

# McCULLOUGH HILL LEARY, PS

---

August 3, 2015

VIA HAND DELIVERY  
AND ELECTRONIC MAIL

Olympia Planning Commission  
c/o Olympia Planning and Development Department  
P.O. Box 1967  
Olympia, WA 98507-1967  
[cpdinfo@ci.olympia.wa.us](mailto:cpdinfo@ci.olympia.wa.us)

Re: Comment on Proposed Comprehensive Plan Amendment  
Friendly Village Area Street Map

Dear Planning Commission Members:

This letter provides comments on the proposed Comprehensive Plan Amendment for the Friendly Village Area Street Map (“Amendment”) on behalf of Friendly Village LLC (“Friendly Village”), the owner of the Friendly Village manufactured home park property (“Property”).

Friendly Village is surprised and disappointed that this Amendment, which affects only Friendly Village’s property, was developed without advance notice to, or consultation with, Friendly Village. The proposed Amendment significantly and adversely affects the Property by designating property for public streets that are not necessary to serve traffic from future development of the Property. These streets remove significant buildable area from the Property and segment the Property in a manner that will prevent full development allowed under the applicable zoning. In all, the effect is to significantly reduce the value of the Property.

The Planning Commission should deny the proposed Amendment because, first, it is inconsistent with the Development Agreement that governs development on the Property through the year 2029. Second, the Amendment fails to acknowledge that future development of public streets on the Property effects a taking of property for which compensation is due. Third, the Amendment fails to meet the standards of Olympia Municipal Code (“City Code” or “OMC”) 18.59.040.

## Development Agreement

While the staff report mentions that the Property was designated high density corridor (“HDC”) in 2008, it fails to acknowledge that the designation and zoning was conditioned on the requirements of a Development Agreement for the Property approved by the City. The Development Agreement (attached as Exhibit A) has a term of 20 years and is binding on the Property until the year 2029. The Development Agreement provides that Friendly Village will not redevelop the Property.

is illegal. For these reasons, the Planning Commission should reject the amendment.

Failure to Meet the Standards of OMC 18.59.040.

The proposed Amendment fails to meet the standards of OMC 18.59.040. The Amendment does not maintain consistency with other plan elements and development regulations. The Amendment is inconsistent with the following Comprehensive Plan goals and policies, among others:

- GP3. City decision processes are transparent and enable effective participation of the public.
- PP3.3. Give citizens, neighborhoods, and other interested parties opportunities to get involved early in land use decision-making processes. Encourage or require applicants to meet with affected community members and organizations.
- GP4. Citizens and other key stakeholders feel their opinions and ideas are heard, valued and used by policy makers, advisory committees, and staff.
- PP4.2. Replace or complement the three-minute, one-way testimony format with an approach that allows meaningful dialogue between and among citizens, stakeholders, City Council members, advisory boards, and staff.

Here, the City did not meet with Friendly Village during the formulation of the proposed Amendment. Rather, Friendly Village did not receive any notice describing the proposal with specificity until only 10 days ago, well after it was developed. The notice identified a potential meeting time with staff less than a week after Friendly Village received notice. This is not transparent, effective, early or meaningful consultation with stakeholders.

- PP3.8. Respect property owners' legal rights when implementing this plan. Regulations should provide for compensation for the property owner or waivers from requirements if the implementation of the regulation would otherwise constitute a legally defined "taking."

Here, the City has failed to acknowledge that compensation is required for the City's taking of private property for public use.

- PE2.1 Encourage retail, office, medical and service activities for their value in providing employment and tax revenues.

The proposed Amendment renders the Property less suitable for future retail or other commercial use, contrary to the policy to encourage those uses.

Friendly Village may sell the property to a different owner, but if it does, then the owners of the manufactured homes on the Property have a right of first opportunity to purchase the Property. If these owners purchase the Property, then it will remain as a manufactured home park. Thus, the conditions attached to the 2008 designation of the Property as HDC increased the likelihood that the Property will be preserved as a manufactured home park. As the staff report acknowledges, the City does not usually designate new streets through established residential neighborhoods. In recognition of the Development Agreement's restrictions, and the manufactured home owners' potential future purchase of the Property, the City should not deviate from its established practice here.

Only if the manufactured home owners do not exercise their opportunity to purchase may the Property be redeveloped by a future owner. In this unlikely event, the Development Agreement provides that the Property is vested to the HDC-4 zone and identifies the development standards ("Development Standards") that apply the Property, including the commercial Development Standards that existed when the Development Agreement was approved. The Development Agreement goes on to state that

the Property shall not be subject to any requirements of the OMC that are inconsistent with the Development Standards or that prevent the Property from being developed to the full extent otherwise permitted under the Development Standards, nor shall the City exercise its substantive authority to condition or deny a proposal under the State Environmental Policy Act in a manner inconsistent with the Development Standards.

Development Agreement, Section 4. Notably, the City had the opportunity to require public streets through the Property when the Development Agreement was approved, but the City chose not to impose any such requirements. The Development Standards do not require the public streets that are currently proposed. To the contrary, the currently proposed street designation improperly prevents the Property from being developed to the full extent otherwise permitted by the Development Standards. Accordingly, the proposed Comprehensive Plan amendment is inconsistent with the Development Agreement. The Planning Commission should reject the amendment for this reason.

#### Taking of Private Property

The Comprehensive Plan Policy PT 4.8 states that the City will "[b]uild new arterials, major collectors and neighborhood collectors based on the general location defined in the Transportation Maps in Appendix B." The proposed Amendment revises these maps to include new public streets through the Friendly Village property. Yet, the Friendly Village property is privately owned. In order to build public streets, the City must first acquire the right of way from Friendly Village. The City must pay fair market value for this property. Despite this, the Amendment fails to acknowledge the need for payment to Friendly Village. Further, the City's identification of future public streets on the Property creates uncertainty for potential future owners and developers, reducing the property value in anticipation of condemnation. This practice is called precondemnation blight and

- PE4.3. Make decisions to invest in public infrastructure projects after analysis determining their total costs over their estimated useful lives, and their benefit to environmental, economic and social systems

There is no indication the City has considered the cost of acquiring the required right of way from Friendly Village. This analysis is mandated by the Comprehensive Plan.

- PE5.4. Create more predictability in development review process to reduce costs, without eliminating protections.

Designating significant public streets to be constructed through private property at some point in the future does not create more predictability. To the contrary, it creates substantial uncertainty.

In addition, as discussed previously, the proposed amendment is inconsistent with the Development Standards to which the Property is vested.

Finally, the proposal is inconsistent with the requirements of the Growth Management Act (“GMA”) relating to early and continuous public participation and the protection of private property rights.

The Planning Commission should reject the amendment because it does not satisfy the criteria contained in the City Code.

#### Conclusion

In sum, for all the reasons discussed in this letter, the Planning Commission should reject the proposed Comprehensive Plan amendment to designate public streets through the privately owned Friendly Village property.

Sincerely,

  
Courtney A. Kaylor

Enclosures

cc: Client  
Todd Stamm

AFTER RECORDING RETURN DOCUMENT TO:  
McCullough Hill PS  
701 First Avenue, Suite 7220  
Seattle, Washington 98104  
Attn: Courtney A. Kaylor

Reference Number of Related Document: N/A  
Grantor(s): Friendly Village LLC  
Grantee(s): City of Olympia  
Abbreviated Legal Description: Parcel B, BLA No. BLA-0213170L, Recorded 3/12/03,  
Auditor's File No. 3511114, and Parcel C, BLA No. BLA-0419890L, Recorded  
7/15/05, Auditor's File No. 3748676, Records of Thurston County, WA  
Additional Legal Description is on Exhibit A to Document  
Assessor's Property Tax Parcel or Account No.: 12821210200, 12821210300

## DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT ("Agreement") is entered into this 19<sup>th</sup>  
day of November, 2009, by and between the City of Olympia ("City"), a  
Washington municipal corporation, and Friendly Village LLC, a Washington limited  
liability company (collectively, "Parties"). Future owners of the Property are referred to  
in this Agreement as "Property Owner" or "Property Owners."

### RECITALS

A. WHEREAS, the Washington State legislature has authorized the  
execution of a development agreement between a local government and a person having  
ownership or control of real property within its jurisdiction pursuant to RCW  
36.70B.170(1).

B. WHEREAS, a development agreement made pursuant to that authority must set forth the development standards and other provisions that shall apply to, govern, and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. RCW 36.70B.170(1).

C. WHEREAS, for the purposes of this Agreement, the term development standards (“Development Standards”) includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3), except as further provided in this Agreement.

D. WHEREAS, the Parties recognize that development agreements must be consistent with the applicable development regulations adopted by a local government planning under Chapter 36.70A RCW. RCW 36.70B.170(1).

E. WHEREAS, this Agreement relates to the property (“Property”) owned by Friendly Village LLC and known as the Friendly Village manufactured housing park, which is more particularly described in Exhibit A to this Agreement.

#### AGREEMENTS

The Parties agree as follows:

1. Comprehensive Plan Amendment and Rezone. The Parties agree that this Agreement fulfills the condition precedent to the Comprehensive Plan amendment and rezone of the Property to HDC-4 contained in City of Olympia Ordinance No. 6594, Sections 16 and 17.

2. Development Standards. The Development Standards that shall apply to the Property for the term of this Agreement (“Term”) are those contained in the Olympia Municipal Code (“OMC”) Sections 18.06.020 through 18.06.100 (Commercial Districts), Chapter 18.36 (Landscaping and Screening), Chapter 18.38 (Parking and Loading), Sections 18.40.020 through 18.40.060 (Property Development and Protection Standards), Chapter 18.42 (Signs), Chapter 18.100 (Design Review), Chapter 18.110 (Basic Commercial Design), Chapter 18.130 (Commercial Design Criteria High Density Corridor (HDC)), and Chapter 18.170 (Multi-Family Residential) in effect as of the date of this Agreement and shall include those amendments contained in Ordinance No. 6666 (“Replacement Housing Text Amendments”). The Development Standards are attached as Exhibit B to this Agreement.

3. Vesting. This Agreement vests the Property to the HDC-4 zone for the Term of this Agreement. During the term of this Agreement, no amendment to the Comprehensive Plan Future Land Use Map land use designation, zoning district or overlay district for the Property shall be effective. Upon the expiration of the Term of



this Agreement, any amendment to the Comprehensive Plan Future Land Use Map land use designation, zoning district or overlay district for the Property shall be effective as provided under then-applicable law.

In addition, this Agreement vests the Property to the Development Standards set forth in Paragraph 2 above for the Term of the Agreement. Pursuant to RCW 36.70B.170(4), the City reserves the authority to impose new or different regulations only to the extent required by a serious threat to public health or safety.

4. Other Standards. Other than as provided in Paragraphs 2 and 3 of this Agreement, the Property shall be subject to the generally applicable requirements of the OMC to which it would be subject in the absence of this Agreement; provided however, that the Property shall not be subject to any requirements of the OMC that are inconsistent with the Development Standards or that prevent the Property from being developed to the full extent otherwise permitted under the Development Standards, nor shall the City exercise its substantive authority to condition or deny a proposal under the State Environmental Policy Act in a manner inconsistent with the Development Standards.

5. Mitigation. Pursuant to RCW 36.70B.170(1), the Parties agree to the following mitigation.

a. Replacement Housing. The Property Owner shall construct one new housing unit ("Replacement Housing") on the Property to replace each manufactured housing unit removed as a result of redevelopment of the Property ("Redevelopment") occurring subsequent to the date of this Agreement. The total amount of required Replacement Housing shall be 246 residential units if all of the existing manufactured housing units are removed as a result of Redevelopment. Redevelopment shall be defined as removal or demolition of manufactured housing units and construction of structures other than manufactured housing in their place. Redevelopment shall not include application for land use and construction permits.

b. Phasing Plan. At the time of application for a land use or construction permit for Redevelopment on the Property, the Property Owner shall submit to the City Department of Community Planning and Development (CP and D) a phasing plan ("Phasing Plan") including the proposed location and schedule for development of Replacement Housing. No permits may be issued for redevelopment of the Property until the Director of CP and D has approved the Phasing Plan. Approval shall be granted if the Phasing Plan meets the requirements of this Paragraph 5b. All Replacement Housing shall be provided prior to or concurrent with the final 25% buildout of the commercial uses set forth in the Phasing Plan for the Property. Accordingly, no construction permits may be issued for the final 25% of the commercial



development set forth in the Phasing Plan until construction permits are issued for the required Replacement Housing, and a certificate of occupancy may not be issued for the final 25% of the commercial development until all required Replacement Housing has been constructed and a certificate of occupancy issued for the Replacement Housing. In describing earlier phases of development, the Phasing Plan shall set aside sufficient land for Replacement Housing in light of a reasonable buildout scenario and in light of prevailing regional market conditions.

c. Replacement Housing Text Amendments. The Replacement Housing Text Amendments shall apply to the Redevelopment of the Property.

6. Additional Mitigation Relating to the Friendly Village Manufactured Home Park. Friendly Village LLC, on behalf of itself and its successors the Property Owners, agrees to the following additional mitigation. The City makes no representations, warranties or commitments relating to the provisions of Paragraph 6 of this Agreement.

a. Redevelopment. Friendly Village LLC agrees that Redevelopment of the Property with a use other than manufactured housing park will not occur during the time that Friendly Village LLC owns the Property. The intent of this provision is that the Property will not be redeveloped unless it is conveyed to a separate entity from Friendly Village LLC, after compliance with the provisions of Paragraph 6b.

b. Sale. Friendly Village LLC agrees that it will not sell the Property to a separate party or an entity related to Friendly Village LLC until April 21, 2012. During this period, Friendly Village LLC will make a good faith effort not to allow the Property to be sold pursuant to a foreclosure or other forced sale proceeding.

c. Right of First Opportunity. In the event that at any time during the Term of this Agreement Friendly Village LLC shall decide to place the Property for sale to a related or unrelated third party or parties, Friendly Village LLC shall first offer the Property to the owners of manufactured homes located in the Friendly Village manufactured housing park as identified in the records of the Thurston County Assessor on the date notice of the offer is mailed pursuant to Subsection (c)(i) ("Manufactured Home Owners") at the same price and on such other terms and conditions as Friendly Village LLC shall later offer to any related or unrelated third party or parties in an arms-length transaction.

(i) Friendly Village LLC shall notify the Manufactured Home Owners of its decision to sell the Property and the price and other terms and conditions of such proposed sale by delivering written notice by certified mail to the Manufactured





Home Owners (the "Notice") at the address set forth in Paragraph 7 of this Agreement, or at such other address as the Manufactured Home Owners may hereafter designate in accordance with the provisions of this Agreement. The Notice shall include a Purchase and Sale Agreement ("PSA") in the form attached as Exhibit C to this Agreement.

(ii) The Manufactured Home Owners shall have a period of thirty-three (33) days following the date of mailing of the Notice (according to the records of the U.S. Post Office) within which to deliver by certified mail to Friendly Village LLC written notice ("Manufactured Home Owners' Response") that the Manufactured Home Owners will purchase the Property at the price and on the terms set forth in the Notice. In order to be effective, the Manufactured Home Owners' Response must be received by Friendly Village LLC within this thirty-three (33) day period. The Manufactured Home Owners' Response may contain a counteroffer for a different sales price but may not seek modification of the terms of the PSA. Friendly Village LLC will give good faith consideration to the counteroffer; however, Friendly Village LLC is under no obligation to accept this counteroffer. The Manufactured Home Owners' Response shall include the PSA executed by a member of the Manufactured Home Owners or third party ("Authorized Party") with authority to act on behalf of the Manufactured Home Owners. Such authority shall be evidenced by a written statement signed by at least three-quarters of the Manufactured Home Owners authorizing the member of the Manufactured Home Owners or the Authorized Party to sign the PSA on their behalf. Prior to closing, the Manufactured Home Owners shall form a legal entity capable of holding title under Washington law. At closing, title shall be conveyed to this entity. The Manufactured Home Owners' Response shall be delivered by certified mail to Friendly Village LLC at the address set forth in Paragraph 7 of this Agreement, or at such other address as Friendly Village LLC may hereafter designate in accordance with the provisions of this Agreement.

(iii) If the Manufactured Home Owners reject such offer or do not deliver by certified mail the Manufactured Home Owners' Response and executed PSA to Friendly Village LLC within the above thirty-three (33) day period, then the Manufactured Home Owners shall be conclusively deemed to have rejected the Right of First Opportunity set forth in this Paragraph 6b and thereafter Friendly Village LLC may offer and sell the Property to other third party or parties free of any right or interest of the Manufactured Home Owners; provided, however, Friendly Village LLC shall not sell the Property to a third party for less than 93 percent of the sale price contained in the Notice and PSA, without re-offering the same to the Manufactured Home Owners on such revised terms. Friendly Village LLC covenants that it shall accept no offer to sell or convey the Property until it has complied with the terms of this Paragraph 6b. Any conveyance of the Property made in the absence of full satisfaction of this Paragraph 6b shall be void.

(iv) This Paragraph 6c applies only to Friendly Village LLC and does not bind subsequent Property Owners.

d. Relocation Assistance. If some or all of the manufactured homes on the Property are replaced with other uses as a direct result of Redevelopment of some or all of the Property, then the Property Owner shall pay relocation assistance ("Relocation Assistance") to the Manufactured Home Owners who own the replaced manufactured homes in the amount of \$2,000 per manufactured home. The Property Owner shall pay such Relocation Assistance to the Manufactured Home Owners shown in the records of the Thurston County Assessor as of the date of termination of the rental agreement between the Property Owner and Manufactured Home Owner. If title to a manufactured home is held by more than one person, then the Property Owner shall divide the Relocation Assistance between the owners on a pro rata basis. Payment shall be made by check delivered by certified mail to the Manufactured Home Owner at the address shown in the records of the Thurston County Assessor within seven (7) days of the termination of the rental agreement between the Property Owner and Manufactured Home Owner.

7. Notices. All notices required to be given hereunder shall be given in writing and shall be deemed delivered on the date of hand delivery of the notice or the date that is three days after mailing of the notice by certified or registered mail, return receipt, postage prepaid, to the parties at the addresses set forth below:

If to City:

City of Olympia  
Community Planning & Development Dept.  
P.O. Box 1967  
Olympia WA 98507-1967  
Attn: Director

If to Friendly Village LLC or Property Owner:

Friendly Village, LLC  
c/o PCF Management, Inc.  
8625 Evergreen Way, Suite 200  
Everett, WA 98208  
Attn: Fred Hines

If to Manufactured Home Owners:

Joyce Brix  
1111 Archwood Drive SW #261  
Olympia, WA 98502

The parties may designate any further or different address to which subsequent notices are to be sent by delivering a written notice of the address change by certified mail to the other parties. If any notice sent to the Manufactured Home Owners is returned by the U.S. Post Office as undeliverable, then the notice shall be sent to all Manufactured Home Owners shown in the records of the Thurston County Assessor on the date of mailing and the notice shall be effective on the date of mailing.

8. Term. The Term of this Agreement shall commence upon the effective date of the Ordinance approving this Agreement ("Effective Date") and shall continue in force for a period of twenty (20) years from the Effective Date.

9. Covenant Running with the Land. The provisions of this Agreement shall run with the land and shall be binding upon and inure to the benefit of the Parties, their successors and assigns.

10. Recording. This Agreement shall be recorded with the Office of the Thurston County Auditor.

11. Remedies. The Parties agree that damages are not an adequate remedy for breach of this Agreement, and that the Parties are entitled to seek specific performance of all material terms of this Agreement. The Parties are also entitled to seek other remedies, including damages, to the extent otherwise provided for by law.

12. Third Party Beneficiaries. The Manufactured Home Owners are third party beneficiaries of Paragraph 6 of this Agreement and a Manufactured Home Owner or legal entity representing a Manufactured Home Owner at the time of an alleged breach of Paragraph 6 of this Agreement shall be entitled to enforce Paragraph 6 of this Agreement. The Parties agree that damages are not an adequate remedy for breach of Paragraph 6, subsections a, b, and c, of this Agreement and the third party beneficiaries are entitled to seek specific performance of these subsections by Friendly Village LLC and subsequent Property Owners. The third party beneficiaries are also entitled to seek other remedies, including damages, against Friendly Village LLC and subsequent Property Owners for breach of Paragraph 6 to the extent otherwise provided by law. There are no other third party beneficiaries of this Agreement and no party other than the City, Friendly Village LLC, subsequent Property Owners and the Manufactured Home Owners shall be entitled to enforce any part of this Agreement. Nothing in this

Agreement imposes a legal obligation on the City to enforce Paragraph 6 of this Agreement nor does this Agreement provide a cause of action against the City for damages or other relief for violations of Paragraph 6 of this Agreement.

13. Prior Agreements; Amendments. This Agreement is the full, final and complete expression of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement, and no prior agreements or understandings, promises or representations, oral or otherwise, pertaining to any such matters shall be effective for any purpose with respect to any matter covered or mentioned in this Agreement. No provision of this Agreement may be amended except by an agreement in writing signed by the Parties or their respective successors in interest and approved by the City pursuant to the process established by law for the adoption of a development agreement.

14. Severability. If any provision of this Agreement or the CPA and Rezone is determined by an administrative appellate body or court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement or the CPA and Rezone is rendered invalid or unenforceable according to the terms of any statute of the State of Washington effective after the Effective Date, and either Party in good faith determines that such provision is material to its entering into this Agreement, that Party may elect to terminate this Agreement as to all of its obligations remaining unperformed.

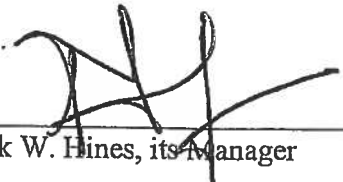
15. Governing Law. This Agreement shall be governed by the laws of the State of Washington.

16. Amendments. Friendly Village LLC or subsequent Property Owners may apply for, and the City may approve, amendments to Paragraphs 2 through 5 of this Agreement without the consent of the Manufactured Home Owners. No other Section of this Agreement may be amended without the prior written consent of the majority of the Manufactured Home Owners. Minor amendments are those that either (1) do not increase the floor area of potential development on the Property by more than 10% or (2) are consistent with the land use laws and regulations in effect at the time of the amendment. All other amendments are major amendments. Minor amendments may be approved administratively by CP and D Director. Major amendments will be subject to the same approval process as this Agreement.

EXECUTED as of the date first above written.

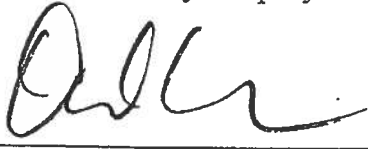
GRANTOR:

Friendly Village LLC,  
a Washington limited liability company

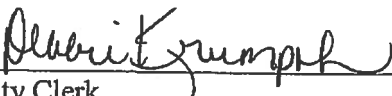
By:   
Frederick W. Hines, its Manager

GRANTEE:

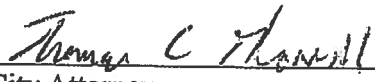
City of Olympia  
a Washington limited liability company

By:   
Doug Mah, its Mayor

ATTEST:

By:   
City Clerk

APPROVED AS TO FORM:

By:   
City Attorney

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF ~~KING~~ Snohomish ) *nr*

I certify that I know or have satisfactory evidence that Frederick W. Hines is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Manager of Friendly Village, LLC., a Washington limited liability corporation, to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

Dated this 19<sup>th</sup> day of November, 2009.

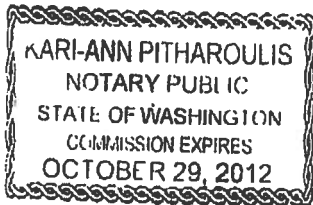


*Melaney Anderson*  
\_\_\_\_\_  
(Signature)  
Melaney Anderson  
\_\_\_\_\_  
(Print Name)  
Notary Public in and for the State of  
Washington, residing at Mukitto  
My appointment expires 5/19/12

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF THURSTON )

I certify that I know or have satisfactory evidence that Doug Mah is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Mayor of the City of Olympia, a Washington municipal corporation, to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

Dated this 27<sup>th</sup> day of October, 2009.



*Kari-Ann Pitharoulis*

(Signature)

Kari-Ann Pitharoulis

(Print Name)

Notary Public in and for the State of

Washington, residing at Olympia

My appointment expires 10-29-2012



**EXHIBIT "A"**

PARCEL A:

REVISED PARCEL C OF BOUNDARY LINE ADJUSTMENT NO. BLA 0419890L, AS RECORDED JULY 15, 2005 UNDER RECORDING NO. 3748676, RECORDS OF THURSTON COUNTY AUDITOR;

PARCEL B:

PARCEL B OF BOUNDARY LINE ADJUSTMENT NO. BLA-0213170L, AS RECORDED MARCH 6, 2003 UNDER RECORDING NO. 3511114, RECORDS OF THURSTON COUNTY AUDITOR;

SITUATE IN THE CITY OF OLYMPIA, COUNTY OF THURSTON, STATE OF WASHINGTON.





## EXHIBIT B

### DEVELOPMENT STANDARDS

The Development Standards that shall apply to the Property for the term of this Agreement ("Term") are those contained in the Olympia Municipal Code ("OMC") Sections 18.06.020 through 18.06.100 (Commercial Districts), Chapter 18.36 (Landscaping and Screening), Chapter 18.38 (Parking and Loading), Sections 18.40.020 through 18.40.060 (Property Development and Protection Standards), Chapter 18.42 (Signs), Chapter 18.100 (Design Review), Chapter 18.110 (Basic Commercial Design), Chapter 18.130 (Commercial Design Criteria High Density Corridor (HDC)), and Chapter 18.170 (Multi-Family Residential) in effect as of the date of this Agreement and shall include those amendments contained in Ordinance No. 6666 ("Replacement Housing Text Amendments").

Exhibit B

4124876

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12/04/2009 09:32 AM Agreement  
Thurston County Washington  
CITY OF OLYMPIA, P W RECORDS (OLY1)



**EXHIBIT "B"**  
**Development Standards**  
**(197 pages)**

These pages do not meet Thurston County's recording requirements for legibility.

To view or request a copy, please contact the City of Olympia, City Clerk's Office at 360-753-8325, 900 Plum St, SE, Olympia, WA.



EXHIBIT C

REAL ESTATE PURCHASE AND SALE AGREEMENT

REAL ESTATE PURCHASE AND SALE AGREEMENT, dated the last day of execution below (the "Effective Date"), between the Purchaser and Seller identified in Section 2.

Purchaser and Seller agree as follows:

1. Purchase and Sale. Purchaser shall purchase and Seller shall sell the Property under the terms and subject to the conditions set forth in this Agreement.

2. Parties. The name, address and fax number of Purchaser and Seller are:

2.1 Purchaser

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

Attn:

Fax: \_\_\_\_\_

2.2 Seller

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

Attn:

Fax:

2.3 Title Company and Closing Agent

\_\_\_\_\_ Title Insurance Company

Attn:

Fax:

3. Property. The Property is that certain parcel of real property consisting of approximately forty-two and three-quarters (42.75) acres, located in the City of Olympia, Thurston County, Washington, as more particularly described on Exhibit A attached hereto (the "Property").



4. Purchase Price. The Purchase Price is \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

5. Payment of Purchase Price. The Purchase Price shall be paid all in cash at Closing, via cashier's check, wire transfer, or other immediately available funds. The Earnest Money shall be applied to Purchaser's payment of the Purchase Price.

6. Earnest Money. Concurrently with the execution of this Agreement by Seller, Purchaser is depositing Earnest Money in the amount of \_\_\_\_\_ and No/100s Dollars (\$ \_\_\_\_\_) with \_\_\_\_\_ (the "Escrow Officer"), which is one percent (1 %) of the Purchase Price. The Earnest Money shall be in the form of cash. The Earnest Money shall be applicable to the Purchase Price, but nonrefundable to Purchaser, even in the event of failure of Purchaser's conditions to closing under Section 10 or other termination of this Agreement, except in the sole event Seller refuses, without legal excuse, to close the sale of the Property. If Purchaser fails to purchase the Property in accordance with its obligations under this Agreement, Seller's exclusive remedy for such failure shall be to terminate this Agreement and retain the Earnest Money, the parties agreeing that the damages that would be incurred by Seller in such event would be difficult or impossible to determine with precision and that the amount of the Earnest Money is reasonable in light of such difficulty or impossibility, the Purchase Price, and the nature of the Property.

7. Title Matters.

7.1 Conveyance. At Closing, Seller shall deliver a statutory warranty deed conveying title to the Property to Purchaser, subject only to Permitted Exceptions.

7.2 Title Review.

7.2.1 Not later than 15 days following the Effective Date, Purchaser shall be furnished with a preliminary commitment for the Title Policy from the Title Company. The preliminary commitment shall be accompanied by complete copies of any exceptions identified as special exceptions therein.

7.2.2 Purchaser shall have 10 days after its receipt of the preliminary commitment in which to notify Seller of its approval and disapproval of each exception shown in the preliminary commitment. Purchaser's failure to notify Seller shall constitute Purchaser's approval of all exceptions in the preliminary commitment. Exceptions not disapproved by Purchaser shall be Permitted Exceptions.

7.2.3 Seller shall have 15 days after its receipt of Purchaser's notice in which to notify Purchaser of its election to cure or remove any of the disapproved exceptions. Seller's failure to notify Purchaser shall constitute Seller's election not to remove any disapproved exceptions. Seller shall remove the exceptions it elects to remove on or before Closing. Seller shall provide clear title except for easements, restrictions and reservations of record as of the date of Closing.

7.2.4 If Seller does not elect to remove all exceptions disapproved by Purchaser, Purchaser may, within 10 days after Seller's notice, or within 10 days after the last day for Seller's notice to be delivered, if no such notice was delivered, elect to terminate this Agreement, in which case the Earnest Money shall be returned to Purchaser. If Purchaser does not so elect to terminate this Agreement, disapproved exceptions that Seller has elected not to remove shall become Permitted Exceptions.

7.2.5 The notice and response procedure of this Section 7.2 shall be repeated for any title exceptions first appearing after Purchaser's receipt of the initial preliminary commitment, except that if the time period for delivery of any notice extends beyond the Closing Date, such notice and all subsequent notices shall be delivered on or before such date.

7.3 Policy. At Closing, Seller shall cause the Title Company to issue to Purchaser the Title Policy, which shall be an ALTA standard coverage owner's policy of title insurance, insuring Purchaser in the amount of the Purchase Price against any loss or damage by reason of defects in title to the Property delivered at Closing, other than Permitted Exceptions ("Title Policy"). At Purchaser's option, Purchaser may require that the Title Policy be issued with ALTA extended coverage ("Extended Coverage"); provided that: (i) Seller will not be required to incur any additional expenses in obtaining the Extended Coverage in excess of the cost of "standard coverage", and (ii) Seller's obligation to deliver title at Closing will require Seller only to deliver title sufficient for the issuance of "standard form" coverage. Purchaser will notify Seller within the time period provided in Section 7.2.2 for review of title whether Purchaser requires Extended Coverage. If Purchaser elects to require Extended Coverage, Purchaser will be responsible for any additional out-of-pocket costs of the survey required for such Extended Coverage, whether or not this transaction closes. Timing associated with delivery of such survey shall not delay Closing hereunder.

7.4 Title Not Insurable. If title is not insurable at Closing in accordance with the provisions of this Agreement, Seller shall not be in default under this Agreement, unless Seller has intentionally failed or refused to deliver title or to remove title exceptions as required by Paragraph 7.2.3; and Purchaser may elect to proceed to Closing despite such noninsurability or Purchaser may terminate this Agreement, whereupon this Agreement shall terminate and all obligations of the parties shall cease.

8. Purchaser's Contingency. Purchaser shall have no obligation to purchase the Property unless Purchaser determines in its sole and absolute discretion that its purchase, use and development of the Property in accordance with Purchaser's intentions will be physically, financially and otherwise feasible ("Purchaser's Feasibility Contingency"). Purchaser shall issue its written notice to Seller within sixty (60) days of the Effective Date ("Contingency Period") that Purchaser is satisfied with or waives Purchaser's Feasibility Contingency, whereupon Purchaser's Feasibility Contingency under this Section 8 shall be satisfied. If Purchaser does not so notify Seller within the Contingency Period, then this Agreement shall terminate and the Earnest Money shall be returned to Purchaser.



9. Possession and Right of Entry. Purchaser shall be entitled to possession of the Property upon Closing. Prior to Closing, Purchaser shall have the right for itself and its agents, employees, consultants and others to enter onto the Property and to conduct such inspections and studies as Purchaser may deem necessary and appropriate, at Purchaser's sole cost and expense. Purchaser will defend, indemnify and hold Seller harmless from any claim, loss or liability in connection with any entry on the Property by Purchaser, any claim of lien or damage, or any activities on the Property by Purchaser, its agents, employees and independent contractors, except to the extent such claim, loss or liability is the result of Seller's negligence or willful misconduct. The foregoing indemnification obligation shall survive Closing or any termination of this Agreement. If the transaction fails to close for any reason other than a default by Seller, Purchaser agrees to provide to Seller copies of all written studies, reports and other documents prepared for Purchaser by third parties with respect to the environmental, physical or other condition of the Property. Purchaser will not thereby be warranting, and shall not be responsible for, the accuracy, completeness, fitness or usability of such reports or the conclusions or recommendations stated therein.

10. Closing. Closing of the purchase and sale shall occur when the statutory warranty deed has been delivered and recorded and the Purchase Price has been delivered to Seller or is available to Seller. Closing shall be conducted through escrow at the Seattle offices of the Title Company. The Title Company shall also be the "Closing Agent" for the parties. This Agreement, together with such other instructions as either party may submit that are consistent with this Agreement, shall be the escrow instructions to the Closing Agent.

10.1 Closing Date. Closing shall occur not later than sixty (60) days following the end of the Contingency Period, after which this Agreement shall terminate.

10.2 Deposits and Prorations. The parties shall each timely deposit with the Closing Agent all instruments, documents and moneys necessary to enable the purchase and sale to close in accordance herewith. Real estate taxes for the current year and assessments that are Permitted Exceptions for the current year shall be prorated as of the Closing Date.

10.3 Closing Costs. Seller and Purchaser shall share equally the real estate excise tax, the fees of the Closing Agent, the premium for the Title Policy (up to the amount of the premium that would be charged for owner's standard coverage title insurance), and recording fees. Purchaser shall pay the amount of the Extended Coverage, the cost of any endorsements to the Title Policy requested by Purchaser, and any other closing cost. Each party shall pay its own attorneys' fees.

11. Seller's representations. Seller makes the following representations and warranties to Purchaser, and acknowledges that Purchaser is relying on such representations and warranties in entering into this Agreement. Such representations and warranties are true as of the date of this Agreement, shall be true as of and at the Closing, and shall not be waived or diminished by reason of any investigation made by Purchaser or its agents.

11.1 No conflict. The execution of this Agreement and the carrying out of the transactions contemplated hereby will not conflict with or result in a breach of any agreement or contract to which Seller is a party, or violate any order, judgment or decree of any court or arbiter that is binding on Seller. Except as may have been specifically disclosed in writing by Seller to Purchaser prior to this Agreement, there is no litigation or other proceeding pending or overtly threatened against Seller that could have a material adverse effect on the ability of Seller to perform its obligations under this Agreement.

11.2 Authority. The execution, by the person specified below, the delivery, and the performance of this Agreement by Seller have been duly and validly authorized by resolution of the Bellevue City Council.

11.3 Existence, Power and Authority. Seller is validly in existence, with full power and authority as such entity to own its properties and conduct its business as presently conducted. The execution of this Agreement by the undersigned signatory and performance of the transactions contemplated by this Agreement have been duly authorized by all necessary action on the part of such entity.

12. Purchaser's Representations. Purchaser makes the following representations and warranties to Seller, and acknowledges that Seller is relying on such representations and warranties in entering into this Agreement. Such representations and warranties are true as of the date of this Agreement, shall be true as of and at the Closing, shall survive Closing, and shall not be waived or diminished for any reason.

12.1 No conflict. The execution of this Agreement and the carrying out of the transactions contemplated hereby will not conflict with or result in a breach of any agreement, contract, commitment, undertaking, order, judgment or decree that is binding on Purchaser. Except as may have been specifically disclosed in writing by Purchaser to Seller prior to this Agreement, there is no litigation or other proceeding pending or overtly threatened against Purchaser that could have a material adverse effect on the ability of Purchaser to perform its obligations under this Agreement, or otherwise involving the Property.

12.2 Authority. The person executing this Agreement has the authority to do so and bind the Purchaser and all consents, permissions, and approvals related to entry into this Agreement, its obligations hereunder, and required by any covenant, agreement, encumbrance, law or regulation applicable to Purchaser have been obtained. This Agreement is a valid and binding obligation of Purchaser and is enforceable according to its terms.

12.3 Existence, Power and Authority. Purchaser is validly in existence, with full power and authority to own its properties and conduct its business as presently conducted. The execution of this Agreement by the undersigned signatory and performance of the transactions contemplated by this Agreement have been duly authorized by all necessary action on the part of such entity.



13. Notices. Notices and other communications under this Agreement shall be in writing and shall be effective when received by personal delivery to the other party, or received by certified mail, return receipt requested (which receipt shall be deemed to occur three days after mailing), or upon the date sent by fax with a machine printed or other written confirmation of receipt by the other party, in each case to the address or fax number set forth in Section 2, directed to the attention of the person identified therein.

14. Default; Remedies. If either party fails to perform its obligations when due under this Agreement, such party shall be in default.

14.1 Purchaser's Failure to Close; Purchaser's Default. If Purchaser fails to purchase the Property in accordance with its obligations under this Agreement, Seller's exclusive remedy for such failure shall be to terminate this Agreement and retain the Earnest Money, the parties agreeing that the damages that would be incurred by Seller in such event would be difficult or impossible to determine with precision and that the amount of the Earnest Money is reasonable in light of such difficulty or impossibility, the Purchase Price, and the nature of the Property. The foregoing shall not, however, limit any right of Seller to indemnification or defense provided in this Agreement, or the provisions of this Agreement providing for payment of attorneys' fees in the event of a dispute, or any of Seller's rights under applicable law in the event that Purchaser breaches any covenant or agreement, except for the covenant to close.

14.2 Seller's Failure to Close; Seller's Default. If Seller refuses, without legal excuse, to close the sale of the Property, Purchaser may elect to: (1) receive a refund of the Earnest Money; or (2) maintain an action for specific performance. In the event of any other default by Seller with respect to its obligations under this Agreement, Purchaser's sole remedy shall be to maintain an action for specific performance. Purchaser expressly waives the right to pursue any remedy for actual or consequential damages against Seller as a result of Seller's default.

15. Condemnation. If, prior to the Closing, all or any part of the Property shall be condemned by governmental or other lawful authority, Purchaser shall have the option of (a) completing the purchase as set forth herein, and receiving a credit at Closing for the amount of any such condemnation award attributable to the Property, or (b) canceling this Agreement, in which event this Agreement shall be terminated and except for Purchaser's indemnification obligation under Section 9 above, neither party shall have any further rights against the other.

16. Assignment. Purchaser may not assign or otherwise transfer all or any of its interest under this Agreement without Seller's prior written consent, which consent may be withheld in Seller's sole discretion. Any unpermitted transfer hereunder (including a transfer of controlling interest in the Purchaser entity) shall be void and shall constitute a default by Purchaser under this Agreement. Subject to the foregoing, this Agreement shall inure to the benefit of and shall be binding upon Seller and Purchaser and their respective successors and assigns.





17. General Provisions.

17.1 Attorneys' Fees. In any litigation or other proceeding arising out of this Agreement, the substantially prevailing party shall be entitled to an award of its reasonable attorneys' fees and other costs incurred therein, in the preparation therefor, and on any appeal thereof.

17.2 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In any action arising under this Agreement, venue shall be in King County, Washington.

17.3 Time. Time is of the essence of this Agreement.

17.4 Commission. Each of Seller and Purchaser represents and warrants to the other that it has not agreed to, entered into, authorized or taken any other action to create an obligation to pay any other finder's fee, commission or other similar compensation in connection with this Agreement, and agrees to indemnify the other party and hold the other party harmless from and against any and all loss, cost, liability, damage or expense (including attorneys' fees) whatsoever that may arise from the untruth of such representation and warranty.

17.5 Counterpart Signatures. This Agreement may be signed in counterpart and by facsimile transmission of signature, each signed counterpart shall be deemed an original, and all counterparts together shall constitute one and the same agreement.

17.6 Date of Performance. If the date for any performance under this Agreement falls on a weekend or a holiday, the time for such performance shall extend to the next business day.

17.7 Entire Agreement. This Agreement is the entire agreement of the parties concerning the subject matter, and may not be modified except in a writing signed by both parties.

17.8 Further Acts. The parties shall execute such further documents and take such other further actions as may reasonably necessary to carry out the intent and provisions of this Agreement.

17.9 Hazardous Substances. During the Contingency Period, Purchaser shall perform, at its sole cost and expense, such environmental assessments, inspections and investigations as Purchaser reasonably deems necessary to satisfy itself as to the environmental condition of the Property. If, prior to the Closing Date, any hazardous substances in amounts or of kinds that pose a threat to human health or the environment or that could give rise to liability under environmental laws, are discovered by Purchaser on, in under or about the Property, Purchaser will notify Seller as to such discovery and will provide Seller a copy of any environmental reports concerning the Property received by Purchaser. In such event, either party may elect in its sole discretion to cancel and terminate this Agreement by written notice to the other, in which case neither party will



have any further obligation to the other hereunder, unless Purchaser within 10 days after receipt of such cancellation notice from Seller elects by written notice to Seller to waive its right of objection to the matter discovered. If Purchaser so waives its right of objection to the matter discovered, the Property will be conveyed to Purchaser AS IS, and Purchaser will have waived any right or remedy under any statute, regulation or ordinance or under any other theory of law or equity or under this Agreement and there will be no reduction, offset or deduction from the Purchase Price for the Property. This Section shall survive Closing. As used in this Agreement, "hazardous substances" means any substance, chemical, waste or other material which is listed, defined or otherwise identified as "hazardous" or "toxic" under any federal, state, local or administrative agency ordinance or law, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act, U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1571 et seq.; Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; Refuse Act, 33 U.S.C. §§ 407 et seq.; Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§ 11001 et seq.; Occupational Safety and Health Act, 29 U.S.C. §§ 65 et seq., to the extent it includes the emission of any hazardous substances and includes any hazardous substances for which hazard communication standards have been established; or any regulation, order, rule, or requirement adopted thereunder, as well as any formaldehyde, urea, polychlorinated biphenyls, petroleum, petroleum product or by-product, crude oil, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel or mixture thereof, radon, asbestos, and "source," "special nuclear" and "by-product" material as defined in the Atomic Energy Act of 1985, 42 U.S.C. §§ 3011 et seq.

17.10 Representations; Condition of Property. Purchaser acknowledges that prior to Closing, Purchaser shall have inspected the Property, and as of Closing, Purchaser will have satisfied itself in all respects therewith, including, but not limited to, all matters related to Hazardous Substances, and that Purchaser will be purchasing the Property on an AS IS, WHERE IS basis. Purchaser agrees that, other than the express warranties contained in Section 11 herein or in the statutory warranty deed, Seller has made no representations, warranties or agreements of any kind or nature regarding the Property, express or implied and Seller expressly disclaims any warranties or representations, whether express or implied, including any warranty of habitability, merchantability, or fitness for a particular purpose, including without limitation any of the following matters in any way related to or arising from: (1) the stability or suitability of the soil on the Property; (2) the presence or absence of any hazardous substances in, on, under or about the Property; and (3) building, zoning, sensitive area, concurrency and all similar State and local laws, or other law, rule, ordinance or regulation restricting the use, development, improvement, or occupancy of the Property for any purpose.

17.11 Confidentiality. Except as specifically provided herein, Purchaser and Seller shall not disclose any of the terms or provisions of this Agreement prior to the Close of Escrow to any person or entity not a party to this Agreement; provided that such disclosure shall be permitted to Purchaser's employees, consultants, architects, engineers, attorneys and lenders, or to any party to whom disclosure is



required by applicable law, regulation, court or administrative order.

EXECUTED as of the dates indicated below.

PURCHASER:

\_\_\_\_\_

\_\_\_\_\_ Date

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

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

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

SELLER:

\_\_\_\_\_

\_\_\_\_\_ Date

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

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

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



EXHIBIT A TO  
REAL ESTATE PURCHASE AND SALE AGREEMENT

LEGAL DESCRIPTION OF PROPERTY

A-1

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12/04/2009 09:32 AM Agreement  
Thurston County Washington  
CITY OF OLYMPIA , P W RECORDS (OLY1)

