

# **DEVELOPER EXTENSION AGREEMENT CONTRACT DOCUMENTS**

## **TANNER'S NEST SHORT PLAT Mike Day Homes, LLC Stormwater and Street**

**CITY OF NORTH BEND  
A MUNICIPAL CORPORATION OF  
THE STATE OF WASHINGTON**

**MAYOR:** Mary Miller

### **City Council**

Brenden Elwood  
Alan Gothelf  
Christina Rustik  
Mark Joselyn

Heather Koellen  
Suzan Torguson  
Errol Tremolada

**City of North Bend**  
920 SE Cedar Falls Way  
North Bend, WA 98045  
(425) 888-1211 FAX (425) 831-6200

### **City Staff**

**City Administrator:** David Miller, AICP  
**City Attorney:** Kendra Rosenberg  
**Public Works Director:** Mark Rigos, P.E.

**DEVELOPER EXTENSION AGREEMENT  
CONTRACT DOCUMENTS**

**Stormwater and Street**

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**CHECKLIST**  
**for Constructing Extensions**  
**to the Stormwater and Street**

**PROJECT TITLE:** Tanner's Nest Short Plat  
**DATE:** February 22, 2024  
**DEVELOPER NAME:** Mike Day Homes, LLC  
**MAILING ADDRESS:** PO Box 1100, North Bend WA 98045  
**PHONE:** 425-941-8019  
**CONTACT:** Mike Day

**Owner:**

Name: Mike Day Homes, LLC  
Address: PO Box 1100, North Bend WA 98045  
Phone: 425-941-8019

**Developer:**

Name: Mike Day Homes, LLC  
Address: PO Box 1100, North Bend WA 98045  
Phone: 425-941-8019

**Developer's Agent:**

Name: Core Design Inc.  
Address: 12100 NE 195<sup>th</sup> Street, Suite 300 Bothell, WA. 98011  
Phone: 425-885-7877  
Contact: Ken Shipley, PLS

**Dates Accomplished:**

Water: \_\_\_\_\_ N/A \_\_\_\_\_  
Sewer: \_\_\_\_\_ N/A \_\_\_\_\_  
Stormwater: \_\_\_\_\_  
Streets: \_\_\_\_\_

**A. Approval of Agreement**

1. Signed Agreement Submitted (Developer)
2. Administrative, Legal and Engineering Fee and Deposits Paid (Developer)
3. Evidence of Environmental Compliance (Developer)
4. Environmental Significance (City Engineer)

5. Extension Agreement Approved (City)
6. Resolution Accepting Agreement (City)

**B. Required Before Plans are Prepared or Approved**

1. Binding Site Plan Map or Site Plan (scale 1"=20') (Developer)
2. Complete set of civil engineer plans satisfying all NBMC and Public Works Standards and requirements.

**C. Required Before Construction by Developer**

1. Approval of Developer's prepared Plans and Specifications (City Engineer or designee)
2. Plans and Specifications approved by appropriate outside Agencies as applicable (Engineer)
3. Application for and Receipt of Necessary Permits (Developer)
4. Performance Bond (Developer)
5. Certificate of Insurance (Developer)
6. All Required Easements Obtained, if applicable (Developer)

**D. Required Before Construction Begins**

1. Submittal of Material and Equipment List (Contractor/Developer)
2. Pre-construction Conference
3. Approval of Material and Equipment List (City Engineer)
4. 48-hours Notice of Start of Construction to City (Contractor/Developer)

**E. Required Before any Service is Connected**

1. All Extension Fees and Charges Paid (Developer)
2. Other Charges established by City Ordinance Paid (Developer)
3. Approval of Completion of Construction (City Engineer)
4. Construction Cost Estimate and Bill of Sale forms (Engineer/City)
5. Executed Bill of Sale Delivered to City (Developer)
6. Resolution Accepting Facilities (City)
7. Substitution of Maintenance Bond for Performance Bond (Developer)

**F. To Be Done Prior to Warranty Expiration**

1. At 23 months after Acceptance, call for final Warranty inspection (Developer)
2. Re-inspect all facilities and notify Developer of Deficiencies, if any (City)
3. Follow-up to Correct Deficiencies, if any (City)
4. Expiration of two-year warranty

## AGREEMENT TO CONSTRUCT EXTENSION TO STORMWATER AND STREET SYSTEMS

Mike Day Homes, LLC a Limited Liability Company (the “Developer”), hereby enters into this Agreement to Construct Extension to Stormwater, and Street Systems (the “Agreement”) with the City of North Bend, a municipal corporation of the state of Washington (“City”), for permission to construct and install certain stormwater mains, and appurtenances or other stormwater system improvements, and/or street improvements or extensions in the public right-of-way and/or on private property in connection with the Tanner’s Nest Short Plat (the “Extensions”), and to connect the same to the City’s stormwater and street systems.

### 1. GENERAL

- A. Upon approval of the City Council and execution of this Agreement, Developer is hereby authorized to construct extensions to the City’s stormwater and/or street systems subject to this Agreement and including the following, each of which is incorporated herein by this reference and all of which are collectively referred to as the “Contract Documents” and included herewith:
  - 1. the terms and conditions of this Agreement, and all exhibits and addenda hereto;
  - 2. Performance Bond;
  - 3. Maintenance Bond;
  - 4. Utilities Easement(s), if any;
  - 5. Bill of Sale;
  - 6. Standards for Preparation of Extension Plans and Specifications; and
  - 7. the General Conditions for Developer Extensions;
- B. Developer shall pay all costs of designing, engineering and constructing the Extensions. All construction shall be done to City standards and according to plans approved by the City.
- C. Upon final acceptance by the City of the Extensions as set forth herein, the City will provide sewer service, and/or stormwater service through the Extensions to residential customers on Developer’s Property (defined below) in accordance with applicable laws, rules, regulations, and resolutions and policies of the City.
- D. The term of this Agreement shall commence on the date of the last signature hereto, and shall expire on the date of final acceptance of the Extensions by the City.

## 2. LOCATION OF EXTENSIONS

The Extensions will be installed to serve the property owned by Developer (“Developer’s Property”), which is legally described on the attached Exhibit A, which is incorporated herein by reference.

The Extensions will be installed on and in the existing public right of way, on and in the Developer’s Property, on and in property subject to easements benefitting Developer’s Property, and/or on and in the property of other persons contributing to the costs of the Extensions (said other persons hereby join in this Agreement and are referred to as “Additional Owners”) and in such other properties described in this Agreement. The property of Additional Owners is described as follows (“Additional Owners’ Property”): No additional owners.

## 3. DESCRIPTION OF EXTENSION

The preliminary plat or site plan is attached hereto as Exhibit B, which is incorporated herein by this reference. Exhibit B depicts the locations of the following proposed extensions:

- A. Stormwater Extension: Approximately 159±/- linear feet of 12-inch stormwater mains, and other applicable stormwater system facilities and appurtenances located within the Property and within the existing public right-of-way.
- B. Street Extension: Approximately 192±/- linear feet of public street improvements along Eagle’s Nest Place SE, installation of new sidewalks, curbs, gutters, asphalt and/or concrete surfacing, street trees, and pavement marking and striping within the existing public right-of-way.
- C. Modifications to Described Extensions: The City may require that the above-described stormwater and street extensions be modified (including changes in design and location) during the preparation of construction plans and specifications as deemed necessary by the City. The construction plans and specifications, when approved by the City, shall be deemed the documents describing the water, sewer, stormwater, and street extensions to be authorized for construction by Developer under this Agreement.

## 4. EXTENSION FEES, DEPOSITS, AND CHARGES

Extension fees, costs and charges shall be paid by Developer for the services and costs listed below:

- A. City Administrative Services

1. Review and revisions, if necessary, to the Agreement and preparation of resolutions accepting the Agreement and amending the City's Comprehensive Plan (if required).
2. General consultation with Developer regarding the requirements of the City, the procedures for Developer to make the Extensions, and the administration of the Agreement.
3. Preliminary review of the proposed development and preliminary determination of the stormwater, and street facilities required to extend services to Developer's Property.

**B. City Basic Engineering Review**

1. Review and approval of construction plans and specifications prepared by Developer's engineer.
2. Review of the construction cost estimate and bill of sale forms.
3. Review of this Agreement for purposes of state and county permits, where applicable.
4. Consultation with Developer during the period of the Agreement regarding design of the Extensions, the City's specifications, and other City requirements.
5. Review for environmental compliance.

**C. City Construction Engineering Services**

1. Schedule and conduct pre-construction conference.
2. Contractor responsible for scheduling inspections.
3. Review of construction stakes provided by Developer's engineer and surveyor.
4. Daily inspection of the construction in progress as required to ensure that the construction of the Extensions are in accordance with the approved construction plans and specifications.
5. Inspection of the tests required by the specifications and inspection of any re-testing which may be necessary.
6. Final inspection of the completed Extension and preparation of the inspection report setting forth any deficiencies that may exist.
7. Re-inspection of deficient work.
8. Final review of the completed Extensions and examination of the required documents to ensure that the City has legal title to the necessary easements and/or rights-of-way, review and approval of Developer's warranty and bill of sale, and preparation of a final recommendation of acceptance of the completed Extensions.
9. Revision of plans to conform to construction records.

**D. Reimbursement for City's Legal Services**

1. Review and revisions, if necessary, to the Agreement and preparation of resolutions accepting the Agreement and amending the City's Comprehensive Plan (if required).
2. Review of easements as required.
3. Review of Developer's Performance Bond, Insurance Certificate, and other performance guarantees and security.
4. Preparation of reimbursement agreement, if required.
5. Any other legal services required by the City in conjunction with this Agreement and administration of the Extensions.

E. Additional City Legal, Engineering, and Other Professional Services

1. Revision of the contract plans and specifications and work occasioned by the need, request, or act of Developer related thereto, or review and approval of revisions prepared by Developer's engineer.
2. Additional legal and/or engineering fees may be charged on a time-and-expense basis where a special contract is required and/or special problems arise with such third parties as King County, Boundary Review Board, State of Washington, or others, in order for the City to enter into this Agreement and/or comply with SEPA or NEPA which requires the representation of the City's legal counsel and/or Engineering Consultant.
3. Any other work reasonably required by the City in conjunction with this Agreement and/or administration of the Extensions.

F. Other Costs

1. All other fees and additional charges as required by governmental agencies.

G. Connection Charges and Reimbursement Amount

1. *Connection Charges*

The City has established charges for connection to the sewer and storm water systems. The amounts of the charges are established by ordinance and are subject to amendment based on adjustments in the cost of providing new facilities, the actual cost of facilities and improvements previously constructed, and changes in the City's Comprehensive Plan which may alter the nature, extent, and cost of these facilities.

2. *Reimbursement Amount*

Where Developer's Property is served in whole or in part by an existing extension constructed by others and transferred to the City, and a reimbursement agreement was in effect at the time Developer submitted its development



application, Developer shall pay a reimbursement to the City representing the fair and equitable share of the existing extension to which all or a portion of Developer's Property may be connected.

The reimbursement for existing facilities is established by the City Council based on the actual cost of construction of the facility and a proration of the cost of that facility so that the properties which are benefited may connect to the facility. The reimbursement will vary for each existing facility based on its cost and the benefitting property.

### *3. Service Charges*

Developer acknowledges and agrees that the City may impose service charges and other taxes and fees as allowed by law upon property owners/residents for water, sewer, stormwater, and street services. Nothing in this Agreement shall be construed to restrict or prohibit the City's imposition of such charges, fees, or taxes.

## **5. CALCULATION OF COSTS, FEES, AND CHARGES**

Fees and charges for all administrative and other services and reimbursements described in Sections 4(A) through 4(E) will be invoiced by the City on an actual time and expense basis. The term "time and expense basis" shall mean the City's actual cost for services rendered by the City staff or its contractors or consultants. Payment for the fees, charges, and costs described in Sections 4(F) and 4(G) shall be based on actual incurred costs or in such amount as is established by City ordinance for such fee, cost, or charge.

## **6. PAYMENT OF FEES AND CHARGES**

### **A. Developer Deposit**

The City will provide Developer with an itemized monthly invoice for Processing Costs, including staff time and invoices from contracted consultants, if any, commencing on the fifth day of the month following the first month during which the City incurs Processing Costs. Developer shall pay the City's invoice on or before the 20<sup>th</sup> day (or fifteen days after mailing of the invoice by the City, whichever is later), subject to the provisions of the Memorandum of Understanding paragraph 2.6, together with any additional amounts required to maintain the required credit balance as required by Memorandum of Understanding paragraph 2.3. If any sum required to be paid hereunder is not timely remitted, the City may suspend processing until payment is made, and/or may terminate the Memorandum of Understanding and require the deposit of the full estimated amount of Processing Costs.

### **B. Connection Charge and Reimbursement Estimate**

All connection charges and reimbursement amounts shall be paid by Developer to the City prior to the issuance of any building permit, in accordance with the current City of North Bend Taxes, Rates and Fees Schedule. Acceptance of the completed Extensions by the City and provision of services to Developer's Property shall be in accordance with this Agreement and applicable North Bend Municipal Code requirements.

**7. ENGINEERING PLAN APPROVAL**

Plans shall be prepared consistent with the requirements of the North Bend Municipal Code. Once plans have been reviewed and determined to meet code requirements, City shall inform the Developer as to the number of plan sets and additional submittal items required for engineering plan approval.

**8. INSURANCE AND INDEMNIFICATION**

**A. Indemnification**

The Developer shall defend, indemnify, and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including but not limited to: attorneys' fees and expert witness fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Developer and the City, its officers, officials, employees, and volunteers, the Developer's liability hereunder shall be only to the extent of the Developer's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Developer's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

**B. Insurance Requirements** Developer shall procure and maintain insurance covering commercial general liability and injury and property damage to the City and to third parties in connection with the performance of this Agreement hereunder by the Developer, its agents, representatives, employees, or subcontractors, in which the City and the City's Engineer shall be named additional insureds. Such insurance shall be maintained without interruption from commencement of construction of the Extensions through thirty (30) days after the completion of the Extensions. Developer's maintenance of insurance, its scope of coverage, and limits as required herein shall not be construed to limit Developer's liability to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity. Before beginning

construction of the Extensions, Developer shall furnish the City with original certificates of insurance and a copy of the amendatory endorsements, including but not limited to the additional insured endorsements, evidencing these insurance requirements have been satisfied. A copy of the certificates of insurance shall be included with the final Contract Documents. This insurance shall be deemed primary coverage as to the City, with any insurance carried by the City classified as additional coverage and shall not contribute with the Developer's insurance. The insurance policies shall contain a "cross liability" provision.

1. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII and shall be issued by an insurance company authorized to do business within the State of Washington. The City does not waive its right to subrogation against the Developer, and the policy shall be so endorsed. The Developer shall instruct the insurers to give the City 30-days advance notice of any insurance cancellation.
2. If any insurance policy is written on a "Claims Made" form, its retroactive date, and that of all subsequent renewals, shall be no later than the effective date of this Contract. The policy shall state that coverage is Claims Made, and state the retroactive date. Claims-made form coverage shall be maintained by the Contractor for a minimum of 36 months following the Final Completion or earlier termination of this contract, and the Contractor shall annually provide the Contracting Agency with proof of renewal. If renewal of the claims made form of coverage becomes unavailable, or economically prohibitive, the Contractor shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the Contracting Agency to assure financial responsibility for liability for services performed.
3. The Developer, its subcontractors, sub-subcontractors, agents, and employees, waive all rights of subrogation against the City, for damages caused by fire or other perils to the extend covered by the General Liability and Builders Risk insurance or other property insurance obtained pursuant to the Insurance Requirements Section of the Agreement or other property insurance applicable to the Work. The policies shall provide such waivers by endorsement.
4. Developer shall ensure that each subcontractor, sub-subcontractor, agents, and employees of every tier obtain at a minimum the same insurance coverage and limits as stated herein for the Developer. Upon request by the City, the Developer shall provide evidence of such insurance.
5. Developer shall obtain insurance of the types described below:
  - i. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy

shall be endorsed to provide contractual liability coverage. The Automobile Liability insurance shall have a minimum Combined Single Limit for bodily injury and property damage of at least \$1,000,000 per accident.

- ii. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Per Project Aggregate Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named by endorsement as an additional insured under the Developer's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage. The Developer may submit a copy of any blanket additional insured clause from its policies instead of a separate endorsement. A statement of additional insured status on an ACORD Certificate of Insurance shall not satisfy this requirement. The Developer's Commercial General Liability policy shall include Waiver of Transfer of Rights of Recovery Against Others to Us endorsement (CG 24 04 05 09) or equivalent coverage. Commercial General Liability insurance shall be written with limits no less than \$3,000,000 each occurrence, \$3,000,000 per project aggregate, and a \$3,000,000 products-completed operations aggregate limit.
- iii. Employers Liability coverage to include bodily injury, and bodily injury by disease. Employers Liability coverage may be included in the Contractor's General Liability Coverage or as a stand-alone policy. Workers Compensation and Employers' Liability coverage shall be in the amount of at least \$1,000,000 Employers' Liability each accident, \$1,000,000 Employers' Liability Disease-each employee, \$1,000,000 Employers' Liability Disease-policy limit.
- iv. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington. The City will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for this Contractor or any sub-Contractor or employee of the Contractor which might arise under the industrial insurance laws during the performance of duties and services under this contract. If the Department of Labor and Industries, upon audit, determines that industrial insurance payments are due and owing as a result of work performed under this contract, those payments shall be made by the Contractor; the Contractor shall indemnify the City and guarantee payment of such amounts.
- v. Builders Risk: The Developer shall provide insurance covering interests of the City, the Developer, and sub-contractor(s) in the work. Builders Risk insurance shall be

on a all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood and earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal. This Builders Risk insurance covering the work will have a deductible of at least \$5,000 for each occurrence, which will be the responsibility of the Developer. Higher deductibles for flood and earthquake perils may be accepted by the City upon written request by the Developer and written acceptance by the City. Any increased deductibles accepted by the City will remain the responsibility of the Developer. The Builders Risk insurance shall be maintained until final acceptance of the work by the City. All sub-contractors shall be covered under the general Developer's builder's risk policy or shall provide proof of their own Builders Risk Policy. Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions. All subcontractors shall be covered under the general Developer's Builder's Risk policy or shall provide proof of their own Builders Risk Policy.

6. The Developer shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Developer's employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Developer, or the Developer's agents, suppliers or Contractors as well as to any temporary structures, scaffolding and protective fences.

## **9. SURETY**

Prior to beginning construction of the Extensions, Developer shall furnish to the City a Performance Bond between Developer and the City, in the form approved by the City, in an amount equal to the estimated cost of the Extensions in existing public rights-of-way and any temporary erosion and sediment control.

The performance bond shall assure and guarantee compliance with this Agreement, the satisfactory completion of all Extensions, payment of all fees required herein, restoration of any impacted pre-existing City facilities in accordance with the terms of this Agreement, and shall hold the City harmless from any claims resulting therefrom.

Developer may provide the City with a cash deposit in lieu of the performance bond required herein. No construction shall be commenced until the cash deposit is accepted by the City. This cash deposit shall be conditioned and held subject to the same terms as the Performance Bond, and will be refunded to Developer upon satisfactory completion of the Extensions and connection of the Extensions to the existing system; provided, that in the event pre-existing City facilities have not been repaired or restored as required by this Agreement, the City may, in addition to any other rights it may have, retain the total amount of the cash deposit as liquidated damages or such portion of said deposit as may be necessary to defray such costs.

## **10. EASEMENTS**

Any necessary easements shall be obtained by Developer at its sole cost and expense in the form approved by the City Attorney. The easement(s) shall name the City as grantee, and a copy of each easement shall be delivered to the City before Developer begins construction on the Extensions. Prior to construction of the Extensions, a title insurance policy insuring the City's clear title to the easement(s), in a sum not less than \$5,000 per 500 feet of easement, shall be provided to the City by Developer.

**11. PERMITS**

All the necessary permits from any governmental agency shall be obtained by Developer directly and the City shall be provided with a copy of all permits obtained by Developer before construction commences. The City shall not be required to appeal the denial of any such permit, and the risk of obtaining and complying with all permits and approvals rests solely with Developer.

**12. CONNECTION TO THE CITY'S SYSTEM**

Not less than 48 hours prior to the time that connection to the City's system is desired, the contractor shall notify the City Engineer and/or City inspector. All connections to the existing system and all testing of the new line shall be at a time and in the manner specified by the City and shall be conducted in the presence of the City's authorized representative. Where connections to the City's water or sewer system would, in the opinion of the City, create unacceptable disruption to service, such connection shall be made by live tap.

**13. CONDITION PRECEDENT**

The City's obligation to allow connection of the Extensions to the City's system, or to provide water, sewer, stormwater service, or street extensions to Developer's Property, shall not arise until Developer has complied with all terms and conditions of this Agreement, and all applicable ordinances, resolutions and requirements of the City, including payment of all fees and charges.

The City shall not be obligated to provide water service, sewer service, stormwater service, or street extensions to Developer's Property real property unless or until the construction of the Extensions has been completed and title accepted by the City.

**14. FINAL ACCEPTANCE**

Following the City Engineer's final inspection and approval of the Extensions as having been completed in accordance with the plans and specifications of this Agreement, Developer shall convey ownership to all or such portions of the Extensions to the City as directed by the City.

Upon acceptance of ownership by the City, the Extensions shall be the property of the City and subject to the control, use, and operation of the City, and to all applicable regulations and charges as established by the City from time to time.

Prior to such acceptance, Developer shall execute and deliver to the City a bill of sale and a maintenance bond as follows:

A. The bill of sale for the Extensions (or portion thereof) shall be provided in the form approved by the City and containing the warranty set forth in Paragraph 23 of the General Conditions for Developer Extensions, entitled "Warranties of Developer." For plans prepared by Developer's engineer, Developer shall also provide the City with as-built record drawings on mylar and on computer disk in AutoCAD format, certified by a licensed professional land surveyor.

B. The maintenance bond shall be provided in the form approved by the City, and shall assure and guarantee Developer's obligations to correct defects in design, labor, and/or materials as provided in this Agreement, and to defend, indemnify and hold harmless the City as provided in this Agreement. The maintenance bond shall continue in force from the date of acceptance and transfer of ownership for a period of two (2) years. The maintenance bond shall be in an amount equal to ten percent (10%) of the cost of said Extensions, or Five Thousand And No/100 Dollars (\$5,000.00), whichever is greater.

## **15. LIMITATION ON ACCEPTANCE**

### **A. Completion**

The Extensions shall be complete and accepted within five (5) years of the date of execution of this Agreement by the City.

### **B. Failure to Commence Construction**

In the event Developer, after the receipt of approved construction plans from the City, has not commenced construction within five (5) years of executing this Agreement, and if the City determines, in its absolute discretion, that it is necessary that the Extensions be completed in order that the City can provide water, sewer, and/or stormwater service and/or street extensions to Developer's Property, then the City may give Developer notice (by certified mail to the addresses shown herein) that construction of the water, sewer, stormwater, and street improvements must be commenced within sixty (60) calendar days of mailing said notice. If construction is not commenced within the time specified in said notice, the City may terminate this Agreement by written notice to Developer. In such event, the City shall retain all payments and deposits made by Developer to the City and the City may, at its discretion, proceed with construction of the water, sewer, stormwater, and/or street improvements by utilizing the Performance Bond or Construction Cash Deposit.

If a delay in the City's preparation of the plans or the City's review of Developer's prepared plans is occasioned by failure of Developer to provide necessary data or information to the City's engineer for a period of sixty (60) days after notice of the need for such data or information, then the City may terminate this Agreement by written notice to the Developer.

C. Failure to Complete Construction

If the Extensions are not completed and accepted within five (5) years from the date this Agreement is executed by the City, Developer's rights under this Agreement shall cease unless the City consents to the renewal of the Agreement or the City and Developer enter a new agreement. In either event, Developer may be required to pay additional administrative fees and additional legal, engineering, and inspection costs as determined by the City.

In the event no new agreement or renewal of this Agreement is entered, the City, in its sole discretion, may proceed to require completion of construction under the provision of Developer's Performance Bond or Construction Cash Deposit for any Extensions on Developer's Property, existing rights-of-way and/or easements.

**16. WARRANTY OF AUTHORITY**

The undersigned Developer warrants that it constitutes the exclusive owner of all of Developer's Property, and agrees to provide, upon request of the City, title insurance at Developer's sole cost and expense, establishing to the satisfaction of the City that the parties executing this Agreement constitute the owners of all the real property described herein and have the authority to execute this Agreement with respect to said real property.

**17. ENFORCEMENT; ATTORNEYS' FEES**

The parties agree to resolve disputes under this Agreement by binding arbitration as provided in Section 28 of the General Conditions, and further acknowledge and agree that by submitting to the alternative dispute resolution process, they intend to surrender their right to have any dispute decided in a court of law by judge or jury. In the event that this Agreement is referred or placed into the hands of attorneys for enforcement of any portion, or if binding arbitration is instituted with respect to a dispute under this Agreement, then the prevailing party shall be paid its reasonable attorneys' fees and expert witness fees, costs, and all other reasonable expenses in connection therewith.

**18. SUCCESSORS AND ASSIGNS**

All of the provisions contained in this Agreement shall be binding upon the heirs, successors, executors, administrators, receivers, trustees, legal representatives,



transferees, and assigns of the Developer; and all privileges as well as any obligations and liabilities of the Developer shall inure to its heirs, successors, and assigns equally as if they were specifically mentioned wherever Developer is named herein.

**19. INDEPENDENT STATUS OF DEVELOPER:**

The parties to this Agreement, in the performance of it, will be acting in their individual capacities and not as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party shall not be considered or construed to be the employees or agents of the other party for any purpose whatsoever.

SIGNED this \_\_\_\_ day of \_\_\_\_\_, 2024.

Developer: \_\_\_\_\_

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

**CITY OF NORTH BEND**, King County, Washington

By: \_\_\_\_\_  
Mary Miller, Mayor

## **EXHIBIT A**

### **Legal Description**

***LEGAL DESCRIPTION***

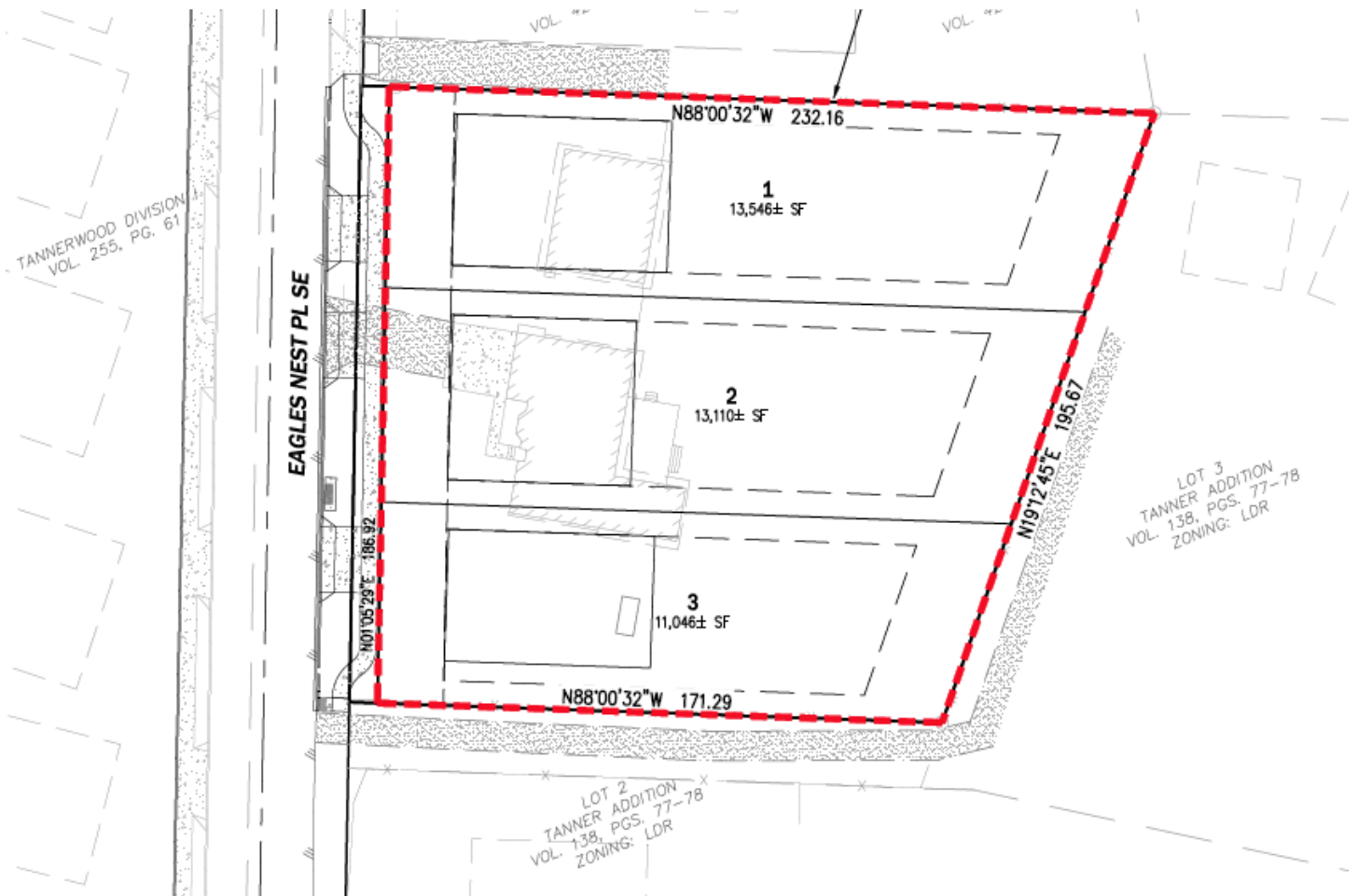
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*LOT 4, TANNER ADDITION, ACCORDING TO PLAT THEREOF RECORDED IN VOLUME 138 OF PLATS, PAGES 77 AND 78, RECORDS OF KING COUNTY, WASHINGTON.*

*SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON*

## **EXHIBIT B**

### **Preliminary Plat / Site Plan**





## City of North Bend Performance and Maintenance Bond Agreement

RE: North Bend Permit No.: \_\_\_\_\_  
Applicant: \_\_\_\_\_  
Project Address: \_\_\_\_\_  
Estimated Cost of Completed Project: \_\_\_\_\_

This Performance and Maintenance Security Agreement (the “Agreement”) is made and entered on the last date set forth below, between the City of North Bend (“City”) and the above named Applicant (“Developer”).

### RECITALS

A. Project. The undersigned Developer has applied to the City for a Performance and Maintenance Security Agreement for the project known as \_\_\_\_\_ (the “Project”), which is the subject of the permit identified above (the “Permit”) located at the address identified above and legally described in the attached **Exhibit A** (the “Property”).

B. Performance. Subject to the Permit approval granted by the City for the Project, the provisions of the North Bend Municipal Code (“NBMC”) and state law, the Developer will construct or install certain improvements and mitigation in connection with the Project, in accord with the improvements and mitigation identified on the Permit and as shown on the following approved plans: \_\_\_\_\_ approved on \_\_\_\_\_, 20\_\_ (the “Improvements”).

C. Maintenance. Subject to the approval granted by the City for the Project, the provisions of the NBMC and state law, the Developer will maintain the Improvements in accord with the obligation identified in the Permit and as shown on the following approved plans: \_\_\_\_\_ - \_\_\_\_\_ approved on \_\_\_\_\_, 20\_\_ (the “Maintenance”).

D. Code Provisions for Security. Performance and Maintenance of the Improvements are subject to the security requirements in the NBMC identified below:

Performance

- ☐ NBMC 12.24.15 Right of Way
- ☐ NBMC 14.05.045 Critical Areas
- ☐ NBMC 14.20.510 Shoreline Permit
- ☐ NBMC 17.08.130 Land Segregation
- ☐ NBMC 18.18.160 Landscaping
- ☐ NBMC 19.10.140 Drainage, Grading and Clearing

Maintenance

- ☐ NBMC 14.05.045 Critical Areas
- ☐ NBMC 18.18.150 Landscaping
- ☐ NBMC 19.10.110 Drainage, Grading and Clearing

E. Type of Security. Developer has elected, consistent with NBMC, to provide the City with the following type of security for this Agreement:

- ☐ Performance Bond
- ☐ Maintenance Bond

Developer hereby agrees and binds itself and its legal representatives, successors, and assigns as follows:

**TERMS OF AGREEMENT**

1. The Recitals set forth above are incorporated into the Agreement between the City, Developer and any third party who also signs this Agreement.

2. Developer and any third party shall signify their agreement to specific terms by signing under the terms section below that corresponds to the security chosen in recital E. above.

3. Terms - Performance Bond.

- a. Developer, as Principal, and \_\_\_\_\_ as Surety, hereinafter called Surety, are held and firmly bound unto the City, as Obligee, in the penal sum of XXXX (\$XX.XX) for payment where of Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally as described in 3. b. – f. below.
- b. In accord with Recital D. above, Developer is required to provide the City with performance security for the Improvements to assure that all work or action identified in Recital B. are satisfactorily completed.
- c. After written notice from the City that Developer has failed to (a) complete all work or action on the Improvements satisfactorily, (b) pay all sums owing to contractors, subcontractors, materialmen, suppliers or others as a result of such work for which a lien against any City property, or property where the improvements are located, has arisen or

may arise; or (c) obtain acceptance by the City for the Project; all on or before the time frame as set forth in the Permit, or any extension of time granted by the City in writing, Principal shall complete to the City's reasonable satisfaction (a) through (c) identified in the written notice by the deadline specified in the written notice, and repair any damage to other work resulting from the Principal's identified failure.

- d. If Principal does not complete the Improvements to the City's reasonable satisfaction as described in c. above, then within five (5) days after the City's written demand to Surety, Surety shall pay to the City all amounts necessary to complete the Improvements up to and including the full penal sum of this bond.
- e. This Agreement for bond shall remain in effect until the City determines in writing at in its sole discretion that the Improvements have been completed.
- f. The City, Developer and Surety also agree to be bound by the General Terms in section 5. below.

IN WITNESS THEREOF, the parties hereto have executed this Agreement.

|                  |               |
|------------------|---------------|
| Principal: _____ | Surety: _____ |
| By: _____        | By: _____     |
| Title: _____     | Title: _____  |
| Date: _____      | Date: _____   |

**4. Terms - Maintenance Bond.**

- a. Developer, as Principal, and \_\_\_\_\_ as Surety, hereinafter called Surety, are held and firmly bound unto the City, as Obligee, in the penal sum of XXXX (\$XX.XX) for payment where of Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally as described in 4. b. – 4.f. below.
- b. Principal has constructed the Improvements for the Project under the Permit in accord with the requirements in Recital B.
- c. After written notice from the City of defects due to faulty materials or workmanship related to the constructed Improvements, Principal shall remedy such defects by the deadline specified in the City's written notice and to the City's reasonable satisfaction, and pay for any damage to other work resulting therefrom.
- d. If Principal does not so remedy such defects to the City's reasonable satisfaction, then within five (5) business days after the City's written demand to Surety, Surety shall pay to the City all amounts necessary to remedy such defects up to and including the full penal sum of this bond.
- e. This Agreement for bond shall remain in effect for \_\_\_\_\_ years from acceptance of the Improvements by the City.



- f. The City, Developer and Surety also agree to be bound by the General Terms in section 5. below.

IN WITNESS THEREOF, the parties hereto have executed this Agreement.

|                  |               |
|------------------|---------------|
| Principal: _____ | Surety: _____ |
| By: _____        | By: _____     |
| Title: _____     | Title: _____  |
| Date: _____      | Date: _____   |

5. General Terms.

a. The Developer shall indemnify and hold the City and its agents, employees, and/or officers harmless from, or shall process and defend at its own expense, all claims, damages, suits at law or equity, actions, penalties, losses, or costs of whatsoever kind or nature, brought against the City arising out of, in connection with, or incident to the execution of this Agreement and/or the Developer's performance or failure to perform any aspect of the Agreement. With respect to any such claim or suit brought against the City, Developer also waives its immunity under Title 51 RCW, the Industrial Insurance Act. This waiver is specifically negotiated between the parties.

b. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be exclusively in King County, Washington. The prevailing party in any such action shall be entitled to its attorneys' fees, expert witness fees, and costs of suit. This Agreement contains the entire agreement between the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind any of the parties hereto. The provisions of this Agreement shall not be construed against either party. If any of the provisions of this Agreement are held to be invalid or unenforceable, the remaining provisions will nevertheless continue to be valid and enforceable.

c. Any failure by the Developer to comply with the terms of this Agreement in a timely manner shall constitute default. Any action or inaction by the City following any default in any term or condition of this Agreement shall not be deemed to waive any rights of the City pursuant to this Agreement.

d. The Developer shall pay all additional costs of the City incurred in the administration of the Agreement, including monitoring by the City as required. Said costs will be paid from the Project permitting deposit. Should there not be sufficient funds in the Project permitting deposit to cover such additional costs, then said costs shall be paid by Developer after receipt of invoice from the City. The Director of Planning and/or the Director of Public Works and/or their designees shall periodically inspect the work required hereunder and inspect completed improvements. Notwithstanding the foregoing, if Developer fails to pay for said inspections, the City may use funds from section 3.d. or 4.d. as applicable to cover said costs. This provision shall not be construed as creating any obligation on the City, its employees, agents and representatives to perform such work.

e. In the event the Developer fails to satisfactorily complete the obligations as described in the City's written notice, the City's employees and agents are hereby authorized to enter onto the Property and perform such work. This provision shall not be construed as creating any obligation on the City, its employees, agents and representatives to perform such work.

f. Funds obtained by the City pursuant to 3.d. and 4.d. above may be used by the City to remedy said defects and pay any and all sums owing to contractors, suppliers, laborers, materialmen, subcontractors or others as a result of such work for which a lien against any City property or property where the Improvements are located, has arisen or may arise. Further, said funds may be used to cover the cost of correcting any damage which may occur off-site due to defects, including damage, if any, to public property. This provision shall not be construed as creating any obligation on the City, its employees, agents and representatives to perform such work.

g. Written notice to all parties shall be by prepaid first class mail to the address specified below or as subsequently amended in writing. Notice shall be considered delivered three (3) days after having been deposited in the mail:

City

Developer

Surety

IN WITNESS THEREOF, the parties hereto have executed this Agreement.

**CITY OF NORTH BEND**

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

**Institution Notary**

STATE OF WASHINGTON  
County of \_\_\_\_\_

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that (he/she) is authorized to act on behalf of \_\_\_\_\_, the Financial Institution which signed this instrument and acknowledged it to be the Institution's free and voluntary act for uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_, 20\_\_\_\_

Signature: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

**Developer Notary**

STATE OF WASHINGTON )  
                                  ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument on behalf of \_\_\_\_\_ for the uses and purposes mentioned in this instrument.

DATED: \_\_\_\_\_.

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Printed Name of Notary Public)

Commission Expires: \_\_\_\_\_

**City Notary**

STATE OF WASHINGTON )  
                                  ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument on behalf of \_\_\_\_\_ for the uses and purposes mentioned in this instrument.

DATED: \_\_\_\_\_.

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Printed Name of Notary Public)

Commission Expires: \_\_\_\_\_

**WHEN RECORDED RETURN TO:**

CITY CLERK  
CITY OF NORTH BEND  
920 SE CEDAR FALLS WAY  
NORTH BEND, WA 98045

REFERENCE NUMBER OF RELATED DOCUMENTS:

GRANTOR:

GRANTEE: The City of North Bend, Washington

ASSESSOR'S TAX PARCEL/ACCOUNT NUMBER:

ABBREVIATED LEGAL DESCRIPTION:

**EASEMENT AGREEMENT**

This Easement Agreement is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_,  
by and between \_\_\_\_\_ ("Grantor") and the City of North Bend ("Grantee").

1. Recitals.

a. The Grantor is the owner of that certain real property legally described on the attached **Exhibit A**, which is incorporated herein by this reference ("Parcel A").

b. The Grantee is a municipal corporation of the state of Washington, and this Easement Agreement is for the benefit of Grantee.

c. This Easement Agreement sets forth the terms and conditions under which the Grantor will grant the Grantee an easement in the portion of Parcel A described below.

2. Grant of Easement. For valuable consideration, receipt and sufficiency of which is acknowledged, the Grantor warrants, grants, and conveys to the Grantee, a perpetual and exclusive easement over, across, and under that portion of Parcel A which is legally described on the attached **Exhibit B**, and depicted on **Exhibit C**, which are incorporated herein by this reference ("Easement Area").

3. Purpose of Easement. The Easement is granted for the purpose of the installation, operation, and maintenance of \_\_\_\_\_ (the "Improvements"). Grantee and its agents, designees, and/or assigns shall have the right at such times as deemed reasonably necessary by Grantee, to enter upon Parcel A to inspect, construct, reconstruct, operate, maintain, repair, and replace the Improvements.

4. General Provisions.

a. Binding Effect. This Easement Agreement shall be binding upon and inure to the benefit of the parties and their successors, heirs, assigns, and personal representatives and all persons claiming by, through or under the parties hereto. The Easement created shall run with the land.

b. Applicable Law. This Easement Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Jurisdiction over and venue of any suit arising out of or related to this Agreement shall be exclusively in King County, Washington.

c. Attorneys' Fees. In the event that any suit or other proceeding is instituted by either party to this Easement Agreement arising out of or pertaining to this Easement Agreement, including but not limited to filing suit or requesting an arbitration, mediation, or other alternative dispute resolution process, and appeals and collateral actions relative thereto, (collectively, "Proceedings"), the substantially prevailing party as determined by the court or in the Proceedings shall be entitled to recover its reasonable attorneys' fees, expert witness fees, and all costs and expenses incurred relative to such suit or Proceedings from the substantially non-prevailing party, in addition to such other relief as may be awarded.

d. Entire Agreement. This Easement Agreement contains the entire agreement between the parties with respect to this matter. It may not be modified except in writing signed by the party against whom enforcement of the modification is sought.

e. Waiver. The waiver by a party of a breach of any provision of this Easement Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach by that party. No waiver shall be valid unless in writing and signed by the party against whom enforcement of the waiver is sought.

f. Severability. If for any reason any portion of this Easement Agreement shall be held to be invalid or unenforceable, the holding of invalidity or enforceability of that portion shall not affect any other portion of this Easement Agreement and the remaining portions shall remain in full force and effect.

g. Notices. Any notice required or desired to be given under this Agreement shall be deemed given if in writing delivered to the party, or sent by certified mail to the address listed below for that party:

GRANTOR:

GRANTEE:

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

GRANTOR: \_\_\_\_\_

GRANTEE: \_\_\_\_\_

STATE OF WASHINGTON     )  
                                          ) ss.  
COUNTY OF KING         )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument on oath stated that (he/she) was authorized to execute the instrument and acknowledge it as the \_\_\_\_\_ of \_\_\_\_\_ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Print: \_\_\_\_\_)  
NOTARY PUBLIC in and for the State of Washington  
My appointment expires \_\_\_\_\_

STATE OF WASHINGTON     )  
                                          ) ss.  
COUNTY OF KING         )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument on oath stated that (he/she) was authorized to execute the instrument and acknowledge it as the \_\_\_\_\_ of \_\_\_\_\_

to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Print: \_\_\_\_\_)  
NOTARY PUBLIC in and for the State of Washington  
My appointment expires \_\_\_\_\_

**FILED FOR RECORD AT REQUEST OF:**

CITY CLERK  
CITY OF NORTH BEND  
920 SE CEDAR FALLS WAY  
NORTH BEND, WA 98045

## BILL OF SALE

**KNOW ALL MEN BY THESE PRESENTS** that for and in consideration of the sum of One and No/100 Dollars (\$1.00) and other good and sufficient consideration, receipt whereof is hereby acknowledged, the undersigned Seller(s) \_\_\_\_\_, do(es) by these presents hereby convey, set over, assign, transfer and sell to the **City of North Bend** (the "City"), a municipal corporation of the state of Washington, the following described water system, wastewater collection system, storm drainage system, curbs, and/or street paving, and warrants against defects in labor or materials appearing within two (2) years from the date hereof:

[INSERT INVENTORY OF IMPROVEMENTS OR ATTACH ONE]

[INSERT MAP SHOWING EXACT LOCATIONS OF IMPROVEMENTS OR ATTACH ONE]

Commonly known as:

Seller warrants that he/she/they/it is/are the sole owner(s) of all the property described above and has/have full power to convey all rights herein conveyed and agree to hold the City of North Bend harmless from any and all claims which might result from execution of this document.

Seller warrants that the property above described is free from all liens and encumbrances and Seller warrants and will defend the property hereby sold to City and its successors and assigns against the lawful claims and demands of all persons.



Seller warrants that the Extensions are in proper working condition, order, and repair as designed and that they are adequate and fit for the intended purpose of use as water, sewer, stormwater, and/or street systems, and as integral parts of the water, sewer, stormwater, and/or street systems of the City.

Seller warrants that all parts of the Extensions shall remain in proper working condition, order and repair as designed except where abused or neglected by the City; and that Developer shall repair or replace, at its own expense, any work or material which may prove to be defective during the period of this warranty, which shall be in effect for two (2) years after the execution of this Bill of Sale. When corrections of defects occurring within the warranty period are made, Developer further warrants such corrected work for two (2) years after acceptance by the City.

By accepting and recording this instrument, the City accepts and agrees to maintain the water system, wastewater collection system, storm drainage system, curbs, and street paving as part of the City's water system, wastewater collection system, stormwater system, and street system in the same manner as though it had been constructed by the City.

IN WITNESS WHEREOF the Seller(s) has/have executed these presents this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

|               |                  |
|---------------|------------------|
| Seller: _____ | Purchaser: _____ |
| _____         | _____            |
| _____         | _____            |

APPROVED AS TO FORM:

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

STATE OF WASHINGTON     )  
                                          ) ss.  
COUNTY OF KING         )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument on oath stated that (he/she) was authorized to execute the instrument and acknowledge it as the \_\_\_\_\_ of \_\_\_\_\_ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Print: \_\_\_\_\_)  
NOTARY PUBLIC in and for the State of Washington  
My appointment expires \_\_\_\_\_

STATE OF WASHINGTON     )  
                                          ) ss.  
COUNTY OF KING         )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument on oath stated that (he/she) was authorized to execute the instrument and acknowledge it as the \_\_\_\_\_ of \_\_\_\_\_ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Print: \_\_\_\_\_)  
NOTARY PUBLIC in and for the State of Washington  
My appointment expires \_\_\_\_\_

**GENERAL CONDITIONS  
FOR EXTENSIONS CONSTRUCTED BY DEVELOPERS**

**1. SCOPE**

Set forth below are general conditions for extension of the City's water, sewer, stormwater systems, and streets by developers. Reference to or requirements for non-applicable conditions for any particular application will be construed to have no meaning relative to the performance of such work. All other conditions shall be strictly followed.

**2. DEFINITIONS**

The following terms, as used in developer extension agreement contract documents, shall be defined and interpreted as follows:

- A. "Agreement" shall mean the Agreement to Construct Extension to Sewer, stormwater, water, and street systems entered into by the Developer and the City.
- B. "City" shall mean the City of North Bend, King County, Washington.
- C. "City Engineer or Public Works Director" shall mean the consulting engineer employed by the City or contracted by the City for the administration of this Agreement.
- D. "Contract Documents" shall have the meaning ascribed in the Agreement.
- E. "Developer" shall mean the person, partnership, firm, or corporation identified in the Checklist, and shall include Developer's agents, employees, and subcontractors.
- F. "Developer's Engineer" shall mean the engineering firm, and that firm's representatives, which may be approved by the City to act as the engineer for the Extensions to be performed under this Agreement.
- G. "Extensions" shall have the meaning ascribed in the Agreement .
- H. "Or Equal" shall mean any manufactured article, material, method, or work which, in the opinion of the City Engineer, is equally desirable or suitable for the purposes intended in the Specifications and the Contract Documents as compared with similar articles specifically mentioned therein.
- I. "Plans" shall mean all instructions, shop drawings, and other official drawings (and reproductions of the same) made or to be made pertaining to the Extensions or to any structure connected therewith, including supplemental instructions, drawings or

documents furnished by the City Engineer at Developer's request, which, in the City Engineer's sole discretion, are necessary for the proper construction of the Extensions, provided that all such supplemental drawings and instructions must be consistent with the Contract Documents.

- J. "Specifications" shall mean the design specifications and criteria identified in the Standards for Preparation of Extension Plans and Specifications.

**3. PLANS AND SPECIFICATIONS; OMISSIONS AND DISCREPANCIES**

Developer shall carefully study and compare all Plans and Specifications and other instructions and shall, prior to ordering material or performing work, report in writing to the City Engineer any error, inconsistency, or omission in respect to design, construction or cost which Developer may discover. If Developer, in the course of this study or in the construction of the Extensions, finds any discrepancy between the Plans, or any such errors or omissions in respect to design, construction, or cost in drawings or in the layout as given by points and instructions, it shall be Developer's duty to inform the City Engineer immediately in writing, and the City Engineer shall promptly check the same. Any work done after such discovery will be done at Developer's sole risk.

**4. STATUS OF CITY ENGINEER**

- A. Except for the method or manner of performing the work, the Extensions are to be constructed under the general supervision and to the complete satisfaction of the City Engineer, or his/her duly authorized representative, who shall use his/her reasonable discretion and professional experience as to the true interpretation and meaning of the project application, Plans, Specifications, and Estimates and as to all questions arising as to proper performance of the work. The City Engineer has the authority to stop work whenever, in his/her opinion, such stoppage may be necessary to ensure proper execution of the contract. The City Engineer may also reject all work and materials which in his/her opinion, do not conform to the contract.
- B. The City Engineer shall use his/her reasonable discretion and professional experience to decide any and all questions which may arise as to the quality or acceptability of materials furnished and work performed and all questions as to the acceptable fulfillment and performance of the Agreement on the part of Developer. The decision of the City Engineer in such matters shall be final.
- C. The City Engineer may direct the sequence of conducting work when it is in locations where the City is doing work either by contract or by its own forces or where such other work may be affected by the Extensions, in order that conflict may be avoided and the Extensions be harmonized with work under other contracts, or with other work being done in connection with, or growing out of, operations of the City. Nothing

in this Section 4(C) shall be interpreted to relieve Developer of its obligations or liabilities under the Contract Documents.

- D. Neither the City Engineer nor his/her representatives have the authority to waive the Developer's obligation to perform work in accordance with the Contract Documents. However, the City Engineer shall have the authority to authorize minor field changes. Failure or omission on the part of the City Engineer or his/her representatives to condemn unsuitable, inferior, or defective work and/or labor or material or equipment furnished under the application shall not release Developer or his/her bond from performing the work in accordance with the Contract Documents.

**5. INSPECTION AND TESTS**

- A. Inspection of the work by the City and its authorized agents shall be strictly for the benefit of the City, and nothing contained herein shall be construed to relieve Developer of its obligations under this Agreement.
- B. The City Engineer and his/her representatives shall, at all times, have access to the Extensions for the purpose of inspecting and testing, wherever it is in preparation or progress, and Developer shall provide proper facilities for such access and for such inspection and testing.
- C. If any work should be covered up without approval or consent of the City Engineer, it must, if required by the City Engineer, be uncovered for inspection at Developer's expense.
- D. Re-examination of questioned work may be ordered by the City Engineer; and, if so ordered, the work shall be uncovered by Developer. If such work is found by the City Engineer to be in accordance with the Contract Documents, the City shall pay the cost of re-examination and replacement. If such work is found not in accordance with the Contract Documents, Developer shall pay such costs.
- E. Developer shall make tests of the work as required by the City Engineer at Developer's expense and shall maintain a record of such test.
- F. For a performance test to be observed by the City Engineer, Developer shall make whatever preliminary tests are necessary to assure that the materials and/or equipment are in accordance with the Specifications. If, for any reason, the test observed by the City Engineer is unsatisfactory, Developer shall pay all costs incurred by the City Engineer for the inspection and supervision of all further testing.
- G. Where work is performed outside of the normal 40-hour work week, Developer shall pay City's additional costs for inspection and supervision, if applicable.

- H. Where the Plans, Specifications, City Engineer's instructions, laws, ordinances, or any government authority require any work to be specifically tested or inspected, Developer shall give the City Engineer timely notice of the date fixed for such inspection. Required certificates of inspection by authorities other than the City Engineer shall be secured by Developer and copies provided to the City Engineer.
- I. Inspection during construction will be provided as deemed necessary by the City Engineer.
- J. Written notice of deficiencies, adequately describing the same, shall be given to Developer upon completion of each inspection, and Developer shall correct these deficiencies within seven (7) days of notice thereof, or as agreed upon in writing by both parties, and before final inspection will be made by the City Engineer.
- K. A representative of Developer or Developer's contractor shall arrange a time with and accompany the City Engineer on the final inspection and subsequent inspections, if required, thereafter.
- L. Deficiencies discovered at the final inspection shall be corrected within seven (7) days' notice thereof or as agreed upon by both parties, and in no instance shall service be provided until said deficiencies are corrected and the extension passes re-inspection.
- M. All costs incurred by the City for inspection, including the fees and charges of its City Engineer, except as specifically provided for in this section, shall be paid by Developer, and a deposit for this may be required in advance by the City.
- N. Neither inspection nor acceptance by the City shall relieve Developer of any responsibility or liability, whether to the City or others, provided in the Contract Documents.

**6. PLANS AND SPECIFICATIONS ACCESSIBLE**

- A. The City shall furnish one (1) copy of Plans and Specifications to Developer, who shall keep at least one (1) copy of the same constantly accessible at the construction site.
- B. Where shop drawings are required to be submitted for acceptance, one (1) copy of the approved shop drawings shall be kept constantly accessible at the construction site.

**7. OWNERSHIP OF DRAWINGS**

All Plans, Specifications and copies thereof prepared or furnished to the City Engineer are his/her property. They are not to be used on other work and, with the exception of the signed Agreement, and are to be returned to him/her upon completion of the work.

**8. MATERIALS AND EQUIPMENT; MATERIALS AND EQUIPMENT LIST**

- A. Materials and equipment shall be new and as specified in the Contract Documents, or if not specified, shall be of a quality approved by the City Engineer. All materials and equipment furnished are warranted by Developer as new and as in compliance with the Plans and Specifications, if specified therein, and as suitable for the intended purpose. In addition thereto, the Developer shall furnish the City with copies of the supplier's warranty. Except in the event of fraud or bad faith by Developer, the warranty described in this Section 11(A) shall be limited to two (2) years.
- B. Developer shall file three (3) copies of its materials and equipment list with the City Engineer prior to commencing construction of the Extensions. This list shall include the quantity, manufacturer and model number, if applicable, of materials and equipment to be installed under the Contract Documents. This list will be checked by the City Engineer as to conforming with the Plans and Specifications. The City Engineer will pass upon the list with reasonable promptness, making note of required corrections.

Developer shall make any required corrections and file three (3) corrected copies with the City Engineer within one week after receipt of notice of required corrections. The City Engineer's review and acceptance of the lists shall not relieve Developer from responsibility for deviations from the Plans and Specifications or warranty for suitability for the intended purpose unless Developer has, in writing, called the City Engineer's attention to such deviations at the time of submittal and secured the City Engineer's written approval for such deviation.

**9. SHOP DRAWINGS**

All shop details, structural steel, pipe, machinery, equipment, schedules, bending diagrams, reinforcing steel, and other detail drawings furnished by the Developer, as required and provided for in the specifications. Developer shall check and verify all field measures. Developer shall submit with such promptness as to cause no delay in its own work or in that of any other contractor, three (3) copies, checked and approved by Developer, of all shop or setting drawings and schedules (all collectively herein referred to as "shop drawings") required for the work of the various trades in the construction of the Extensions or where requested by the City Engineer, and shall verify all field various trades in the performance of the work or where requested by the City Engineer and shall verify all field measurements or conditions to which the shop drawings are applicable. The City Engineer shall pass upon them with reasonable promptness making note of required corrections, including those related to design and artistic effect. Developer shall make any corrections required by the City Engineer and, within one (1) week after receipt of the notice of required corrections, shall file with the City Engineer three (3) corrected copies and furnish such other copies as may be needed by the City Engineer. The City

Engineer's acceptance of such drawings or schedules shall not relieve Developer from responsibility for deviation from drawings, Plans, or Specifications, unless Developer has, in writing, called the City Engineer's attention to such deviation at the time of submission and secured the City Engineer's written approval, nor shall it relieve Developer from responsibility for errors in shop drawings or schedules.

**10. CUTTING AND FITTING**

Developer shall do all cutting and fitting of its work that may be required to make any of the Extensions' several parts come together properly, and fit it to receive or be received by work of other developers or contractors shown or reasonably implied by the Plans and Specifications for the completed structure, and Developer shall restore all surfaces damaged by cutting and fitting as the City Engineer may direct.

**11. LABOR, MATERIALS, EQUIPMENT, FACILITIES, AND WORKMEN**

- A. Developer shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities necessary for the execution and completion of the work, except as otherwise stipulated in the Contract Documents.
- B. The Developer shall at all times enforce strict discipline and good order among its employees and shall not employ on the work any person unfit or not skilled in the work assigned to him/her. Employees or agents of Developer, who, in the opinion of the City Engineer, may impair the quality of the Extensions shall forthwith be discharged by Developer upon the written request of the City Engineer.
- C. During the term of the Agreement, neither party shall employ nor hire any employee of the other party, nor of the City Engineer, without the written consent of the other party. Neither party shall use any work performed or any information obtained from any employee hired in violation of this provision in making a claim against the other party.
- D. Necessary sanitation conveniences for the use of workmen on the job, properly secluded from public observation, shall be provided and maintained by Developer.

**13. SAMPLES**

The Developer shall furnish for approval all samples as directed by the City Engineer. The finished work shall be in accordance with approved samples. Approval of samples by the City Engineer does not relieve the Developer of performance of the work in accordance with the Contract Documents.

**14. DETERMINATION OF "OR EQUAL"**



The City Engineer shall make the determination regarding questions of “or equal” for any supplies or materials proposed by Developer. Developer shall pay to the City the cost of tests and evaluation by the City Engineer to determine acceptability of alternatives proposed by Developer, in accordance with Section 4 of the Agreement.

**15. ROYALTIES AND PATENTS**

Developer shall defend, indemnify, and hold the City harmless for all claims and/or suits brought against the City by reason of infringement of patent rights or licenses on any material, machine, appliance, or process that Developer may use on the work or incorporate into the finished job. Such indemnity shall include the costs of defense by an attorney selected by Developer and approved by the City.

**16. PAYMENT OF PREVAILING WAGES**

Developer does not have to pay prevailing wages on projects without City funding.

**17. PROTECTION OF WORK AND PROPERTY AND SAFETY**

- A. Developer shall continuously maintain adequate protection of the work from damage and shall protect City’s property from injury or loss arising in connection with and during the term of the Agreement. Developer shall make good any such damage, injury, or loss, except as may be directly due to the negligence of agents or employees of the City. Developer shall provide and maintain all passageways, guard fences, lights, and other facilities for protection required by public authority or local conditions.
- B. Developer shall bear the risk of loss or damage for all finished or partially finished work until accepted by the City.
- C. Developer shall take all necessary precautions for the safety of employees on the work site and shall comply with all applicable provisions of federal, state, and local safety laws and building codes. Developer shall erect and properly maintain at all times, as required by the conditions and progress of the Extensions, all necessary safeguards for protection of workmen and the public, shall post danger signs warning against known or unusual hazards; and shall designate a responsible member of its organization on the construction site whose duty shall be the prevention of accidents. The name and position of such person so designated shall be reported in writing to the City Engineer by Developer.

**18. EXISTING UTILITIES OR OBSTRUCTIONS**

- A. Developer shall not enter upon or place materials on other private premises except by written consent of the individual owners, and Developer shall save the City harmless from all suits and actions of every kind and description that may result from its use of private property.
- B. Underground utilities of record shall be shown on the Plans insofar as it is possible to do so. These, however, are shown for convenience only, and the City assumes no responsibility for improper locations or failure to show utility locations on the construction plans. Any underground utilities found during the course of construction not properly shown on the Plans shall be recorded as to the nature, size, depth and orientation on the as-built drawings.
- C. Developer shall take adequate precautions to protect existing lawns, trees, shrubs, outside rights-of-way, sidewalks, curbs, pavements, utilities, adjoining property, and structures, and to avoid damage thereto caused by its operations to the satisfaction of the City Engineer, except as otherwise provided in the Contract Documents.

**19. REPLACING IMPROVEMENTS**

Whenever it is necessary in the course of construction to remove or disturb culverts, driveways, roadways, pipelines, monuments, property stakes, or other existing improvements, whether on private or public property, they shall be replaced to a condition equal to or better than that existing before they were so removed and disturbed.

**20. SUPERINTENDENCE AND SUPERVISION**

Developer shall keep on the construction site during the construction of the Extensions a competent superintendent and any necessary assistants, all satisfactory to the City Engineer. The superintendent shall not be changed except with the consent of the City Engineer unless the superintendent ceases to be in Developer's employ. The superintendent shall represent Developer, and all directions given to the superintendent shall be as binding as though given to Developer. Instructions to Developer shall be confirmed in writing upon its request in each case. Developer shall give efficient supervision to the work, using its best skill and attention.

**21. WARRANTIES OF DEVELOPER**

Upon completion of the Extensions and approval and acceptance thereof by the City, Developer warrants to the City as follows:

- A. That Developer is the owner of the property and the same is free and clear of all encumbrances and that Developer has good right and authority to transfer title

thereto to the City and will defend the title of the City against the claims of all third parties claiming to own the same or claiming an encumbrance against the same; and

- B. That the Extensions are in proper working condition, order, and repair as designed and that they are adequate and fit for the intended purpose of use as water, sewer, stormwater, and/or street systems, and as integral parts of the water, sewer, stormwater, and/or street systems of the City; and
- C. That all parts of the Extensions shall remain in proper working condition, order and repair as designed except where abused or neglected by the City; and that Developer shall repair or replace, at its own expense, any work or material which may prove to be defective during the period of this warranty. Developer shall obtain warranties and guaranties from its subcontractors and/or suppliers where such warranties or guaranties are specifically required herein and shall deliver copies of such to the City upon completion of the Extensions. When corrections of defects occurring within the warranty period are made, Developer shall further warrant corrected work for two (2) years after acceptance by the City.

Except in the event of fraud or bad faith by Developer, the warranty described in this Section 23 shall be limited to two (2) years.

**22. CORRECTION OF DEFECTS OCCURRING WITHIN WARRANTY PERIOD**

When defects occurring within the warranty period are discovered, Developer shall work to remedy any such defects within seven (7) days of notice of discovery thereof by the City, or as agreed upon in writing, and shall complete such work within a reasonable time as determined by the City. In emergencies, where damage or loss of service may result from delay, corrections may be made by the City immediately upon discovery; in which case the cost thereof shall be borne by Developer. In the event Developer does not commence and/or accomplish corrections within the time specified, the work shall be otherwise accomplished and the cost of same shall be paid by Developer.

Developer shall be responsible for any expenses incurred by the City resulting from defects in the Developer's work including actual damages, cost of materials, and labor expended by the City in making emergency repairs, and cost of engineering, inspection, and supervision by the City or City Engineer, as well as reasonable attorneys' fees and expert witness fees to be fixed by the court in any action which the City may commence against the Developer to enforce the provisions hereof.

**23. SUBLETTING AND SUBCONTRACTING**

Developer is fully responsible and liable to the City for the acts and omissions of its employees, subcontractors, and all other persons either directly or indirectly employed or contracted with by subcontractors. The City's consent to subcontracting part of the

work shall in no way release Developer from responsibility under the Agreement, and Developer will be held in all respects accountable for the same as if no consent had been given. Nothing contained in the Contract Documents shall create any contractual relation between any subcontractor and the City.

**24. SEPARATE CONTRACT; INTERFERENCE WITH OTHER DEVELOPERS**

The City reserves the right to perform work with its own forces or to let contracts for work under similar general conditions in connection with this project or other projects. Developer shall afford the City and other contractors reasonable opportunity for the execution of their respective work.

**25. LOSS OF MARKERS**

The City shall not be responsible for costs to relocate service ends in the event of removal or destruction of the markers by parties other than the City.

**26. DISPUTE RESOLUTION**

A. Process for Alternative Dispute Resolution. The parties shall cooperate in good faith and deal fairly in performing their duties under the Contract Documents in order to accomplish their mutual objectives and avoid disputes. If a dispute arises, the parties shall resolve all disputes by the following progressive alternative dispute resolution process:

1. The parties shall first seek a fair and prompt negotiated resolution.

2. If negotiation is not successful, either party may demand binding arbitration in accordance with RCW 7.04.060; provided, that within twenty (20) days of the initial arbitration demand, the parties shall attempt to resolve the dispute by nonbinding third-party mediation. Mediation efforts shall not delay or affect the arbitration hearing date unless agreed by the parties.

3. If the dispute is not resolved through mediation within forty-five (45) days of the initial arbitration demand, the parties shall proceed with the binding arbitration; provided, that the mediator shall prepare and deliver to the arbitrator a final written recommendation for resolution of the dispute.

B. Selection of Arbitrator. There shall be one arbitrator agreed upon by the parties, or, if the parties cannot agree on the identity of the arbitrator within ten (10) days of the initial arbitration demand, the arbitrator shall be selected by the administrator of the American Arbitration Association (AAA) office in Seattle from its Large, Complex Case Panel (or shall have similar professional credentials). The arbitrator shall be an attorney with at least fifteen (15) years' experience in the practice of law and shall

reside in the Seattle/King County metropolitan area. Whether a claim is covered by the Contract Documents shall be determined by the arbitrator. All statutes of limitations which would otherwise be applicable in a court of law shall apply to any arbitration proceeding hereunder. The mediator shall be selected by the same manner as the arbitrator.

- C. Procedures. The arbitration shall be conducted in accordance with the AAA Commercial Arbitration Rules in effect on the date of the initial arbitration demand, as modified by this Section 28. There shall be no dispositive motion practice. As necessary to ensure a fair hearing, the arbitrator may authorize limited discovery, and may enter pre-hearing orders regarding (without limitation) scheduling, document exchange, witness disclosure and issues to be heard. The arbitrator shall not be bound by the rules of evidence or of civil procedure, but rather may consider such writings and oral presentations as reasonable business people would use in the conduct of their day-to-day affairs, and may require the parties to submit some or all of their case by written declaration or such other manner of presentation as the arbitrator may determine to be appropriate. The parties intend to limit live testimony and cross-examination to the extent necessary to ensure a fair hearing on material issues.
- D. Hearing – Law – Appeal Limited. The arbitrator shall hold a private hearing within ninety (90) days of the initial arbitration demand and shall take reasonable measures to conclude the hearing within three (3) days. The arbitrator's written decision shall be issued not later than fourteen (14) calendar days after the close of the hearing. These time limits are included in order to expedite the proceeding, but they are not jurisdictional, and the arbitrator may for good cause afford or permit reasonable extensions, which shall not affect the validity of the award. The written decision shall contain a brief statement of the claim(s) determined and the award made on each claim. In making the decision and award, the arbitrator shall apply substantive law. Absent fraud, collusion or willful misconduct by the arbitrator, the award shall be final, and judgment may be entered in any court having jurisdiction over the parties. The arbitrator may award injunctive relief or any other remedy available from a judge, including the joinder of parties or consolidation of this arbitration with any other arbitration proceeding involving common issues of law or fact or which may promote judicial economy, but shall not have the power to award punitive or exemplary damages.
- E. Provisional Remedies. Pending selection of the arbitrator, either party may request the AAA to unilaterally appoint an interim arbitrator for the limited purpose of awarding temporary or preliminary relief. This award may be immediately entered in any federal or state court having jurisdiction over the parties even though the decision on the underlying dispute may still be pending. Once appointed, the official arbitrator may, upon request of a party, issue a superseding order to modify or reverse such temporary or preliminary relief or may confirm such relief pending a full hearing on the merits of the underlying dispute, which order may be immediately entered in any

federal or state court having jurisdiction over the parties, even though the decision on the underlying dispute may remain pending. Such relief may be granted by the arbitrator only after notice to and opportunity to be heard by the opposing party, unless the party applying for such relief demonstrated that its purpose would be rendered futile by giving notice.

- F. Attorneys' Fees and Costs. The arbitrator shall award attorneys' fees, expert witness fees, and costs to the prevailing party, but only if the award to the prevailing party exceeds the mediator's recommendation. Except as otherwise provided in the Agreement, neither party is entitled to payment of its attorneys' fees by the other party for disputes resolved prior to a final decision of the arbitrator.

Nothing in this Section 28 shall affect Developer's responsibility to reimburse the City for attorney fees and legal expenses in the normal course of the Agreement.

## **CERTIFICATE(S) OF INSURANCE**