

Return Address:

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**CITY OF \_\_\_\_\_ – \_\_\_\_\_**  
**DEVELOPMENT AGREEMENT FOR \_\_\_\_\_**

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ corporation [?] (referred to herein as the “Developer”); and the CITY OF \_\_\_\_\_, a municipality of the State of Washington (hereinafter the “City”).

WITNESSETH:

WHEREAS, state law (RCW 36.70B.170-200) permits and allows local jurisdictions to enter into development agreements to address to address situations where conventional development requirements may not accommodate the development in a way that best serves the needs of the local jurisdiction and the development; and,

WHEREAS, the Developer desires to develop certain real property owned by it, as hereinafter described for the construction and development of the projects hereinafter described, in accordance with the zoning classifications designated in this Agreement; and,

WHEREAS, pursuant to the authority provided in Sections 36.70B.170-200 of the Revised Code of Washington (RCW), the parties hereto have agreed to enter into this Agreement to set forth the terms and conditions of the development on the Properties in order to protect more fully such development rights; and,

WHEREAS, in connection with the proposed Development, the Developer and the City recognize that the scope and term of the planned developments under this Agreement accomplish the statutory aims of comprehensive, orderly planning and development within the City, thus providing benefits to the citizens and residents of the City exceeding any derogation from the City's zoning powers for the duration of the Projects and provide public benefits through the donation and set-aside of those public facilities described and identified in this Agreement; and,

WHEREAS, pursuant to RCW 36.70B.200, a public hearing was held on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants of the parties contained herein, and pursuant to RCW 36.70B.170-200, THE PARTIES HERETO AGREE as follows:

#### SECTION 1. DEFINED TERMS

Terms not otherwise defined herein have the meaning set forth in 36.70B.170 RCW, the provisions of which are incorporated herein by reference.

#### SECTION 2. PURPOSE

The Developer desires to develop certain real property owned by \_\_\_\_\_ consisting of approximately \_\_\_\_\_ acres of land, more or less, located in the City, consisting of the parcels listed on Exhibit A, attached hereto and incorporated herein by reference, all as hereinafter described (the "Properties") for the redevelopment of the

\_\_\_\_\_ hereinafter described (the “Project”), in accordance with the development regulations designated in this Agreement.

Pursuant to the Section 36.70B.170 RCW, the parties hereto have agreed to enter into this Agreement to set forth the terms and conditions of the development on the Project in order to set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the Project for the duration specified in this Agreement.

The Developer also desires to obtain from the City in connection with the development of the Properties assurances (i) that the Properties will be appropriately zoned, (ii) that upon receipt of its development and construction permits it may proceed with the development and construction of the Project, and (iii) that such development rights will be vested for the duration of the Project.

In connection with the proposed Project, Developer and the City recognize that the scope and term of the developments under this Agreement accomplish the statutory aims of comprehensive planning, and orderly development within the City, thus providing benefits to the citizens and residents of the City exceeding any derogation from the City’s zoning powers for the duration of the Project and provide public benefits through the construction of those public facilities described and identified in this Agreement.

This Agreement describes the plans of development and establishes standards, guidelines and conditions that will apply to the Project on the various Properties, to provide such predictability to Developer with regard to future development plans. These standards are intended to provide certainty to the City in planning while permitting a certain degree of flexibility for the Developer in undertaking its development.

### SECTION 3. THE PROPERTIES

The Properties consist of the parcels described Exhibit A, which is attached hereto and incorporated herein by reference.

#### SECTION 4. PARTIES

The City is the City of \_\_\_\_\_, a municipality of the State of Washington, exercising governmental functions and powers pursuant to the laws of the State of Washington and the \_\_\_\_\_ Municipal Code. The principal office of the City is located at \_\_\_\_\_, \_\_\_\_\_, Washington \_\_\_\_\_.

The Developer, \_\_\_\_\_, a \_\_\_\_\_ corporation, has its principal offices at \_\_\_\_\_. Any reference hereafter to "Developer" shall be deemed to include any successors and/or assigns of \_\_\_\_\_, as permitted in Section 18.

#### SECTION 5. THE PROJECT

The planned Project is the \_\_\_\_\_. A detailed description of the planned Project is listed in Exhibits B and C, attached hereto and incorporated by reference.

#### SECTION 6. CERTAINTY OF DEVELOPMENT AGREEMENT

6.01 Development Agreement Deemed Controlling. This Agreement, once recorded, and any terms, conditions, maps, notes, references, or regulations which are a part of the Agreement shall be considered enforceable elements of the \_\_\_\_\_ Municipal Code. In the case of an explicit conflict with any other provisions of the \_\_\_\_\_ Municipal Code, this Agreement shall take precedence. Unless otherwise provided by this Agreement, the City's ordinances, resolutions, rules and regulations, and official policies governing permitted land uses, density, design, improvement, and construction standards shall be those City ordinances,

resolutions, rules and regulations, and official policies in force at the time of the execution of this Agreement.

6.02 Subsequent Actions. This Agreement shall not prevent the City, in subsequent actions applicable to the property, from applying new rules, regulations, and policies which do not conflict with those rules, regulations, and policies applicable to the subject property, nor shall this Agreement prevent the City from denying or conditionally approving any subsequent development project application on the basis of such new rules, regulations, and policies.

6.03 Changes in the Law. In the event that state or federal laws or regulations, enacted after this Agreement has been entered into, prevent or preclude compliance with one (1) or more of the provisions of the Agreement, such provisions of the Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations following modification procedures in Section 14 for an amendment or cancellation.

6.04 Emergency Situations. The City may suspend the issuance of building permits for the planned Project, if it finds that continued construction would place surrounding residents or the immediate community, or both, in a condition dangerous to their health or safety, or both.

## SECTION 7. COMPREHENSIVE PLAN

The Project as proposed is in material compliance with the planning goals and objectives of the City, as set forth in the City of \_\_\_\_\_ Comprehensive Plan adopted by City, dated \_\_\_\_\_, 200\_\_\_\_.

## SECTION 8. APPROVED USES & STANDARDS FOR DEVELOPMENT

8.01 Permitted Uses. Permitted uses for the planned Project are as set forth in Exhibit D, attached hereto and incorporated herein by reference.

8.02 Off-Street Parking. Off-street parking facilities for the planned Project are as set forth in Exhibit E, attached to this Agreement and made part hereof.

8.03 Landscaping. Landscaping for the planned Project is as set forth in Exhibit F, attached to this Agreement and made part hereof.

8.04 Signs. The master sign program for the planned Project is as set forth in Exhibit G, attached to this Agreement and made part hereof.

8.05. Public Facilities/Infrastructure. The following types of public facilities and infrastructure will service the Project that require City review and approval: storm water systems, road and related improvements (including curb, gutter, sidewalk and street trees), traffic signals at key intersections, other eligible project components, and those public use facilities, all of which are set forth as Exhibit H, attached hereto and incorporated herein by reference.

For the purposes of this Agreement, the Developer is solely responsible for installation and construction of the public facilities/infrastructure items listed in Exhibit H as required by and approved by the City. All public facilities/infrastructure shall be placed or put into service on land deeded or dedicated to the City or another public agency, or on which the City or other public agency has easement rights. All public facilities/infrastructure shall be installed, inspected, and approved by the City.

8.06. Developer's Obligations. Nothing in this Section shall be deemed to alter the obligation of the Developer to obtain all permits necessary before the commencement of each phase of the development of each of the Properties.

## SECTION 9. ENVIRONMENTAL PROCEDURE

This Agreement is a project as defined by the State Environmental Policy Act (SEPA). A

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*Determination of Non-Significance (DNS) - Mitigated Determination of Non-Significance???*  
(MDNS) was issued in compliance with the environmental procedures as outlined in the City of \_\_\_\_\_ Municipal Code, Chapter 16.06. The \_\_\_\_\_ and related mitigation measures, are set forth in Exhibit I, attached to this Agreement and made part hereof.

#### SECTION 10. DEVELOPMENT SCHEDULE

Attached hereto as Exhibit J, and incorporated herein by this reference, is the Development Schedule for the planned Project. Construction of the planned Project shall commence not later than \_\_\_\_\_ (date) \_\_\_\_\_. Full construction shall be completed not later than \_\_\_\_\_ (date) \_\_\_\_\_. The Development Schedule includes the completion dates for the installation and construction of public facilities/infrastructure.

#### SECTION 11. GOVERNMENT APPROVALS

Should the Developer at any time require the approval of any governmental body or board, whether of local, regional, state or federal jurisdiction, the Developer shall bear the sole cost and responsibility for obtaining the approval. The City, upon request by Developer, shall lend its full cooperation and affirmative support if it deems such would be in the interest of timely performance under this Agreement, and such cooperation and support would not compromise the responsibilities of the City, including its responsibilities to the Developer as set forth in this Agreement. Nothing contained herein is designed to relieve the Developer of the necessity of complying with the laws governing the permitting requirements, conditions, terms or restrictions.

SECTION 12. PUBLIC NOTICE AND HEARINGS

The City represents and warrants that it has conducted at least one public hearing and has published notice of intent to consider this Agreement in accordance with the requirements of 36.70B.200.

SECTION 13. AMENDMENT OR TERMINATION

This agreement may be amended, modified or terminated in conformity with the requirements of RCW 36.70B.170-200, and other applicable laws, rules or regulations, and upon mutual consent of the parties, which mutual consent of the parties shall be evidenced by a written agreement therefore, signed by the parties hereto. It is provided, however, that nothing in this Section shall limit or otherwise affect the City's ability to terminate unilaterally or modify this Agreement as a result of periodic review, in conformity with the requirements of RCW 36.70B.170-200, and other applicable laws, rules or regulations.

SECTION 14. PERIODIC REVIEW REQUIRED

This Agreement shall be reviewed by the City periodically at least every 12 months from the date this Agreement is entered into, at which review the Developer, or successor in interest thereto, shall be required to demonstrate good faith compliance with this Agreement.

The body to conduct such review shall be the \_\_\_\_\_.

SECTION 15. PROCEDURE FOR PERIODIC REVIEW

15.01 Public Hearing. The \_\_\_\_\_ (per Section 14) shall conduct a public hearing at which time the Developer must demonstrate good faith compliance with the terms of this Agreement. The burden on this issue is upon the Developer. The PAB shall determine upon the basis of substantial evidence whether or not the Developer



has, for the period under review, complied in good faith with the terms and conditions of this Agreement.

15.02 Compliance. If the \_\_\_\_\_ (per Section 14) finds and determines on the basis of substantial evidence that the Developer has complied in good faith with the terms and conditions of this Agreement during the period under review, no further action is required, except to forward their findings to the City Council. However, if it is determined on the basis of substantial evidence that the Developer has not complied in good faith with the terms and conditions of this Agreement during the period of review, proceedings may be initiated to terminate or modify this Agreement.

#### SECTION 16. GENERAL PROVISIONS

16.01 Notices, Demands and Communications. Formal notices, demands and communications between the City and the Developer shall be sufficiently given if and shall not be deemed given unless dispatched by certified mail, postage prepaid, returned receipt requested, or delivered personally, to the principal offices of the City and the Developer as follows:

<u>City</u>	<u>Developer</u>
City Manager/Mayor	_____
City of _____	_____
_____, Washington _____	_____

16.02 Service of Process. All services of process shall be effective if served in person or through substitution on those individuals designated for acceptance of other communication pursuant to Section 10.01.

16.03 Conflict of Interests. No member, official or employee of the City shall make any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

The Developer warrants that it has not paid or given, and shall not pay or give, any third person any money or other consideration for obtaining this Agreement.

16.04 Non-Liability of City, Officials, Employees, and Agents. No member, official, employee or agent of the City of \_\_\_\_\_ shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement.

16.05 Enforced Delay. Performance by either party under this Agreement shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes, lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions of priority; litigation (including suits filed by third parties concerning or arising out of this Agreement); unusually severe weather; inability to secure necessary labor, materials or tools; acts or failure to act of any public or governmental authority or entity (other than the acts or failure to act of the City which shall not excuse performance by the City), or any other causes (other than lack of funds of Developer) beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall be for a period of the enforced delay and shall commence to run from the commencement of the cause, if notice by the party claiming such extension is sent to the other party within fifteen (15) calendar days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the City's City Manager/Mayor or designee.

16.06 Plans and Data. If the Developer defaults or fails to comply with the requirements hereof, and the default or failure is not properly cured, the Developer shall deliver to the City's City Manager/Mayor any and all plans and data concerning any proposed public improvements pursuant to this Agreement which shall thereafter be the property of the City at no additional cost to the City.

16.07 Provisions Not Merged with Deeds. None of the provisions of this Agreement are intended to or shall be merged by the Statutory Warranty Deeds of the Property.

16.08 Title of Parts and Sections. Any titles of the Parts, Sections or Subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provisions.

16.09 Hold Harmless. The Developer shall indemnify and hold harmless the City and their officers, agents and employees, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by any reason of or arising out of the negligent act or omission of the Developer, its officers, agents, employees, or any of them relating to or arising out of the performance of this Agreement. If a final judgement is rendered against the City, its officers, agents, employees and/or any of them, or jointly against the City and the Developer and their respective officers, agents and employees, or any of them, the Developer shall satisfy the same to the extent that such judgement was due to the Developer's negligent acts or omissions.

16.10 Enforcement, Rights and Remedies Cumulative. This Agreement shall be enforceable by the City, applicant, or successor-in-interest notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City which alters or amends the rules, regulations, or policies specified in this Agreement. Enforcement may be through any remedy or enforcement method or process, or combination thereof, allowed under law and/or equity. Except as otherwise stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise one or more of these 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.

16.11 Right of Entry. During the life of this Agreement and until all improvements required under this Agreement to be completed are completed, the Developer shall grant to the City, its agents, employees and representatives the right of entry on to the Property during normal business hours.

16.12 Real Estate Commissions. Neither party shall be responsible to the other for any real estate commissions or brokerage fees which may arise from this Agreement or otherwise be incurred by the other party.

16.13 Applicable Law. This Agreement shall be interpreted under and pursuant to the laws of the State of Washington. Venue for any legal action brought hereunder shall be in the \_\_\_\_\_ County Superior Court.

16.14 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

16.15 Legal Actions. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement, or to collect damages as a result of any breach of the Agreement, the party prevailing in any such action shall be entitled to recover against the party not prevailing all reasonable attorney fees and costs incurred in the action.

16.16 Binding Upon Successors. This agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the parties hereto except that there shall be no transfer of any interest to any of the parties hereto except pursuant to the terms of this Agreement. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor heir, administrator, executor

or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law.

16.17 Parties Not Co-ventures. Nothing in this Agreement is intended to or does establish the parties as partners, co-venturers, or principal and agent with one another, nor employees and/or employers of each other.

16.18 Warranties. The City expresses no warranty or other representation to the Developer other than those expressed within this Agreement, as to fitness or condition of the Property.

16.19 Reasonable Approvals. The approval of a party of any documentation or submissions herein called for shall not be unreasonably withheld unless the text clearly indicates a different standard. All such approvals shall be given or denied in a timely and expeditious fashion.

16.20 Recordation. Within 10 days after the effective date of this Agreement, or any modification or the cancellation thereof, the City Clerk shall have this Agreement, the modification or cancellation notice recorded with the County Auditor/Recorder of \_\_\_\_\_ County.

16.21 Execution of Other Documentation. The City and the Developer agree to execute any further documentation that may be necessary to carry out the intent and obligations under this Agreement.

16.22 Complete Understanding of the Parties. This Agreement is executed in two (2) duplicate originals, each of which is deemed to be an original. This Agreement consists of \_\_\_\_\_ pages and \_\_\_\_\_ attached Exhibits and constitutes the entire understanding and agreement of the parties.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

CITY OF \_\_\_\_\_

DEVELOPER, \_\_\_\_\_

\_\_\_\_\_  
Mayor

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

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Attest: \_\_\_\_\_

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

\_\_\_\_\_  
City Clerk

Dated: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
City Attorney

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me known as the Mayor and City Clerk, for the City of \_\_\_\_\_, the corporation who executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said City of \_\_\_\_\_, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument on behalf of said municipal corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the date hereinabove set forth.

\_\_\_\_\_  
NAME

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
MY COMMISSION EXPIRES: \_\_\_\_\_



## LIST OF EXHIBITS

The following Exhibits are attached to this Agreement:

- Exhibit A      Legal Description of the Properties.
- Exhibit B      Project Description.
- Exhibit C      Site Plan, Building Elevations, and Floor Plans.
- Exhibit D      List of Permitted Uses.
- Exhibit E      Parking Facilities Standards.
- Exhibit F      Landscaping Standards.
- Exhibit G      Master Sign Program.
- Exhibit H      City Infrastructure Requirements.
- Exhibit I      *SEPA [Mitigated] Determination of Non-Significance (MDNS) including Mitigation Measures???[If applies].*
- Exhibit J      Development Schedule.