer, a certificate stating that: (i) this Agreement is in full force and effect and has not been modified, or if there have been modifications, identifying such modifications; and if this Agreement is not in force and effect, the certificate shall so state; and (ii) to its knowledge, all conditions under the Agreement have been satisfied by City or Developer, as the case may be, and that no defenses or offsets exist against the enforcement of this Agreement by the other party, or, to the extent untrue, the certificate shall so state. The party to whom any such certificate shall be issued may rely on the matters therein set forth and thereafter the party issuing the same shall be estopped from denying the veracity or accuracy of the same.

15.3 Inspection. Until the Certificate of Performance is recorded, City shall have the right at all reasonable times to inspect the Property, including any construction work thereon, to determine compliance with the provisions of this Agreement. Further, City shall have all rights in its regulatory capacity to inspect the Property and construction activity.

15.4 Entire Agreement. This Agreement, the Project Documents and any documents attached as exhibits thereto contain the entire agreement between the parties as to the subject matter hereof and supersedes all prior discussions and understandings between them with reference to such subject matter.

15.5 Modification. This Agreement may not be amended 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.

15.6 Successors and Assigns; Joint and Several. This Agreement shall be binding upon and inure to the benefit of the successors in interest and assigns of each of the parties hereto. This Agreement touches and concerns the land and shall be a burden on the Property

until terminated by a Certificate of Performance. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor or assign of such party who has acquired its interest in compliance with the terms of this Agreement or under law. The obligations of Developer and of any other party who succeeds to its interests hereunder or in the Property shall be joint and several. Nothing in this section is intended to modify the restrictions on assignment contained in Section 13 hereof

15.7 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 City: City of Bothell  
18415 – 101<sup>st</sup> Avenue NE  
Bothell, WA 98011  
Attention: City Manager  
Phone: (425) 806-6140  
Email: jennifer.phillips@bothellwa.gov

With a copy to: K&L Gates LLP  
925 Fourth Avenue  
Suite 2900  
Seattle, WA 98104  
Attention: Shannon Skinner  
Fax No.: (206) 623-7022  
Phone: (206) 623-7580  
Email: shannon.skinner@klgates.com

To Developer: [ \_\_\_\_\_ ]

With a copy to: [ \_\_\_\_\_ ]

Any such notices shall be either (a) 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, (b) 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, (c) hand delivered, in which case notice shall be deemed delivered on the date of the hand delivery, or (d) sent via electronic mail, provided that receipt of same is telephonically confirmed by the recipient or his or her assistant, in which case notice shall be deemed delivered when receipt is telephonically confirmed (provided that such confirmation is before 5:00 p.m. on a Business Day, and, if after such time, then on the next Business Day).

The above contact information may be changed by written notice to be provided the other party in accordance with this Section 15.7; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are

for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

15.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15.9 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 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.

15.10 Rights and Remedies Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by either party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default by the other party.

15.11 Governing Law; Jurisdiction. This Agreement shall be interpreted under and pursuant to the laws of the State of Washington. In the event any action is brought to enforce any of the provisions of this Agreement, the parties agree to be subject to the jurisdiction in the King County Superior Court for the State of Washington or in the United States District Court for the Western District of Washington.

15.12 No Joint Venture; No Third Party Rights. Nothing contained in this Agreement shall create any partnership, joint venture or other arrangement between City and Developer. The parties intend that the rights, obligations, and covenants in this Agreement shall be exclusively enforceable by City and Developer, their successors and assigns. No term or provision of this Agreement shall be for the benefit of any person or entity not a party hereto, and no such other person or entity shall have any right or cause of action hereunder, except as may be otherwise expressly provided herein.

15.13 Provisions Surviving Termination. Upon termination of this Agreement, the provisions of Section 6.4 (Indemnity), Section 7 (Environmental Issues) and Section 15.16 (Attorneys' Fees) shall survive issuance of the Certificate of Performance and any termination of this Agreement.

15.14 Conflict of Interest. No member, official, or employee of City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement that affects his or her personal interests or the interest of any corporation, partnership, or association in which he

is, directly or indirectly, interested. No member, official, or employee of City shall be personally liable to Developer or any successor in interest upon the occurrence of any default or breach by City or for any amount that may become due to Developer or its successor or on any obligations under the terms of this Agreement.

15.15 Non-Discrimination. Developer, for itself and its successors and assigns, agrees that during the construction of the Project, Developer will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, marital status, handicap, national origin, sexual orientation, disability, honorably discharged veteran or military status.

15.16 Attorneys' Fees. If any legal action or other proceeding is brought for the enforcement of this Agreement (including, without limitation, enforcement of any obligation to indemnify, defend or hold harmless), or because of an alleged dispute or default in connection with any of the provisions of this Agreement, the substantially prevailing party shall be entitled to recover the reasonable attorneys' fees (including those in any bankruptcy or insolvency proceeding), accountants' and other experts' fees and all other fees, expenses and costs incurred in connection with that action or proceeding, in addition to any other relief to which it may be entitled.

15.17 Captions; Exhibits. The headings and captions of this Agreement and the Table of Contents preceding the body of this Agreement are for convenience of reference only and shall be disregarded in constructing or interpreting any part of the Agreement. All exhibits and appendices annexed hereto at the time of execution of this Agreement or in the future as contemplated herein, are hereby incorporated by reference as though fully set forth herein.

15.18 Fair Construction; Severability. All pronouns thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the context may require. The term "including" means "including, without limitation." The parties acknowledge and agree that each was properly represented by counsel and this Agreement was negotiated and drafted at arms' length so that the judicial rule of construction to the effect that any ambiguities are to be construed against the drafting party shall be inapplicable in the interpretation of this Agreement. If any term, provision or other portion of this Agreement or the application thereof to any person or circumstances becomes invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect, unless rights and obligations of the parties have been materially altered or abridged by such invalidation or unenforceability.

15.19 Time of the Essence. In all matters under this Agreement, the parties agree that time is of the essence.

15.20 Computation of Time. In the computation of any period of time hereunder, the day of the act or event from which the period of time runs shall be excluded and the last day of such period shall be included. If any deadline hereunder falls on a day that is not a

Business Day, then the deadline will be deemed extended to the next following Business Day.

15.21 Waiver of Jury Trial. DEVELOPER AND CITY HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER ARISING IN TORT OR CONTRACT) BROUGHT BY SUCH PARTY AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

*[Signatures on the following page]*

IN WITNESS WHEREOF, the parties hereto have executed this document as of the day and year first above written.

CITY:

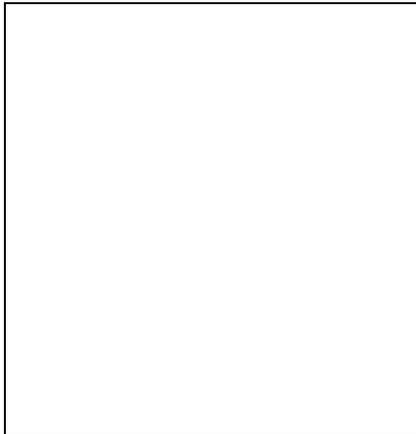
CITY OF BOTHELL, a Washington  
municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

State of Washington

County of King

This record was acknowledged before me on \_\_\_\_\_ by \_\_\_\_\_ as the  
\_\_\_\_\_ of the City of Bothell.



*(Stamp)*

\_\_\_\_\_  
*(Signature of notary public)*

\_\_\_\_\_  
*(Title of office)*

My Commission Expires: \_\_\_\_\_  
*(Date)*

[Signatures continued next page]

DEVELOPER:

[ \_\_\_\_\_ ]

By: \_\_\_\_\_

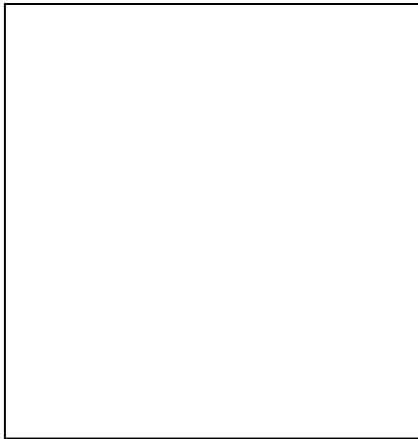
Name: \_\_\_\_\_

Title: \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

This record was acknowledged before me on \_\_\_\_\_ by \_\_\_\_\_ as the  
\_\_\_\_\_ of \_\_\_\_\_.



*(Stamp)*

\_\_\_\_\_  
*(Signature of notary public)*

\_\_\_\_\_  
*(Title of office)*

My Commission Expires: \_\_\_\_\_  
*(Date)*

**EXHIBIT A to Development Agreement**

**Legal Description of Property**

**EXHIBIT B to Development Agreement**

**Form of Performance Guaranty**

**GUARANTY OF COMPLETION (Block D)**

This Guaranty of Completion (Block D) is made as of \_\_\_\_\_, 20\_\_\_\_, by [ \_\_\_\_\_ ] (“Guarantor”), in favor of the City of Bothell, a Washington municipal corporation (“City”), with reference to the following facts.

**RECITALS**

A. Contemporaneously herewith, \_\_\_\_\_, a \_\_\_\_\_ (“Developer”), is purchasing the property in Bothell, Washington commonly known as \_\_\_\_\_ recorded under \_\_\_\_\_ in downtown Bothell (the “Property”).

B. As part of the closing of the purchase of the Property, Developer and City are entering into a Development Agreement (Block D) of even date herewith (the “Development Agreement”) that provides for the development of the Property. The Development Agreement requires that Guarantor provides this Guaranty to City. Capitalized terms not otherwise defined herein shall have the meaning given them in the Development Agreement.

C. Guarantor is a beneficial owner of Developer and will benefit from the purchase of the Property by Developer. Guarantor understands that development of the Property is crucial to mission and goals of City and that City would not sell the Property to Developer without this Guaranty.

**GUARANTY AGREEMENT**

NOW, THEREFORE, in consideration of the sale of the Property to Developer and as required by the Development Agreement, Guarantor unconditionally and irrevocably guarantees to City the full, faithful, timely and complete performance by Developer of Developer’s obligations under the Development Agreement. Guarantor further agrees to pay all out-of-pocket costs and expenses, including attorneys’ fees, that may be incurred by City in enforcing this Guaranty. The obligations of Guarantor under this paragraph are called the “Obligations.”

If for any reason there is an Event of Default by Developer under the Development Agreement then, in any such event, Guarantor, upon receipt of notice from City, agrees to cure such default and to perform, or cause Developer to perform, all of Developer’s obligations under the Development Agreement.

If Guarantor fails to cure or cause cure of Developer’s default as provided above (such cure by Guarantor in any event commence not later than thirty (30) days after notice to Guarantor from City and thereafter proceed diligently and continuously), City, at City’s option, shall have the right to complete the Project. City’s rights to complete the Project

shall be subject to the rights of the construction lender to the Project to also complete the Project, such that if such lender is undertaking the construction of the Project, City shall not interfere with such construction activity (provide that such construction activity is in compliance with the Development Agreement). The amount of all out-of-pocket expenditures reasonably incurred by City in curing the default shall be immediately due and payable by Guarantor to City.

Guarantor shall be responsible and liable to City for any losses, costs or expenses that City may suffer or incur as a result of any breach by Guarantor of any of the terms of this Guaranty or in the event that any of the representations or warranties made in writing by Guarantor to City are or were incorrect. If Guarantor defaults under this Guaranty, City may enforce this Guaranty against any or all persons liable hereunder and pursue any rights and remedies available at law or in equity, including without limitation actions for damages and specific performance, provided any such action for specific performance shall be available only from and after the time that Developer Commences Construction. Guarantor agrees that, given the unique nature of the proposed development on the Property, City may not be in a position to complete the development and that specific performance is an appropriate remedy hereunder. In the event of any default under this Guaranty or in any action to enforce this Guaranty, City shall be entitled to recover all reasonable costs and expenses, including experts, accountants and attorney's fees and costs and including any such fees in any bankruptcy and appellate proceedings.

Guarantor agrees that its liability shall not be impaired or affected by: (i) any renewals or extensions of the time for performance under the Development Agreement; (ii) any enforcement of or any forbearance or delay in enforcing the Development Agreement against Developer; (iii) any modifications of the terms or provisions of the Development Agreement; (iv) any settlement, release or compromise with Developer (except to the extent that the same are in a writing signed by Developer and City); (v) any lack of notice to Guarantor from City except that expressly provided for herein. City has no obligation to resort for payment to Developer or to any other person or entity or their properties, or to resort to any security, property, rights or remedies whatsoever, before enforcing this Guaranty.

Any other provisions hereof notwithstanding, this Guaranty shall terminate upon the issuance by City of a Certificate of Performance for the Project.

All diligence in collection, protection, or enforcement and all presentment, demand, protest and notice, as to anyone and everyone, whether Developer, Guarantor or others, of dishonor or default, the creation and existence of the Obligations, the acceptance of this Guaranty or any extensions of credit and indulgence hereunder, are hereby expressly waived. The payment by Guarantor of any amount pursuant to this Guaranty shall not in any way entitle Guarantor to any rights by way of subrogation or otherwise against Developer unless and until the full amount owing to City on the Obligations has been paid and the Obligations have been fully performed.

Upon the occurrence of an Event of Default under the Development Agreement that is not cured within any applicable cure period under the Development Agreement, City may exercise any right or remedy it may have at law or in equity against Developer under the Development Agreement. No such action by City will release or limit the liability of Guarantor to City, if the effect of that action is to deprive Guarantor of the right to collect reimbursement from Developer for any sums paid to City.

Guarantor assumes full responsibility for keeping fully informed of the financial condition of Developer and all other circumstances affecting Developer's ability to perform its obligations to City and agrees that City will have no duty to report to Guarantor any information that City receives about Developer's financial condition or any circumstances bearing on its ability to perform.

All notices that may be or are required to be given pursuant to this Guaranty shall be in writing and delivered to the parties at the following addresses:

To City: City of Bothell  
18415 – 101<sup>st</sup> Avenue NE  
Bothell, WA 98011  
Attention: City Manager  
Phone: (425) 806-6140  
Email: jennifer.phillips@bothellwa.gov

With a copy to: K&L Gates LLP  
925 Fourth Avenue  
Suite 2900  
Seattle, WA 98104  
Attention: Shannon Skinner  
Phone: (206) 623-7580  
Email: shannon.skinner@klgates.com

To Guarantor: [ \_\_\_\_\_ ]

With a copy to: [ \_\_\_\_\_ ]

Any such notices shall be either (a) 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, (b) 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, (c) hand delivered, in which case notice shall be deemed delivered on the date of the hand delivery, or (d) sent via electronic mail, provided that receipt of same is telephonically confirmed by the recipient or his or her assistant, in which case notice shall be deemed

delivered when receipt is telephonically confirmed (provided that such confirmation is before 5:00 p.m. on a Business Day, and, if after such time, then on the next Business Day).

The above contact information may be changed by written notice to be provided the other party in accordance with the above provisions; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

This Guaranty shall be binding upon Guarantor, and upon the successors and assigns of Guarantor. This Guaranty shall run for the benefit of City, its successors and assigns.

This Guaranty may only be changed by an instrument in writing signed by the party against whom enforcement hereof is sought.

Guarantor acknowledges that the transactions contemplated hereby have been negotiated in the State of Washington, that Guarantor is to perform its obligations hereunder in the State of Washington and that after due consideration and consultation with counsel Guarantor and City have elected to have the internal laws of Washington apply hereto. Accordingly, this Guaranty shall be deemed made under and shall be construed in accordance and governed by the internal laws of the State of Washington without regard to principles of conflicts of laws. Guarantor hereby consents to the nonexclusive jurisdiction of the state courts located in King County, Washington and the federal courts in the Western District of Washington. Guarantor waives the defense of forum non conveniens in any such action and agrees that this Guaranty may be enforced in any such court.

**NOTICE IS HEREBY GIVEN THAT ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, MODIFY LOAN TERMS, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

[add signature block]

**EXHIBIT C to Development Agreement**

**Form of Certification of Performance**

After recording return to

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CERTIFICATE OF PERFORMANCE (BLOCK D)**

GRANTOR: CITY OF BOTHELL

GRANTEE:

Abbreviated Legal Description  
(Full legal description on Ex. A):

Assessor's Tax Parcel No(s):

Related Document: Development Agreement (Doc. No. \_\_\_\_\_)

The CITY OF BOTHELL, a Washington municipal corporation ("City"), hereby certifies that \_\_\_\_\_, a \_\_\_\_\_ ("Developer"), has satisfactorily completed construction of the Improvements on the Property described on Exhibit A attached hereto (the "Property"), including the associated Developer Road Work and Utilities Work, as such Improvements, Developer Road Work and Utilities Work are described in the Development Agreement dated \_\_\_\_\_, 20\_\_ (the "Agreement"), which was recorded in the Records of the King County Auditor, Washington, as Document No. \_\_\_\_\_, on \_\_\_\_\_, 20\_\_.

This Certificate of Performance is and shall be a conclusive determination that the Developer has satisfied, or City has waived, each of the agreements, covenants and conditions contained in the Agreement as to the development of the Improvements pursuant to Section 5 of the Agreement.

Notwithstanding this Certificate of Performance, Section 15.13 of the Agreement provides for the survival of certain covenants as between City and Developer, and nothing in this Certificate of Performance affects such survival.

The Agreement is hereby terminated to the extent it is an encumbrance on the Property and is released from title to the Property.

IN WITNESS WHEREOF, City has caused this instrument to be executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

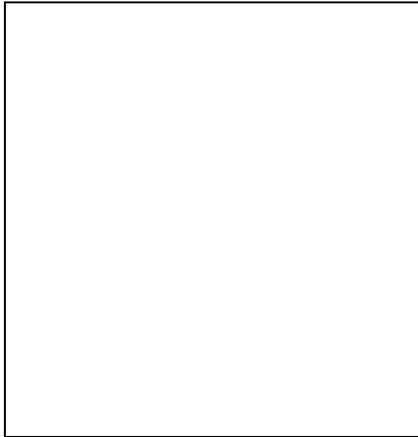
CITY OF BOTHELL, a Washington  
municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

State of Washington

County of King

This record was acknowledged before me on \_\_\_\_\_ by \_\_\_\_\_ as  
the \_\_\_\_\_ of the City of Bothell.



*(Stamp)*

\_\_\_\_\_  
*(Signature of notary public)*

\_\_\_\_\_  
*(Title of office)*

My Commission Expires: \_\_\_\_\_  
*(Date)*

Exhibit A  
Legal Description

## **EXHIBIT D to Development Agreement**

### **Description of Developer Road Work and Utilities Work**

#### **DEVELOPER ROAD WORK (TO BE PERFORMED BY DEVELOPER):**

Developer shall perform the Developer Road work hereafter described. The Developer Road Work shall be designed in a manner that is consistent with the following:

- City's Main Street Extension design package consisting of the Main Street Extension Road Project #T40 Construction Documents (dated 11/21/14 and the Bothell Main Street Extension Urban Elements – Design Development (dated 9/7/12). However, the design shall be modified to match the existing Boulevard Place (SHAG) development frontage to the north.
- City's design Construction Documents of 98th Avenue NE including "Roadway-old.dwg" (undated), "p\_chan – 2009.dwg (dated 1/14/10) and "future grades.pdf" (dated 12/10/10). The sidewalk joint pattern shall match the adjacent existing sidewalk pattern.
- The adopted Downtown Subarea Construction Documents and Regulations
- The adopted Design and Construction Standards and Specifications.

The Developer Road Work includes:

Main Street Extension: Subject to the terms of this Agreement, Developer will complete the full width of the Main Street Extension abutting the Property as well as the frontage improvements on Block D's side of the street in accordance with City's design package and consistent with any portion of the Main Street Extension that has already been constructed. The area in which Developer shall construct the Main Street Extension include the full half-street frontage (eastbound lane, parking lane, curb/gutter, drainage, sidewalk, streetlights, streetscape amenities) along the north property line from 98th Ave NE to Bothell Way NE, and the remaining center turn lane and westbound lane from 98th Ave NE to the existing improvements located approximately 200 feet to the east, as identified on Exhibits E-1 to E-3 to this Agreement.

The "Developer Road Work" shall also include the frontage improvements along 98th Avenue NE from Main Street to SR 522 and along Main Street from 98th Ave NE to Bothell Way. These are not considered off-site infrastructure costs. Roadwork along the 98th Avenue NE frontage will be required to transition the existing roadway elevations/profile to the Developer-installed curb. This roadway work will add an 11" lane to the east side of 98th Ave NE north of the existing east-west old SR 522 local access/transit road. South of this local access/transit road, 98th Ave NE is the correct width.

Main Street between Bothell Way NE and 98th Ave NE must be complete and open to public use prior to demolition of the existing temporary roadway through the parcel.

## **UTILITIES WORK (TO BE PERFORMED BY DEVELOPER):**

Developer shall install all utilities serving the Property in a manner consistent with City's Downtown Revitalization Utility Phasing, Cost Partitioning and Financing Study, prepared by Gray & Osborne, Inc. and dated January 3, 2011 (the "Utilities Plan") unless otherwise specified in the specific Construction Documents listed for the Developer Road Work or the Utilities Work. This utilities work consists of the following:

### Utilities Work to be constructed by Developer in the Developer Road Work Area:

The Utilities Work in the Developer Road Work Area as identified on Exhibits E-1 to E-3) shall consist of the following:

- An approximately 215-foot long 12" diameter water main will be installed in Main Street from the existing main located within 98<sup>th</sup> Ave NE to the existing connection to the east.
- 12" Storm Drain system will be constructed along the south side of Main Street between 98th Ave NE and Bothell Way
- An approximately 250-foot long sewer main will be installed in Main Street from the existing main located within 98<sup>th</sup> Ave NE to the existing connection to the east.

### The Utilities Work to be constructed by Developer (but not considered off-site infrastructure costs) includes:

- Developer shall be responsible for connecting its site storm water system to the existing storm water system direct discharge pipe as follows:
  1. Connect to the single discharge point on the south end of the property provided by the City. If this discharge point is not utilized, it shall be appropriately capped and protected.
  2. Or/and connect to the Bothell Way direct discharge pipe via an existing catch basin. If this is done, the new pavement within Bothell Way shall not be disturbed. Curb, sidewalk, landscaping, etc. that are disturbed shall be replaced in-kind.
  3. Or/and, if Main Street has not been paved, install the street storm drain system, size it to handle the site drainage in addition to the street flow and site flow from the property north of Main Street, and tie the pipe to the existing stub that connects to the Bothell Way direct discharge pipe. Developer will have to confirm that the size of the Main Street drainage pipe that currently is stubbed into the Bothell Way direct discharge line is sufficient to carry its site flows in addition to the street flow and site flow from the property north of Main Street. If the Main Street drainage pipe stub is not sufficient, then Developer would only be able to use whatever capacity is available with the existing stub after providing for the street and the northern property's needs first.
  4. The Property is located within the Downtown Direct Discharge Zone, is subject to payment of Downtown Stormwater General Facility Charges in accordance with the Fee Schedule in effect at time of building permit issuance, and is direct discharge exempt from stormwater flow control requirements.

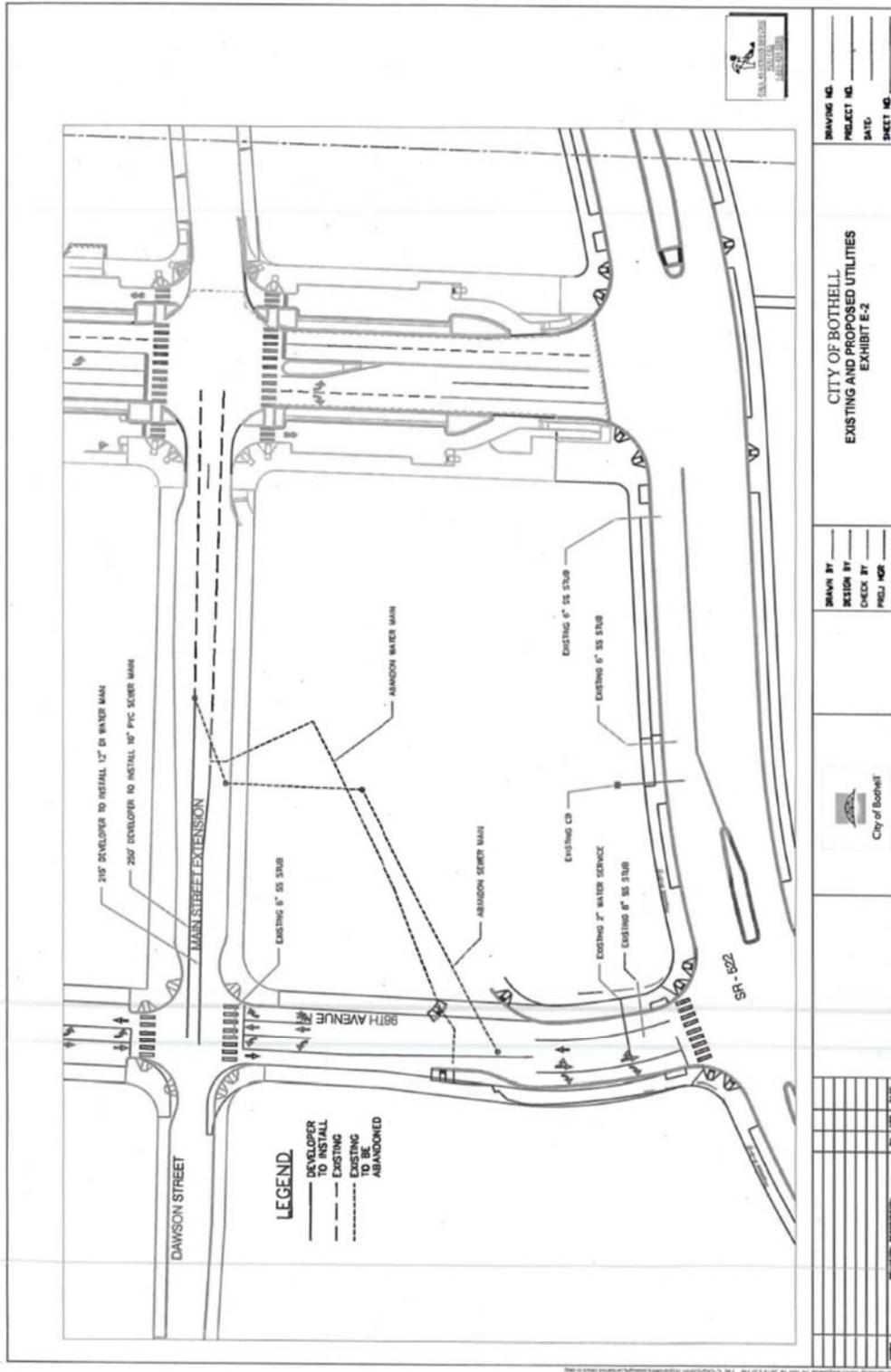
- Developer shall be responsible for connecting its site water system to the existing water system as follows:
  1. Connect to an existing 2” water service off of 98th Ave NE. If this service is not utilized, it shall be abandoned at the water main.
  2. Or/and connect to an existing 2” water service and 6” fire line off of SR 522. If these services are not utilized, they shall be abandoned at the water main.
- Developer shall be responsible for connecting its site sanitary sewer system to the existing sewer system as follows:
  1. Connect to any side sewer stubs available for the site. If these side sewers are not utilized, they shall be abandoned at the sewer main.
- Developer shall underground power, phone, and cable throughout the Project and the Developer Road Work.

Developer shall not disturb newly installed pavement along SR 522 and Bothell Way. If pavement is disturbed then provide a half-street overlay for the extent of the disturbance. If pavement is disturbed west of the centerline, then provide an overlay that exceeds the width of the disturbance. If less than half of the width of a lane remains undisturbed, provide a full street overlay.

Note that the designs of the various streets were performed by different consultants. As a result, Developer should study the Survey Control Summary provided in order to understand potential survey elevation differences in the designs provided and make appropriate adjustments for their site and off-site work.



**EXHIBIT E-2 to Development Agreement (Existing City Utilities)**



**LEGEND.**  
 — DEVELOPER TO INSTALL  
 - - - EXISTING  
 - - - EXISTING TO BE ABANDONED



DRAWING NO. \_\_\_\_\_  
 PROJECT NO. \_\_\_\_\_  
 DATE: \_\_\_\_\_  
 SHEET NO. \_\_\_\_\_

**CITY OF BOTHELL**  
 EXISTING AND PROPOSED UTILITIES  
 EXHIBIT E-2

DRAWN BY \_\_\_\_\_  
 DESIGN BY \_\_\_\_\_  
 CHECK BY \_\_\_\_\_  
 FIELD NO. \_\_\_\_\_

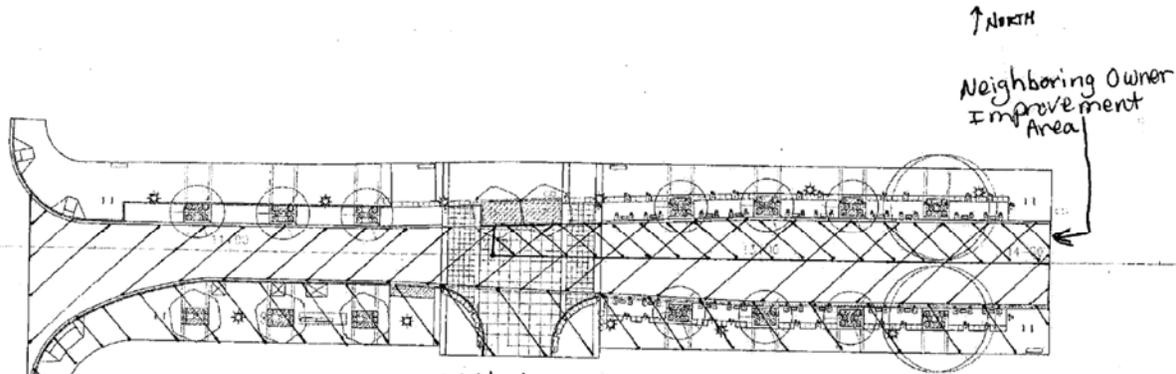


NO.	REVISION DESCRIPTION	BY	DATE



EXHIBIT E-4 to Development Agreement [if applicable]

Depiction of Neighboring Owner Improvement Area



Neighboring Owner Improvement Area:  
 = SHAG MAY BUILD THIS PORTION OF THE STREET PRIOR TO REGENCY. IF NOT, REGENCY WILL BUILD THIS PORTION & GET CREDIT FOR IT.

= REGENCY WILL BUILD & PAY FOR

= REGENCY WILL GET CREDIT FOR THE PORTION OF THE STREET THAT THEY BUILD WITHIN THIS HATCHED AREA.

EXHIBIT  
 MAIN STREET EXTENSION  
 LIMITS OF RESPONSIBILITY  
 1-22-15

IF SHAG IS PERMITTED & REGENCY'S DRIVEWAY & CROSSWALK LOCATION & DESIGN IS NOT PERMITTED, REGENCY WILL NEED TO REBUILD THE CROSSWALK AREA, INCLUDING THE FLEX ZONE ON THE NORTH SIDE OF THE STREET AT ITS POINT.