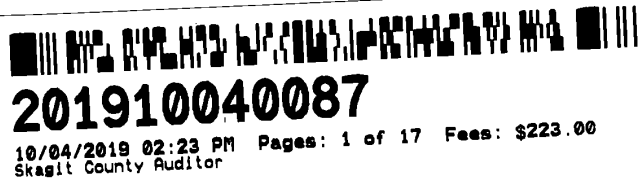


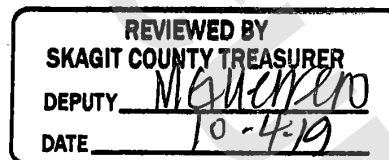
**After Recording Return To:**

City of Mount Vernon  
910 Cleveland Avenue  
Mount Vernon, WA 98273  
Attn: Kevin Rogerson



**AUDITOR/RECORDER'S INDEXING FORM**

<b>Document Title:</b> Covenant and Easement for Maintenance GUARDIAN NORTHWEST TITLE CO. 19-2683	
<b>Grantor:</b>	VWA - Mount Vernon, LLC, an Ohio limited liability company
<b>Grantee:</b>	City of Mount Vernon, a Washington municipal corporation
<b>Legal description</b> (abbreviated: i.e. lot, block, plat or section, township, range):  BURDENED: Lots 4 & 6, BLA No. ENGR19-0308, Recording No. 201910040050  BENEFITED: Lot 5, BLA No. ENGR19-0308, Recording No. 201910040050  Additional legal is on Exhibits A and B to document.	
<b>Assessor's Property Tax Parcel/Account Numbers:</b> P26886, P26788, P121047	



## COVENANT AND EASEMENT FOR MAINTENANCE

THIS COVENANT AND EASEMENT FOR MAINTENANCE (this "Agreement") is dated as of October 3, 2019 and is by and between VWA - MOUNT VERNON, LLC, an Ohio limited liability company ("Visconsi"), and the CITY OF MOUNT VERNON, a Washington municipal corporation ("City"), and is made with reference to the following recitals:

### RECITALS

A. Visconsi is the fee owner of certain real property situated in Skagit County, Washington and more particularly described on Exhibit A hereto (the "Property"). The Property consists of Lots 4 and 6 of a larger property acquired by Visconsi concurrently herewith (the "Visconsi Property").

B. Visconsi acquired a portion of the Visconsi Property from City concurrently herewith. In connection therewith, the parties have entered into a Public Benefits Agreement of even date herewith and recorded concurrently herewith (the "Public Benefits Agreement").

C. Pursuant to that certain Real Property Disposition Agreement between City and Visconsi dated July 29, 2019 (the "RPDA"), and as partial consideration for its acquisition of a portion of the Visconsi Property from City, Visconsi conveyed to City a parcel of unimproved land adjacent to the Visconsi Property and more particularly described on Exhibit B attached hereto ("Public Trail Area").

D. Pursuant to the RPDA and Public Benefits Agreement, Visconsi has agreed to construct and maintain certain additional improvements on the Property as described on Exhibit C attached hereto (the "Additional Improvements").

E. As required by the RPDA and Public Benefits Agreement, Visconsi has agreed to provide this Agreement to provide for the maintenance of the Additional Improvements.

### AGREEMENT

NOW, THEREFORE, in furtherance of the Recitals set forth above (which are adopted herein and included as part of the agreement of the parties), in consideration of the mutual promises set forth below, and for no monetary consideration, the parties agree to the following:

1. Grant of Covenant. Visconsi hereby covenants with and agrees for the benefit of City and the Public Trail Area, that Visconsi will perform, or will cause to be performed, the maintenance, repair and replacement (collectively, the "Maintenance") of the Additional Improvements (the "Maintenance Covenant"). The Maintenance shall be done so as to keep the Additional Improvements in good, safe and attractive condition, as further described on

Exhibit D attached hereto. The Maintenance includes the obligation to appropriately water, weed and care for any landscaping or planting component of the Additional Improvements and to replace any such landscaping or planting that has died or is diseased. The Maintenance also includes the obligation to promptly repair or replace any Additional Improvements that are worn, damaged or destroyed. All Maintenance shall be performed at no expense to City.

3. Grant of Easement. Visconsi hereby grants to City, for the benefit of City and the Public Trail Area, a perpetual non-exclusive easement over, across and through the Property for the purpose of performing the Maintenance if Visconsi defaults in its obligation hereunder to perform or cause to be performed the Maintenance (the "Maintenance Easement"). Before exercising its rights under the Maintenance Easement, City will provide Visconsi with not less than thirty (30) days written notice specifying the Maintenance obligation that needs to be performed. Visconsi shall perform or cause to be performed the needed Maintenance within such 30-day period, and if it does not then City may enter the Property pursuant to the Maintenance Easement to perform such Maintenance. Visconsi will reimburse City for the cost of performing the Maintenance within ten (10) days after receipt of an invoice therefor. City may also draw on any maintenance bond posted by Visconsi to pay for the cost of such Maintenance.

4. Duration. This Agreement and the Maintenance Covenant and Maintenance Easement contained herein shall be perpetual in duration.

5. Compliance with Laws. Visconsi and City shall comply with all applicable laws, ordinances, orders and regulations of all applicable governmental authorities in performing their rights and obligations under this Agreement.

6. Remedies. If Visconsi fails to observe or perform any of its obligations in this Agreement and such failure continues for more than thirty (30) days after written notice from City to Visconsi, then in addition to the rights set forth in Section 3, City shall be entitled to all remedies in law or in equity, including without limitation the right: (a) to compel specific performance by Visconsi of its obligations under this Agreement; (b) to restrain by injunction the actual, threatened or attempted breach of this Agreement and to obtain a judgment or order specifically prohibiting a violation of this Agreement; and (c) to obtain an award of damages resulting from violation of this Agreement. In seeking any equitable remedies, City shall not be required to prove or establish that City does not have an adequate remedy at law. Visconsi hereby waives the requirement of any such proof and acknowledges that City will have suffered irreparable harm and would not have an adequate remedy at law for Visconsi's breach of this Agreement. In no event shall City be required to post a bond or other security in any action seeking to enforce the provisions of this Agreement by injunctive relief or other remedy.

7. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following addresses:

If to City:

City of Mount Vernon  
910 Cleveland Avenue  
Mount Vernon, WA 98273  
Attention: Kevin Rogerson  
Phone: (360) 336-6203  
Email: kevinr@mountvernonwa.gov

If to Visconsi:

VWA – Mount Vernon, LLC  
c/o Visconsi Companies, Ltd.  
30050 Chagrin Blvd., Ste. 360  
Pepper Pike, OH 44124  
Attention: Brad Goldberg  
Phone: (216) 464-5550  
Email: bgoldberg@visconsi.com

Either party may change its address for notice by giving the other party written notice thereof as herein provided. Notices shall not be given by email.

8. Successors and Assigns; Run with the Land. The rights and obligations of the parties under this Agreement shall inure to the benefit of and be binding upon their respective successors in interest and assigns. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor or assign of such party who has acquired all or any part of its interest. The parties further agree that this Agreement touches and concerns the land and shall be considered a covenant that runs with and burdens the Property and is appurtenant to and for the benefit of City and the Public Trail Area.

9. Representation and Warranty. Each party hereby warrants and represent to the other that (i) it has the legal right, power and authority to enter into this Agreement and to perform in accordance with its terms and provisions; (ii) the individual signing this Agreement on its behalf has the authority to bind the party and to enter into this Agreement; and (iii) it has taken all required action(s) to legally authorize the execution, delivery and performance of this Agreement.

*[signature pages follow]*

IN WITNESS WHEREOF, this Agreement has been executed the day and year first above written.

**VISCONSI:**

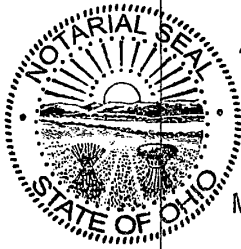
VWA – MOUNT VERNON, LLC, an Ohio limited liability company

By: Dominic A. Visconsi, Jr.  
 Name: Dominic A. Visconsi, Jr.  
 Its: Manager

State of Ohio

County of Cuyahoga

This record was acknowledged before me on October 1, 2019 by Dominic A. Visconsi, Jr. as manager of VWA – Mount Vernon, LLC, an Ohio limited liability company.



THERESA M. BALES  
 NOTARY PUBLIC  
 STATE OF OHIO  
 Recorded in  
 Geauga County  
 My Comm. Exp. 9/21/2020

(Stamp)

(Use this space for notarial stamp/seal)

Theresa M. Bales  
 (Signature of notary public)  
Notary  
 (Title of office)  
 My Commission Expires: 9/21/2020  
 (Date)

[Visconsi's Signature Page to Covenant and Easement for Maintenance]

IN WITNESS WHEREOF, this Agreement has been executed the day and year first above written.

**CITY:**

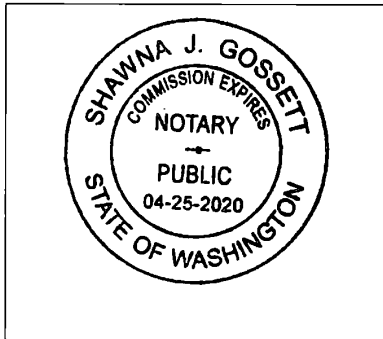
CITY OF MOUNT VERNON, a Washington municipal corporation

By: *Jill*  
 Name: JILL BONDREAN  
 Title: Mayor

State of Washington

County of Skagit

This record was acknowledged before me on October 2, 2019 by Jill Bondrean as Mayor of the City of Mount Vernon, a Washington municipal corporation.



(Stamp)

*Shawna Gossett*  
 (Signature of notary public)  
Notary  
 (Title of office)  
 My Commission Expires: 04/25/2020  
 (Date)

[City's Signature Page to Covenant and Easement for Maintenance]

**EXHIBIT A**

Legal Description of the Property

LOTS 4 AND 6 OF MOUNT VERNON BOUNDARY LINE ADJUSTMENT NO. ENGR19-0308, RECORDED UNDER NO. 201910040087 IN THE OFFICIAL RECORDS OF SKAGIT COUNTY, WASHINGTON.

EXHIBIT A

1

**EXHIBIT B****Legal Description of the Public Trail Area**

LOT 5 OF MOUNT VERNON BOUNDARY LINE ADJUSTMENT NO. ENGR19-0308, RECORDED UNDER NO. 201910040087 IN THE OFFICIAL RECORDS OF SKAGIT COUNTY, WASHINGTON.

CONTAINING 5,467 SQUARE FEET, MORE OR LESS.

FORMERLY DESCRIBED AS:

THE WEST 10.00 FEET OF THE FOLLOWING DESCRIBED PARCEL "I":

THE EASTERLY 29.0 FEET OF THE BURLINGTON NORTHERN RAILROAD COMPANY'S (FORMERLY GREAT NORTHERN RAILWAY COMPANY) RIGHT-OF-WAY IN THE WEST ½ OF THE WEST ½ OF THE SOUTHWEST ¼ OF SECTION 20, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M., LYING BETWEEN TWO LINES DRAWN PARALLEL WITH AND DISTANT, RESPECTIVELY, 25.0 FEET AND 54.0 FEET EASTERLY, AS MEASURED AT RIGHT ANGLES FROM SAID RAILROAD COMPANY'S MAIN TRACK CENTERLINE, AS NOW LOCATED AND CONSTRUCTED, SAID 54.0 FOOT PARALLEL LINE ALSO BEING ON THE WESTERLY BOUNDARY OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN QUIT CLAIM DEED FROM BURLINGTON NORTHERN RAILROAD COMPANY TO GLACIER PARK COMPANY DATED OCTOBER 17, 1988, BOUNDED ON THE SOUTH BY EASTERLY EXTENSION OF THE SOUTH LINE OF BROADWAY STREET AND BOUNDED ON THE NORTH BY A LINE DRAWN PARALLEL WITH AND 45 FEET SOUTHERLY OF, AS MEASURED AT RIGHT ANGLES TO, THE K LINE SURVEY LINE OF SR 5, MOUNT VERNON; BLACKBURN ROAD TO SKAGIT RIVER. THE SPECIFIC DETAILS OF SAID K LINE ARE SHOWN ON THAT CERTAIN MAP OF DEFINITE LOCATION NOW OF RECORD AND ON FILE IN THE OFFICE OF THE SECRETARY OF TRANSPORTATION AT OLYMPIA, AND BEARING THE DATE OF APPROVAL, FEBRUARY 25, 1971, REVISED NOVEMBER 22, 1996.

EXCEPT THAT NORTHERLY PORTION THEREOF CONVEYED TO THE CITY OF MOUNT VERNON BY DEED RECORDED MAY 8, 2000 AS AUDITOR'S FILE NO. 200005080050.

ALSO EXCEPT THE WEST 5.6 FEET THEREOF AS CONVEYED TO THE BN LEASING CORPORATION BY DEEDS RECORDED APRIL 25, 2003 AND JUNE 27, 2003 AS AUDITOR'S FILE NOS. 200304250120 AND 200306270020, RESPECTIVELY.

TOGETHER WITH THE WEST 15.60 FEET OF THE FOLLOWING DESCRIBED PARCEL "B", EXCEPTING ANY PORTION THEREOF LYING SOUTHERLY OF THE WESTERLY

EXHIBIT B



EXTENSION OF THE SOUTH LINE OF LOT 1, BLOCK 1, "PICKEN'S ADDITION TO THE TOWN OF MT. VERNON", AS PER PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 105, RECORDS OF SKAGIT COUNTY, WASHINGTON:

PARCEL "B"

THE EASTERLY 29.0 FEET OF BURLINGTON NORTHERN RAILROAD COMPANY'S (FORMERLY GREAT NORTHERN RAILWAY COMPANY) RIGHT-OF-WAY IN THE WEST  $\frac{1}{2}$  OF WEST  $\frac{1}{2}$  OF SOUTHWEST  $\frac{1}{4}$  OF SOUTHWEST  $\frac{1}{4}$  OF SECTION 20, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M., AT MT. VERNON, SKAGIT COUNTY, WASHINGTON, LYING BETWEEN TWO LINES DRAWN PARALLEL WITH AND DISTANT, RESPECTIVELY, 25.0 FEET AND 54.0 FEET EASTERLY, AS MEASURED AT RIGHT ANGLES FROM SAID RAILROAD COMPANY'S MAIN TRACK CENTERLINE, AS NOW LOCATED AND CONSTRUCTED, SAID 54.0 FOOT PARALLEL LINE ALSO BEING ON THE WESTERLY BOUNDARY OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN QUITCLAIM DEED FROM BURLINGTON NORTHERN RAILROAD COMPANY TO ALFCO, INC. DATED JULY 27, 1992 AND RECORDED AS DOCUMENT NO. 9209030031 IN AND FOR SKAGIT COUNTY, WASHINGTON, BEING ON THE WESTERLY BOUNDARIES OF TWO PARCELS OF LAND DESCRIBED IN WARRANTY DEED FROM THE GREAT NORTHERN RAILWAY COMPANY TO LIBBY, MCNEILL & LIBBY, A MAINE CORPORATION DATED MAY 8, 1955, BEING ON THE WESTERLY BOUNDARY OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN WARRANTY DEED FROM THE GREAT NORTHERN RAILWAY COMPANY TO S.A. MOFFETT AND WIFE DATED NOVEMBER 14, 1944 AND BEING ON THE WESTERLY BOUNDARY OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN QUITCLAIM DEED FROM BURLINGTON NORTHERN RAILROAD COMPANY TO GLACIER PARK COMPANY DATED OCTOBER 17, 1988, BOUNDED ON THE SOUTH BY THE NORTH LINE OF SECTION STREET AND BOUNDED ON THE NORTH BY THE EASTERLY EXTENSION OF THE SOUTH LINE OF BROADWAY STREET, ACCORDING TO THE RECORDED PLAT OF MT. VERNON, WASHINGTON.

ALL SITUATE IN THE CITY OF MOUNT VERNON, SKAGIT COUNTY WASHINGTON.

### EXHIBIT C

#### Description and Depiction of the Additional Improvements

1. Additional Improvements No. 1: A 366 square foot public plaza located on Lot 4 of the BLA constructed with decorative pavers (or stamped concrete). Developer shall install, or cause to be installed, the following amenities within the plaza: a bike rack, bench, and trash receptacle. All amenities shall be steel with black powder coated finish. Developer shall obtain City approval prior to installing these amenities.

For illustrative purposes, following are pictures of the types of amenities required to be installed. The approximate geographic location of the public plaza and its required amenities is shown on the following page.



EXHIBIT C

## Depiction of Additional Improvements No. 1

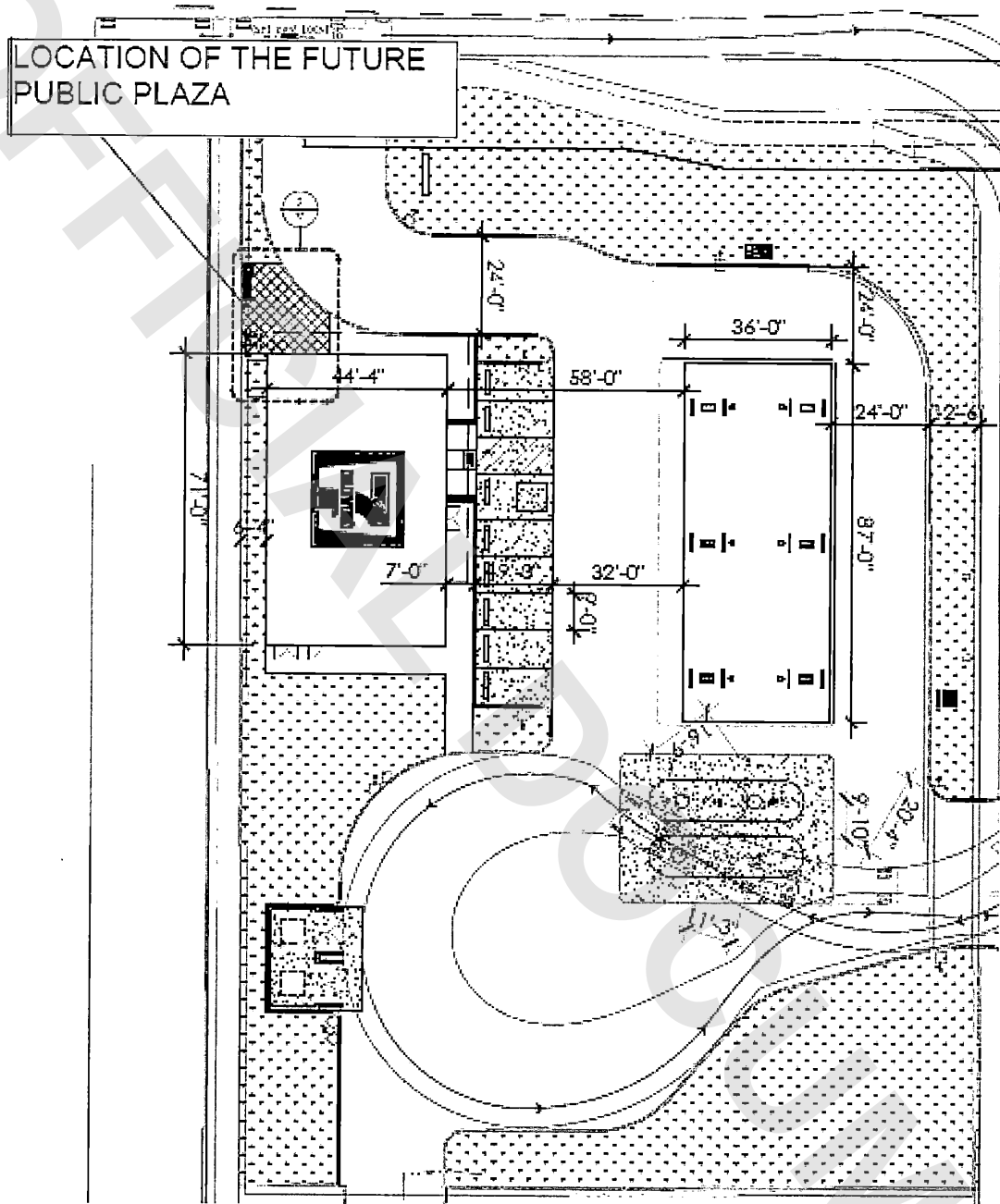


EXHIBIT C

2

Depiction of Additional Improvements No. 1 (cont.)

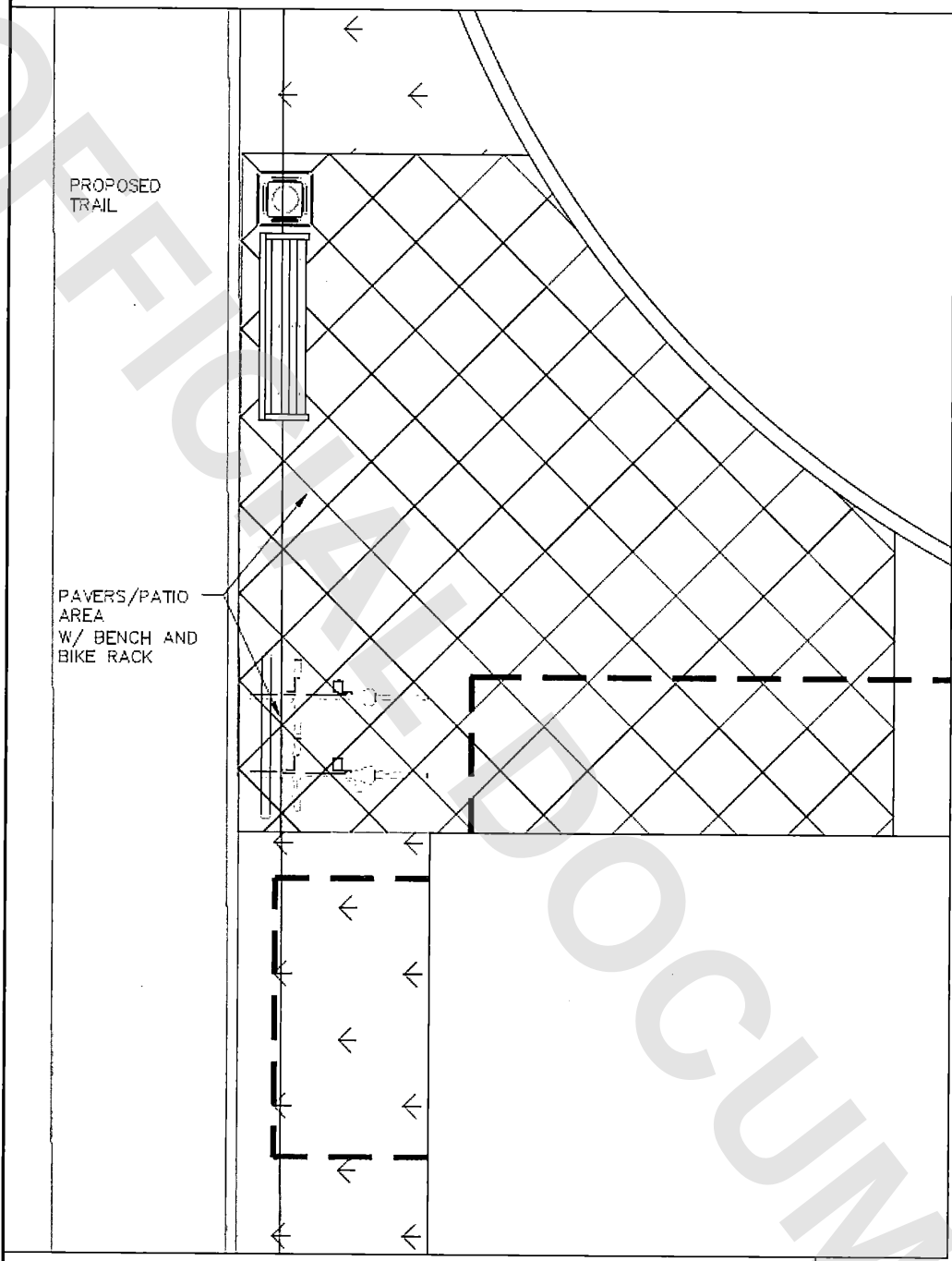


EXHIBIT C  
3

2. Additional Improvements No. 2: Developer shall install, or cause to be installed, 3,320 square feet of landscaping improvements abutting the Public Trail Area on westernmost side of Lot 4, as shown on the following map. No less than eight trees (conifers and evergreen) shall be installed within this area. In addition, shrubs and groundcover plants shall also be installed to cover no less than 70% of the 3,320 square foot area two years after the shrubs and groundcover plants are installed. Note: the shape of the 3,320 square foot landscaping area can be modified with the approval of City so long as the overall square footage does not decrease. Minimum tree size for deciduous trees is 2-inch caliper. All evergreen trees shall be a minimum of 7 feet in height. All shrubs shall be a minimum of 2 gallon or equivalents. Developer shall obtain City approval prior to installing these trees, shrubs and groundcover.

## Depiction of Additional Improvements No. 2

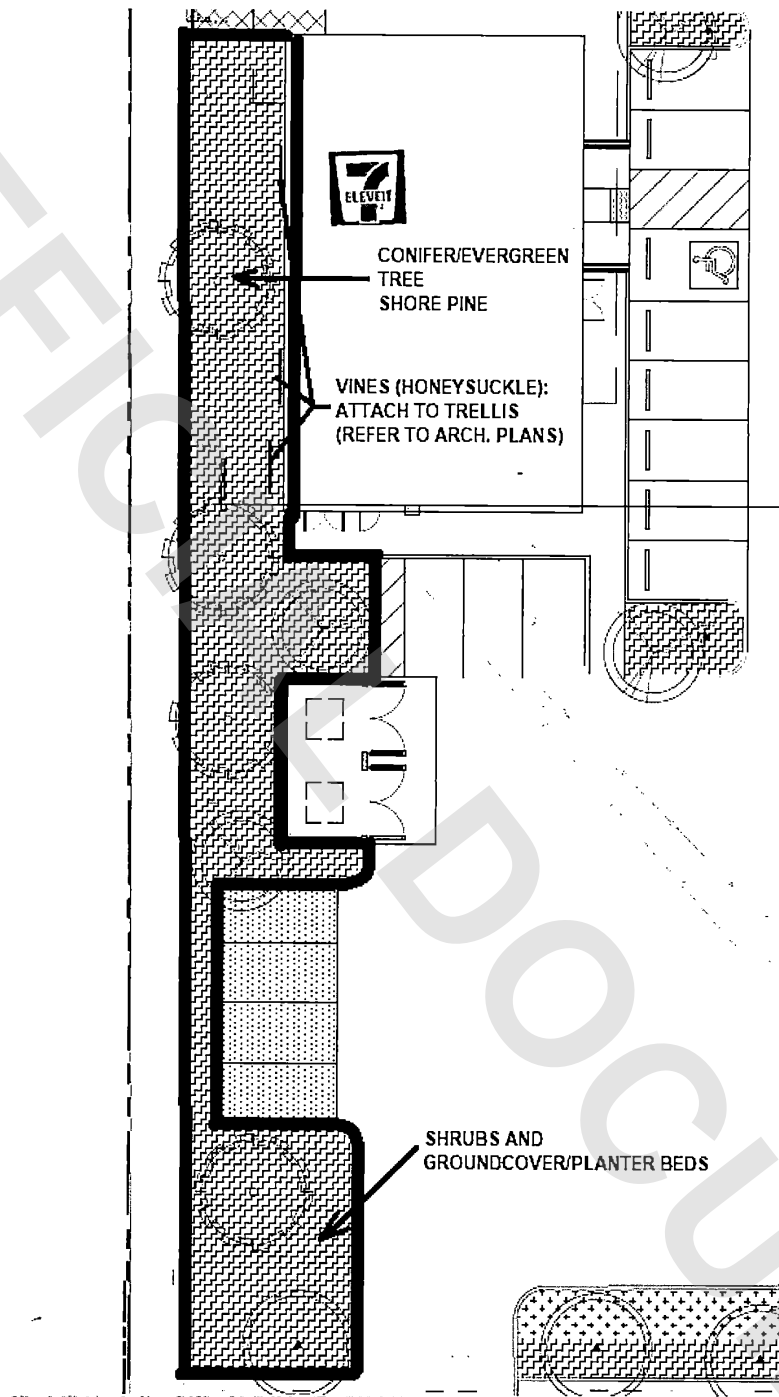


EXHIBIT C

3. Additional Improvements No. 3: Developer shall install, or cause to be installed, 2,000 square feet of landscaping improvements abutting the Public Trail Area on westernmost side of Lot 6, as shown on the following map. No less than eight trees (conifers and evergreen) shall be installed within this area. In addition, shrubs and groundcover plants shall also be installed to cover no less than 70% of the 2,000 square foot area two years after the shrubs and groundcover plants are installed. Note: the shape of the 2,000 square foot landscaping area can be modified with the approval of City so long as the overall square footage does not decrease. Minimum tree size for deciduous trees is 2-inch caliper. All evergreen trees shall be a minimum of 7 feet in height. All shrubs shall be a minimum of 2 gallon or equivalents. Developer shall obtain City approval prior to installing these trees, shrubs and groundcover.

178.01'

15.00'

10.00'

5.60'

97.64'

50.01'

15.6'

2,000 SF

LOT 6

PARCEL B  
39,314 SF  
(0.90 ACRES)

2,000 s.f. of landscaping in excess of code requirements to be located in this general area

207.98'

7



## EXHIBIT D

### Maintenance Requirements

#### **A. LANDSCAPE MAINTENANCE REQUIREMENTS**

Developer will be responsible for furnishing all labor, equipment and materials necessary to complete the maintenance of landscape areas used to offset the benefits derived from the City. Maintenance of the landscape areas includes, but in no way is limited to, the below listed activities that need to be completed in the listed intervals to ensure the trees, shrubs and groundcover are healthy and growing, and that broken, dead, dying vegetation is removed and replaced.

1. Mowing and edging lawn areas (weekly and monthly)
2. Seasonal mulching (quarterly)
3. Trimming trees, shrubs and groundcover (quarterly)
4. Weed Control (weekly and monthly depending on the time of year)
5. Removing broken, dead/dying trees, shrubs and groundcover (quarterly)
6. Replanting new trees, shrubs, and groundcover when removed (quarterly / semi-annually at the end of growing seasons)
7. Keeping the landscape areas reasonably free of weeds and trash (weekly)

#### **B. Public Plaza Maintenance Requirements**

Developer will be responsible for furnishing all labor, equipment and materials necessary to complete the maintenance of the public plaza used to offset the benefits derived from the City. Maintenance of the public plaza areas includes, but in no way is limited to, the below listed activities that need to be completed in the listed intervals to ensure these amenities remain attractive and can safely be used by the public.

1. Checking the plaza surface and repair of any lips, holes, or trip hazards (quarterly)
2. Maintaining the plaza and plaza amenities (i.e. bench, trash can and bike rack) areas clean, sanitary and free of graffiti (weekly checks)