

**AFTER RECORDING MAIL TO:**

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REVIEWED BY  
SKAGIT COUNTY TREASURER  
DEPUTY Heather Beauvais  
DATE 08/16/2021

**Document Title(s):** (or transactions contained herein)

1. Declaration of Easements, Restrictive Covenants and Conditions

**Reference Number(s) of Documents assigned or released:****Grantor(s):** (Last name first, then first name and initials)

1. VWA – Mount Vernon, LLC

**Grantee(s):** (Last name first, then first name and initials)

1. VWA – Mount Vernon, LLC

**Abbreviated Legal Description as follows:** (i.e. lot/block/plat or section/township/range/quarter/quarter)

Multiple portions of the SW ¼ of the SW ¼ of Section 20, Twp. 34 N., R. 4 E., W.M.

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

P134969/8100-000-001-0000, P134970/8100-000-002-0000, P134971/8100-000-003-0000, P134972/8100-000-004-0000, P134974/8100-000-006-0000, P134975/8100-000-007-0000, P53379/3735-003-018-0000 & P53372/3735-001-004-0000



**DECLARATION  
OF  
EASEMENTS,  
RESTRICTIVE COVENANTS,  
AND CONDITIONS**

Dated: July 19, 2021

## DECLARATION OF EASEMENTS, RESTRICTIVE COVENANTS AND CONDITIONS

This Declaration of Easements, Restrictive Covenants and Conditions (this "**Declaration**") is made and entered into as of this 19th day of July, 2021 (the "**Effective Date**"), by VWA - Mount Vernon, LLC, an Ohio limited liability company ("**Developer**").

### RECITALS

- A. Developer is the owner of that certain real property located in Mount Vernon, Washington, and as described in Exhibit "A" attached to, and made a part of, this Declaration (the "**Development**").
- B. The Development, as of Effective Date, consists of seven (7) lots, as shown on Exhibit B-1 attached hereto and made a part hereof (collectively, the "Original Lots", and each an "Original Lot"). After the Effective Date, Developer anticipates combining and re-subdividing the Original Lots into four separate tracts, as shown on Exhibit B-2 attached hereto and made a part hereof (the "Original Site Plan"), which shall consist of (i) "Tract A" ("Tract A"), (ii) "Tract B" ("Tract B"), (iii) "Tract C" ("Tract C"), and (iv) "Tract D" ("Tract D") (collectively, the "Tracts", and each a "Tract").
- C. Developer anticipates developing the Development as a mixed-use development.
- D. For the benefit of Developer and all future owners, tenant and occupants of the Development, Developer desires to record this Declaration to provide for certain easements, restrictive covenants and conditions to apply to the Development, upon the terms and conditions set forth in this Declaration.

In consideration of the premises and the covenants contained in this Declaration, Developer hereby declares that the Development shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the terms and conditions set forth in this Declaration, which shall run with the Development and shall be binding upon the Development and all tenants, occupants, subtenants, licensees, concessionaires, future owners or other parties permitted within the Development.

### ARTICLE I

#### DEFINITIONS

- 1. **Definitions.** Each reference in this Declaration to any of the following defined terms set forth in this Section shall be construed to incorporate into such reference all of the definitions set forth in this Section.
  - 1.1 **Applicable Legal Requirements.** The term "**Applicable Legal Requirements**" means all codes, laws, including, without limitation, environmental laws, orders, ordinances, requirements, regulations, rules and/or statutes of governmental bodies, including but not limited to, federal, state, county, local and/or otherwise,

and/or agencies, whether building, disability, environmental, fire, handicapped, including without limitation, The Americans With Disabilities Act (42 U.S.C. 12101 et. seq.), health, insurance, police, safety or otherwise, and whether now in force or hereafter enacted or adopted and including final decisions of courts of competent jurisdiction.

- 1.2 Approval of the Owing Parties. The term “**Approval of the Owing Parties**” shall mean the affirmative written vote of all of the Approving Owing Parties (hereinafter defined).
- 1.3 Approving Owing Party. The term “**Approving Owing Party**” and/or “**Approving Owing Parties**” shall mean (individually and/or collectively) the Owing Party (hereinafter defined) designated from time to time pursuant to this Declaration to make certain decisions and/or give certain approvals with respect to a Tract (hereinafter defined) pursuant to the terms of this Declaration. There shall be one Approving Owing Party representing each Tract. As of the date of the execution of this Declaration, Developer is the Approving Owing Party with respect to each Tract. Each Approving Owing Party shall have absolute discretion to make the decisions and/or give the approvals expressly designated to be made pursuant to this Declaration and/or given on behalf of the Tract represented by such position regardless of whether the Approving Owing Party owns or leases such Tract. When assigning its interest in a Tract, an Approving Owing Party shall have no obligation to assign the position of Approving Owing Party in connection therewith; provided, however, if an Approving Owing Party assigns its interest in a Tract, but does not assign the position of the Approving Owing Party with respect to such Tract, and such Approving Owing Party no longer owns or leases any Tract, then such Approving Owing Party position for all applicable Tracts for which the assigning Owing Party held the Approving Owing Party designation shall automatically be deemed assigned to the Owing Party acquiring the last Tract owned or leased by the transferring Approving Owing Party. Each Approving Owing Party shall have the right to designate either (i) any Owing Party or any Occupant (hereinafter defined) as the Approving Owing Party with respect to any Tract, or (ii) such Approving Owing Party’s lender, or such lender’s purchaser or transferee, as the Approving Owing Party in the event of a default by such Owing Party under such Owing Party’s mortgage and/or deed of trust and/or acquisition of any Tract owned by such Owing Party by such lender, or such lender’s purchaser or transferee, at foreclosure. Any designation by any Owing Party of an Approving Owing Party with respect to a Tract may be accomplished by (i) delivery of written notice to all other Owing Parties and Approving Owing Parties of such designation, (ii) the unilateral execution and recordation of an amendment to this Declaration reflecting such designation, and/or (iii) the provision of such notice in the deed or other instrument conveying any interest in the Tract previously owned by such Approving Owing Party.

- 1.4 **Constant Dollars.** The term “**Constant Dollars**” shall mean the present value of the dollars to which such phrase refers. An adjustment shall occur on January 1 of the third calendar year following the Effective Date, and thereafter on January 1 of each following calendar year. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number (hereinafter defined) and the denominator of which is the Base Index Number (hereinafter defined). The term “**Base Index Number**” shall mean the level of the Index (hereinafter defined) for the month and year during which the Declaration is dated. The term “**Current Index Number**” shall mean the level of the Index for the month of September of the year preceding the adjustment year. The term “**Index**” shall mean the Consumer Price Index for All Urban Consumers for the greater Seattle, Washington Metropolitan Area, published by the Bureau of Labor Statistics of the United States Department of Labor (base year 1982 – 84 = 100), or any successor index. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed then the Developer shall substitute a new Index based on comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.
- 1.5 **Developer.** The term “**Developer**” shall mean VWA - Mount Vernon, LLC (and/or its affiliates), and/or the successors and assigns of VWA - Mount Vernon, LLC and/or such affiliates, so long as such parties are an Owning Party of any portion of the Development. If neither Developer nor any affiliate of Developer is an Owning Party of any portion of the Development, then (i) all maintenance obligations of Developer as set forth in this Declaration shall be the obligation of the Owning Party of Tract B, unless otherwise designated by Developer, and (ii) the rights of consent and/or approval by Developer under this Declaration shall be exercised by the Approval of the Owning Parties.
- 1.6 **Development.** The term “**Development**” shall mean the mixed-use development consisting of the Tracts.
- 1.7 **Occupant.** The term “**Occupant**” shall mean any Person (hereinafter defined) from time to time entitled to the use and occupancy of any portion of the Development under an ownership right or any lease, sublease, assignment, license, franchise agreement, concession, or other similar agreement.
- 1.8 **Owning Party.** The term “**Owning Party**” shall mean the Developer and the successors and assigns who become owners of any portion of the Development or successors to the interest of such Owning Party as a result of acquisition of such Owning Party’s rights set forth in this Declaration, or possession of such Owning Party’s Tract, by foreclosure or other remedy pursuant to any mortgage and/or deed of trust of such Tract. Each Owning Party shall be liable for the performance

of all covenants, obligations and undertakings herein set forth with respect to such Owning Party's Tract which accrue during the period that such Owning Party is the "Owning Party" for such Owning Party's Tract, and such liability shall continue with respect to any portion transferred until the notice of transfer set forth in this Declaration is given, at which time the transferring Owning Party's personal liability for unaccrued obligations shall terminate (and all accrued obligations shall also terminate, if assumed by the new Owning Party). An Owning Party transferring all or any portion of its interest in the Development, and/or the new Owning Party to which such interest is transferred, shall provide notice of such transfer by either (i) delivering written notice to all other Owning Parties and Approving Owning Parties of such transfer, (ii) unilaterally executing and recording an amendment to this Declaration reflecting such transfer, and/or (iii) providing such notice in the deed or other instrument conveying any interest in the Tract previously owned by such Approving Owning Party .

- 1.9 Tract B Access Drive. The term "**Tract B Access Drive**" shall mean that drive depicted on the Site Plan and located on Tract B for the non-exclusive use and benefit of each of Tract C and Tract D pursuant to the terms and conditions of this Declaration.
- 1.10 Permittee. The term "**Permittee**" shall mean all Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, assignees, franchisees, and concessionaires of Occupants.
- 1.11 Person. The term "**Person**" shall mean any individual, partnership, firm, association, corporation, limited liability company or other limited liability entity, trust or any other form of business or government entity.
- 1.12 Monument Sign. The term "**Monument Sign**" shall mean the monument sign, if any, as may be installed in the Development at the location shown on the Site Plan.
- 1.13 Tract. The term "**Tract**" shall mean that portion of the Development owned by an Owning Party. For purposes of this Declaration, each Owning Party shall have the right, upon written notice to all other Owning Parties, from time to time, to designate such Owning Party's Tract either (i) as a single Tract or (ii) as consisting of one (1) or more Tracts, provided that in all events all Tracts, and/or the creation of any new Tracts otherwise permitted by this Declaration, shall remain subject to the terms and conditions of this Declaration. Any designation by any Owning Party of an Approving Owning Party with respect to a Tract may be accomplished by (i) delivery of written notice to all other Owning Parties and Approving Owning Parties of such designation, (ii) the unilateral execution and recordation of an amendment to this Declaration reflecting such designation, and/or (iii) the provision of such notice in the deed or other instrument conveying any interest in

the Tract previously owned by such Approving Owning Party. As of the date of execution of this Declaration, Developer anticipates that the initial Tracts within the Development shall consist of Tract A, Tract B, Tract C, and Tract D, all as shown on the Site Plan. Developer shall have the right to expand, contract, reconfigure, and/or change any or all of such initial Tracts, and upon any such expansion, contraction, reconfiguration and/or change, such resulting Tracts shall be and mean a Tract for purposes of this Declaration. Notwithstanding the foregoing, if both (i) any Tract has been previously leased, sold or otherwise transferred by Developer to an Occupant and/or Owning Party and (ii) the terms and conditions of the lease, purchase agreement, or other agreement by which such Tract was previously leased, sold or otherwise transferred by Developer to such Occupant and/or Owning Party required the prior approval of such Occupant and/or Owning Party to any changes to such Tract, then Developer shall not make any such changes to the extent such changes would materially and adversely affect any such Tract without the prior written consent of such Occupant and/or Owning Party, as applicable.

- 1.14 **Utility Lines.** The term “**Utility Lines**” shall mean those facilities and systems for the transmission of utility services, including, without limitation, electrical, gas, water, telecommunications, sanitary sewer, storm water, and other similar services. “**Common Utility Lines**” shall mean those Utility Lines which provide the applicable service to more than one Tract to the point of connection with any Separate Utility Lines (hereinafter defined). “**Separate Utility Lines**” shall mean those Utility Lines which provide the applicable service to only one (1) Tract including the portion thereof which extends from any Tract to a connection with any Common Utility Line.

## ARTICLE II EASEMENTS

### 2. Easements.

#### 2.1 Tract B Access Drive – Easement for Ingress and Egress.

2.1.1 **Grant.** Developer, as the initial Owning Party of Tract B, hereby grants to the Owning Parties owning Tract C and Tract D, for such Owning Parties’ use, and for the use of such Owning Parties’ Permittees, in common with others entitled to use the same, a perpetual non-exclusive easement for the passage of vehicles over and across the Tract B Access Drive. Such grant shall remain subject to the terms and conditions set forth in this Declaration.

2.1.2 **Maintenance and Cost.** All costs and expenses with respect to the maintenance, repair and/or cost of removing snow, ice and debris from

the Tract B Access Drive (the "**Tract B Access Drive Maintenance Costs**") shall be the sole responsibility of the Owing Party of Tract B. Notwithstanding the foregoing, the Owing Party of each of Tract C and Tract D shall be responsible for paying to the Owing Party of Tract B the Tract B Access Drive Maintenance Costs Contribution (defined below), which Tract B Access Drive Maintenance Costs Contribution shall be payable to the Owing Party of Tract B (i) within thirty (30) days after the date on which the Owing Party (and/or its Occupants) has initially opened for business and commenced using the rights granted under Section 2.1.1 above, and (ii) on or before January 31 of each calendar year thereafter. For purposes of this Section 2.1.2, the "**Tract B Access Drive Maintenance Costs Contribution**" shall mean (i) initially, the sum of Two Thousand Five Hundred Dollars (\$2,500.00) per year (prorated for any partial year), for the year in which the use by such Owing Party of their rights granted under Section 2.1.1 above first commence, and (ii) commencing with the fifth (5<sup>th</sup>) calendar year after the calendar year in which the Tract B Access Drive Maintenance Costs Contribution first became payable by such Owing Party (or its Occupants), and commencing with each fifth (5<sup>th</sup>) calendar year thereafter, an amount equal to one hundred ten (110%) percent of the Tract B Access Drive Maintenance Costs Contribution in effect for the calendar year immediately preceding the calendar year in which such adjustment is made herein.

For purposes of this Section 2.1.2, the Owing Party of Tract B shall have the right to delegate responsibility for maintaining the Tract B Access Drive to any Occupant of Tract B, and to require that each Owing Party of Tract C and/or Tract D, or the respective Occupants of Tract C and/or Tract D (if either of the Owing Parties of Tract C and/or Tract D designate its Occupant as the responsible party for paying such sum), pay the Tract B Access Drive Maintenance Costs Contribution directly to such Occupant of Tract B.

- 2.1.3 **Rights of Owing Parties.** Each Owing Party shall have the right to close off any portion of such Owing Party's Tract, including the Owing Party of Tract B with respect to the Tract B Access Drive, as the case may be, for such reasonable period of time as may be legally necessary. Notwithstanding the foregoing, prior to closing off any portion of such Owing Party's Tract, such Owing Party shall give written notice of such Owing Party's intention to do so to any Owing Party and/or Owing Parties, as the case may be, entitled to use such closed portion pursuant to the terms and conditions of this Declaration, and such closing Owing Party shall attempt to coordinate such closing so that no unreasonable interference or interruption of use shall occur.



2.2 **No Parking.** In no event shall any Owing Party, and/or any Owing Party's Permittees, have the right to park vehicles on any Tract owned and/or occupied by another Owing Party.

2.3 **Utilities.**

2.3.1 **Easement for Utility Lines.** Subject to the terms and conditions of this Declaration, Developer hereby grants to each Owing Party perpetual non-exclusive easements in, to, over, under, along and across those portions of the Development located on each Tract necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation and removal of Utility Lines serving the benefited Owing Party's Tract, including, but not limited to, sanitary sewers, storm drains, water (fire and domestic), gas, electrical, telephone and communication lines. In addition, if any Utility Line benefiting an Owing Party's Tract is connected to another Utility Line located on another Owing Party's Tract, Developer hereby grants to the benefited Owing Party a perpetual non-exclusive easement to maintain such Utility Line connection. All Utility Lines shall be underground except (i) ground mounted electrical transformers, phone pedestal and any required meters, (ii) as may be necessary during periods of construction, reconstruction, repair, or temporary service, (iii) as may be required by governmental agencies having jurisdiction, (iv) as may be required by the provider of such service and (v) fire hydrants.

The location of all Utility Lines shall be subject to the approval of the Owing Party, which approval shall not be unreasonably withheld, on whose Tract such Utility Lines are located. Upon request by any Owing Party on whose Tract any such Utility Lines are located, the Owing Party benefitted by such Utility Lines shall provide to the requesting Owing Party a copy of an as-built survey or other reasonably satisfactory evidence showing the location of such Utility Lines. The Installation of any Utility Lines on the Tract of any other Owing Party shall be subject to the terms and conditions of Section 2.3.2 below.

Notwithstanding anything to the contrary contained in this Declaration, in no event shall any Utility Lines be located within or below the area on Tract A used for a motor fuels facility, including, without limitation, within or below any motor fuel canopy, equipment, product dispenser, or facilities.

2.3.2 **Installation of Utility Lines.** If any Owing Party ("**Grantee Owing Party**") desires to install any Utility Lines and/or to relocate any Utility Lines following the initial installation that then extend across the Tract of another Owing Party ("**Grantor Owing Party**"), then such Grantee Owing Party shall install and/or relocate such Utility Line in accordance with the terms and conditions set forth in this Section 2.3.2.

**2.3.2.1 Notice.** Prior to exercising the rights granted pursuant to this Declaration, Grantee Owning Party shall first provide Grantor Owning Party with a written statement describing the need for such easement, shall identify the proposed location of the Utility Line, and shall furnish a certificate of insurance showing that Grantee Owning Party's contractor has obtained the minimum insurance coverage required by this Declaration.

**2.3.2.2 Cost.** Except as otherwise agreed to by Grantor Owning Party and Grantee Owning Party, any Grantee Owning Party installing separate Utility Lines pursuant to the provisions of this Section 2.3.2 shall pay all costs and expenses with respect to the same and shall cause all work in connection with such installation, including general clean-up and proper surface and/or subsurface restoration, to be completed as quickly as possible and in a manner so as to minimize interference with the use of Grantor Owning Party's Tract.

**2.3.2.3 Grantor Owning Party Approval.** The location of any Utility Line, or the connection to any Utility Line, shall be subject to the prior written approval of the Grantor Owning Party, such approval not to be unreasonably withheld, conditioned or delayed. The easement area shall be no wider than necessary to reasonably satisfy the requirements of a private or public utility, or five feet (5') on each side of the centerline if the easement is granted to Grantee Owning Party. Upon request, Grantee Owning Party shall provide to Grantor Owning Party a copy of an as-built survey or other reasonable evidence showing the location of such Utility Line.

**2.3.2.4 Grantor Owning Party's Rights.** Grantor Owning Party shall have the right at any time to relocate a Utility Line upon thirty (30) days prior written notice, provided that such relocation (i) does not interfere with or diminish the utility service to Grantee Owning Party during Grantee Owning Party's business hours, (ii) does not reduce or unreasonably impair the usefulness or function of such Utility Line, (iii) is performed without cost or expense to Grantee Owning Party, (iv) is completed using materials and design standards which equal or exceed those originally used and (v) shall have been approved by the provider of such service and the appropriate governmental or quasi-governmental agencies having jurisdiction over such Utility Lines, if such approval is required. Grantor Owning Party shall pay all costs and expenses with respect to the same and shall cause all work in connection with such installation, including general clean-up and proper surface and/or

subsurface restoration, to be completed as quickly as possible and in a manner so as to minimize interference with the use of Grantee Owning Party's Tract. Upon request, Grantor Owning Party shall provide to Grantee Owning Party a copy of an as-built survey or other reasonable evidence showing the location of such Utility Lines. Upon the installation and/or relocation of any Utility Lines as permitted in this Section 2.3.2.4, the Grantor Owning Party and Grantee Owning Party shall have the unilateral right to record an amendment to this Declaration reflecting the location of such easement area and Utility Lines.

- 2.4 **Storm Water.** Developer hereby grants (i) to each Owning Party a perpetual non-exclusive easement to discharge surface storm drainage and/or runoff from such Owning Party's Tract over, upon and across an adjacent Tract, and (ii) to each Owning Party whose Tract is permitted by Developer to drain storm water through Utility Lines to the retention facilities, a perpetual, non-exclusive easement to discharge such storm water, provided that no Owning Party shall alter or permit to be altered the surface of such Owning Party's Tract, or the drainage/retention/detention system, constructed on such Owning Party's Tract if such alteration would materially increase the flow of surface water onto an adjacent Tract either in the aggregate or by directing the flow of surface water to a limited area or adversely affect any drainage/retention/detention system located on and/or serving any other Tract.

2.5 **Monument Sign.**

- 2.5.1 **Grant of Monument Sign.** Developer hereby reserves a perpetual non-exclusive easement for the right of reasonable access over and across Tract A to both (i) install, use, maintain, operate, repair and replace the Monument Sign in the location shown on the Site Plan, together with the right to install, use, maintain, operate, repair and replace any and all Utility Lines serving the same, and (ii) permit sign panels to be maintained on the Monument Sign pursuant to Section 2.5.2 below. The rights reserved herein shall include a right of reasonable access over and across any Tracts that contain Utility Lines serving the Monument Sign for purposes of installing, using, operating, maintaining, repairing and/or replacing the same.

- 2.5.2 **Grant of Monument Sign Use.** If the Monument Sign is installed by Developer pursuant to Section 2.5.1 above, then Developer shall have the right, at Developer's discretion, to grant to any Tract a perpetual non-exclusive easement to install, operate, maintain, repair and/or replace a sign panel (or sign panels) on the Monument Sign, all of which sign panels

shall be of a size, configuration, and position as determined by Developer in its sole discretion.

Developer shall have the right to modify or alter the Monument Sign (and/or any panels located thereon) from time to time in such manner as Developer, in its sole discretion, may determine, and/or to grant rights to any party (including without limitation, any Owning Party and/or Occupant of any Tract) to maintain a sign panel (or panels) on the Monument Sign.

Upon the exercise by Developer of any rights permitted herein, Developer shall have the right to deliver written notice to all Owning Parties of such exercise, and/or unilaterally execute and record an amendment to this Declaration setting forth the terms and conditions of all rights exercised by Developer herein.

Notwithstanding anything to the contrary contained herein, if the Monument Sign is installed by Developer pursuant to Section 2.5.1 above, then pursuant to the existing lease presently in effect between Developer and the Occupant of Tract A (the "**Existing Tract A Lease**"), then so long as the Existing Tract A Lease is in effect, the Occupant of Tract A shall have the right to place a sign panel in the top position on such Monument Sign in accordance with the terms and conditions of the Existing Tract A Lease.

- 2.5.3 **Maintenance Costs.** Developer shall perform all required installation, maintenance, repair, replacement and/or insurance for the structural portions of the Monument Sign and all Utility Lines serving the same (the "**Monument Sign Maintenance Costs**"). Each Owning Party which is permitted to maintain a panel on the Monument Sign shall pay to Developer its Monument Sign Maintenance Costs Contribution (defined below) (i) within thirty (30) days after such Owning Party is first permitted to maintain a panel on the Monument Sign, and (ii) on or before January 31 of each calendar year thereafter, for so long as such Owning Party is permitted to maintain a panel on the Monument Sign. For purposes of this Section 2.5.3, the "**Monument Sign Maintenance Costs Contribution**" shall mean (i) initially, the annual sum of Three Hundred Dollars (\$300.00), with respect to the first (1<sup>st</sup>) calendar year in which such Owning Party is first permitted to maintain a panel on the Monument Sign, and (ii) commencing with the fifth (5<sup>th</sup>) full calendar year after the first (1<sup>st</sup>) calendar year (or portion thereof) during which such Owning Party has the right to maintain a panel on the Monument Sign, and commencing with each successive fifth (5<sup>th</sup>) calendar year thereafter for so long as such Owning Party has the right to maintain a panel on the Monument Sign, an annual amount equal to one hundred ten (110%) percent of the Monument Sign Maintenance Costs Contribution in effect for the calendar

year immediately preceding the calendar year in which such adjustment is made herein.

All expenses with respect to the maintenance, operation, insurance, repair and/or replacement of any sign panels on the Monument Sign shall be the sole responsibility and obligation of the Owning Party which has the right to maintain a panel on the Monument Sign.

**2.5.4 Transfer of Obligations and Rights.** At such time as neither Developer nor any affiliate of Developer owns any Tract within the Development, then the rights and obligations to be exercised and/or performed by Developer under this Section 2.5 shall be deemed assigned to, and shall be performed and/or exercised by, the Owning Party of Tract B.

**2.6 Other Developer Rights.**

**2.6.1 Changes in Development.** Developer shall have the right, in Developer's sole discretion, to combine, subdivide, reconfigure, and/or otherwise change the Tracts, the location and/or design of any Utility Lines permitted herein prior to the installation thereof, the location and/or design of the Monument Sign, and the location, size and/or configuration of any buildings, in such manner as Developer in its sole discretion may determine. Notwithstanding the foregoing, if both (i) any Tract has been previously leased, sold or otherwise transferred by Developer to an Occupant and/or Owning Party and (ii) the terms and conditions of the lease, purchase agreement, or other agreement by which such Tract was previously leased, sold or otherwise transferred by Developer to such Occupant and/or Owning Party required the prior approval of such Occupant and/or Owning Party to any changes to such Tract, then Developer shall not make any such changes to the extent such changes would materially and adversely affect any such Tract without the prior written consent of such Occupant and/or Owning Party, as applicable.

**2.6.2 Consents and Approvals.** So long as Developer (or any of its affiliates) own any portion of the Development, Developer shall have the right to grant consents and/or approvals under, to waive, and/or to amend or modify, this Declaration, and to otherwise take such other actions, as Developer in its sole discretion may determine, and in such event the terms and conditions of this Declaration, as affected by any such consents, waivers, amendments, modifications, and/or other actions, shall remain binding upon all Tracts; provided, however, that in no event shall Developer have the right to amend or modify this Declaration in any manner which would adversely affect the rights or obligations of any Owning Party or Occupant

of any Tract without the prior written consent of such Owning Party or Occupant.

- 2.6.3 Developer Reservation and Grant of Rights. So long as Developer (or any of its affiliates) own any portion of the Development, all rights permitted to be exercised under this Declaration by Developer shall be reserved for the benefit of, and shall be exercisable only by, Developer. Notwithstanding the foregoing, Developer shall have the right to grant any or all such rights under this Declaration to any Owning Party (and/or any Occupants) of any Tract, and/or to any third party, and upon the grant of any such rights by Developer, such Owning Party (and/or such Occupants) of such Tract, and/or such third party, shall have the right to exercise the rights of Developer under this Declaration with respect to the rights granted by Developer to such Owning Party (and/or to such Occupants) and/or to such third party.

In addition, Developer shall have the right to delegate all or any of its obligations under this Declaration with respect to any Tract to the Owning Party and/or Occupants of such Tract, and/or to any third party, and upon such delegation, such Owning Party and/or its Occupants, and/or such third party, shall be responsible for the performance of all such obligations with respect to its Tract in accordance with the terms and conditions of this Declaration.

- 2.6.4 Amendments. So long as Developer (or any of its affiliates) own any portion of the Development, Developer shall have the right to unilaterally execute and record an amendment to this Declaration setting forth any and all combinations, subdivisions, reconfigurations, and/or other changes to any or all of the Tracts and/or the Development permitted herein, and/or all such consents and approvals, waiver, amendments or modifications, and/or other such actions permitted herein.

### ARTICLE III CONSTRUCTION

#### 3. Construction of Tracts.

##### 3.1 General Requirements.

- 3.1.1 Standards and Restrictions. All construction activities performed by any Owning Party, or by any Permittee, within the Development shall be performed in compliance with all Applicable Legal Requirements, use new or like-new materials, and shall be performed in a good and workmanlike manner. Any construction activities by any Owning Party, or by any Permittee shall not (i) cause any unreasonable increase in the cost of

constructing improvements upon any Tracts, (ii) unreasonably interfere with construction work being performed on any other part of the Development, (iii) unreasonably interfere with the use, occupancy or enjoyment of any part of the remainder of the Development by any Owning Party, Occupant or such Owning Party's Permittees, (iv) unreasonably interfere with the visibility of the improvements or the signage located on the Tracts of other Owning Parties or (v) cause any other Tract (or any building located on such Tract) to be in violation of any Applicable Legal Requirements.

3.1.2 Staging and Storage. In connection with any construction, reconstruction, repair or maintenance on an Owning Party's Tract, Developer hereby grants to each Owning Party the right to create a temporary staging and/or storage area on such Owning Party's Tract at such location as will not unreasonably interfere with access between such Tract and the other areas of the Development. Prior to the commencement of any work which requires the establishment of a staging and/or storage area on such Owning Party's Tract in a location which would unreasonably interfere with access between such Tract and the other Tracts of the Development, the constructing Owning Party shall give at least thirty (30) days prior notice to the Approving Owning Parties of the adjacent Tracts, for approval, of the proposed location, and if substantial work is to be performed, the constructing Owning Party shall, at the request of any such Approving Owning Parties, fence off the staging and storage area. If such Approving Owning Parties do not approve the proposed location of the staging and/or storage area, the constructing Owning Party shall modify the proposed location to satisfy the reasonable requirements of such Approving Owning Parties. All storage of materials and the parking of construction vehicles, including vehicles of workers, shall occur only on the constructing Owning Party's Tract. To the extent that the constructing Owning Party's Tract has access to a publicly dedicated street, then all laborers, suppliers, contractors and others connected with such construction activities shall use only the access points located upon the constructing Owning Party's Tract. If the constructing Owning Party's Tract does not have an access point to any publicly dedicated streets, then access for such constructing Owning Party shall be in accordance with the terms and conditions of this Declaration. Upon completion of such work, the constructing Owning Party shall restore the affected portion of the Development to a condition equal to or better than that existing prior to commencement of such work.

3.2 Permitted Changes. Each Owning Party hereby reserves the right, from time to time and without obtaining the consent or approval of any other Owning Party, to make at such Owning Party's own expense any change, modification or alteration

in such Owning Party's Tract, provided that (i) the accessibility of such Tract for pedestrian and vehicular traffic, as it relates to the remainder of the Development, is not unreasonably restricted or hindered, (ii) any such changes, modifications or alterations do not materially adversely impact the use, operation or ownership of the Owning Parties of the other Tracts of the Development, (iii) the Tract, as so modified or altered, shall continue to comply with the terms and conditions of this Declaration, including, but not limited to, the grant, accessibility and use of the Tract B Access Drive and (iv) no Applicable Legal Requirements shall be violated as a result of such action, and such action shall not result in any other Owning Party being in violation of any Applicable Legal Requirements.

#### ARTICLE IV MAINTENANCE AND REPAIR

#### 4. Maintenance and Repair Requirements.

##### 4.1 Tract Maintenance.

4.1.1 General Requirements. Each Tract shall be maintained, repaired and restored in a sightly, safe condition and good state of repair and otherwise in accordance with the terms and provisions of Declaration. Any unimproved Tract shall be mowed and kept litter-free. The minimum standard of maintenance for the improved Tracts shall be comparable to the standard of maintenance followed in other similar mixed use developments of comparable size in the greater Seattle, Washington Metropolitan Area, and in all cases in compliance with all Applicable Legal Requirements, and the provisions of this Declaration.

4.1.2 Repairs and Replacements. After completion of initial construction, each Owning Party covenants and agrees to maintain and keep the exterior portion of the building improvements, all outdoor areas and all signage located on such Owning Party's Tract in good condition and state of repair, in compliance with all Applicable Legal Requirements and in compliance with the terms and conditions of this Declaration. All necessary repairs and replacements to the improvements, all outdoor areas and all signage shall be made with materials at least equal to the quality of the materials being repaired or replaced so as to maintain the architectural and aesthetic harmony of the Development as a whole.

4.1.3 Maintenance Obligations of Owning Parties. Each Owning Party shall, at such Owning Party's sole cost and expense, perform or cause the performance of, all necessary maintenance, repair, and/or replacement obligations set forth in this Declaration. Such maintenance repair, and/or replacement obligations of the Owning Parties shall include, but not be limited to, the following:



- 4.1.3.1 Paved Surfaces. Maintenance of all paved surfaces and curbs in a smooth and evenly covered condition, including, without limitation, the replacement of base, skin patch, resealing and resurfacing.
- 4.1.3.2 Clean Condition. Removal of all papers, debris, filth, refuse, ice and snow, including periodic broom sweeping to the extent necessary, to keep the Tract in a good, clean and orderly condition. All trash and garbage shall be stored in adequate containers located in an area not readily visible from any parking areas and shall be removed on a regular basis.
- 4.1.3.3 Signage. Maintenance and replacement of all appropriate directional, stop or handicapped parking signs.
- 4.1.3.4 Parking and Drive Lanes. Marking and striping parking lots, drive lanes fire lanes, loading zones, no parking areas and pedestrian cross-walks as necessary to maintain proper parking space designation and traffic direction.
- 4.1.3.5 Lighting. Maintenance, cleaning and replacement of Tract lighting facilities, including light standards, wires, conduits, lamps, ballasts and lenses, time clocks, wiring, and circuit breakers.
- 4.1.3.6 Landscaping. Maintenance, trimming and replacement of all landscape plantings, trees and shrubs necessary to maintain the same in an attractive and thriving weed free condition.
- 4.1.4 Casualty. In the event any of the building improvements, outdoor areas or signage are damaged by fire or other casualty, whether insured or not, the Owning Party upon whose Tract such building improvements, outdoor areas or signage are located shall, subject to Applicable Legal Requirements and/or insurance adjustment delays, within a reasonable time (i) repair or restore the building improvements, outdoor areas or signage so damaged to a complete unit, such repair or restoration to be performed in accordance with all provisions of this Declaration, (ii) erect other building improvements, outdoor areas or signage in such location, such construction to be performed in accordance with all provisions of this Declaration, or (iii) demolish the damaged portion and/or the balance of such building improvements, outdoor areas or signage and restore the cleared area to either a hard surface condition or a landscaped condition.

#### 4.2 Utility Lines.

4.2.1 Separate Utility Lines. Each Owning Party shall maintain and repair, or cause to be maintained and repaired, in a good state of repair and safe condition, all Separate Utility Lines utilized by such Owning Party regardless of where located.

4.2.2 Common Utility Lines. Each Owning Party whose Tract is served by any Common Utility Lines located on another Owning Party's Tract shall be jointly and severally responsible for the maintenance and repair of such Common Utility Lines, and in no event shall any Owning Party be responsible for the operation, maintenance, repair, and/or replacement of any Common Utility Lines located on such Owning Party's Tract that does not serve such Owning Party's Tract.

4.2.3 Non-Dedicated Utilities. Any maintenance and repair of non-dedicated utilities located on another Owning Party's Tract shall be performed (i) after at least two (2) weeks' notice to such other Owning Party, except in an emergency where the work may be initiated with reasonable notice, (ii) after normal business hours whenever possible and (iii) in such a manner as to cause as little disturbance in the use of such other Owning Party's Tract as is practicable under the circumstances. Any Owning Party, and/or Occupant, performing, or causing to be performed, maintenance or repair work shall promptly pay all costs and expenses associated with such repair work, shall diligently complete such work as quickly as possible, and shall promptly clean the area and restore the affected portion of the Tract to a condition equal to or better than the condition which existed prior to the commencement of such work. Any work performed pursuant to this Section 4.2.3 shall remain subject to the terms and conditions of Section 2.3.2 above.

### ARTICLE V OPERATION OF THE DEVELOPMENT

#### 5. Uses.

5.1 Prohibited Uses. No use shall be permitted in the Development which is inconsistent with the operation of a similar mixed use development or similar nature located in the greater Seattle, Washington Metropolitan Area. Without limiting the generality of the foregoing, in no event shall any Tract of the Development be used as (i) an assembling, manufacturing, refining, smelting, agricultural, or mining operation, (ii) except for temporary use of construction trailers during periods of construction, reconstruction, or maintenance, a mobile home park, trailer court, labor camp, junkyard, or stockyard, (iii) a dumping,

disposing, incineration, or reduction of garbage facility, (iv) a central laundry, dry cleaning plant, or laundromat (v) a bowling alley, skating rink, dance club or disco, (vi) a mortuary or funeral home, (vii) an establishment primarily selling or exhibiting pornographic materials or drug related paraphernalia (viii) a flea market (ix) a gambling facility or operation, including but not limited to, off-track or sports betting parlor, table games, slot machines, video poker/black-jack/keno machines or similar devices, and bingo hall or (x) a topsoil farm.

- 5.2 Use Restrictions. At all times, the Development shall be subject to the use restrictions set forth on Exhibit "C", attached to, and made a part of, this Declaration.
- 5.3 Hazardous Materials. No Owning Party and/or Occupant shall use, or permit the use of, Hazardous Materials (hereinafter defined) on, about, under or in such Owning Party's Tract, or the Development, except in the ordinary course of its usual business operations, and any such use shall at all times be in compliance with all Environmental Laws (hereinafter defined). Each Owning Party shall indemnify, protect, defend and hold harmless the other Owning Parties from and against all claims, suits, actions, demands, costs, damages and losses of any kind, including, but not limited to, costs of investigation, litigation and remedial response, arising out of any Hazardous Material used or permitted to be used by such Owning Party, whether or not in the ordinary course of business. Nothing contained in this Section shall be binding upon any Owning Party which is a mortgagee of any Tract and which has become an Owning Party as a result of the foreclosure of such mortgagee's mortgage or the conveyance of such Tract to such mortgagee in lieu of such foreclosure. For the purpose of this Section, the term (i) "**Hazardous Materials**" shall mean petroleum products, asbestos, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law, and (ii) "**Environmental Laws**" shall mean all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations which relate to or deal with human health by any Owning Party or such Owning Party's Permittees or the environment, all as may be amended from time to time.
- 5.4 Lighting. After completion of the lighting system on an Owning Party's Tract, each Owning Party shall keep such Owning Party's Tract fully illuminated during standard hours of operation and shall provide security lighting each day from dusk to dawn. Each Owning Party shall have an irrevocable license from each other Owning Party for the purpose of permitting the lighting from one Tract to incidentally shine on the other Tracts.

- 5.5 Occupant Signs. All building signs erected within the Development shall be subject to the terms and conditions of this Declaration and all Applicable Legal Requirements.
- 5.6 Taxes and Assessments. Each Owning Party shall pay, or cause to be paid, prior to delinquency, directly to the taxing authority, all taxes and assessments (both general and special) with respect to such Owning Party's Tract, the buildings, and improvements located on such Tract and any personal property owned or leased by such Owning Party in the Development, including, without limitation, rental taxes, provided that if the taxes or assessments or any part of such taxes or assessments may be paid in installments, the Owning Party may pay each such installment as and when the same becomes due and payable.
- 5.7 Liens. If required under Applicable Legal Requirements with respect to any work or construction performed on any Tract, the Owning Party (and/or its Occupants) shall file, serve, post or cause to be filed, served and posted such notices as may be required with respect to the performance of such work or construction. In the event any mechanic's lien is filed against the Tract of one Owning Party as a result of services performed or materials furnished for the use of another Owning Party, or such Owning Party's Occupants, the Owning Party, or such Owning Party's Occupants, permitting or causing such lien to be so filed agrees to cause such lien to be discharged (or bonded off) within thirty (30) days after receipt of notice of filing and further agrees to indemnify, defend, and hold harmless the other Owning Party and such other Owning Party's Tract against liabilities, losses, damages, costs or expenses, including reasonable attorneys' fees and cost of suit, on account of such claim of lien. Nothing set forth in this Section shall prevent an Owning Party, or such Owning Party's Occupants, from contesting the validity of a lien in any manner such Owning Party, or such Owning Party's Occupants, chooses, so long as such contest is pursued with reasonable diligence and the lien is bonded off in accordance with Applicable Legal Requirements.
- 5.8 Compliance. Each Owning Party shall comply, or cause the compliance with, all Applicable Legal Requirements relating to its Tract.
- 5.9 Development Agreements. This Declaration shall be subject and subordinate to each of those agreements set forth in Exhibit "D" attached hereto and made a part hereof (as the same may be amended or modified from time to time) (the "**Development Agreements**"), and in connection therewith (i) all rights permitted to be exercised by any Owning Party (and/or its Permittees) under this Declaration shall be exercised in accordance with, and not in violation of, the Development Agreements, (ii) to the extent the consent of any party pursuant to any of the Development Agreements is required with respect to any matter under this Declaration, then each Owning Party shall be required to obtain such consent notwithstanding any consent which Developer may have granted with respect to

such matter, (iii) each Owning Party shall comply with the terms and conditions of the Development Agreements (and shall cause its Permittees to comply as well), (iv) in the event of any conflict between the terms and conditions of this Declaration and the Development Agreements, the terms and conditions of the Development Agreements shall be controlling, and (v) the exercise of any rights by any party under this Development Agreements shall not be deemed a violation of this Declaration. In addition, Developer shall have the right to amend, modify, grant its consent or approval under, and/or waive any provision with respect to any of the Development Agreements, provided that if any such amendment, modification, grant of consent or approval, and/or waiver would materially and adversely affect the rights of any Owning Party under this Declaration, then the consent of such Owning Party shall be required with respect to such amendment, modification, grant, and/or waiver.

To the extent that any of the Development Agreements impose any obligations upon any Tract, the Owning Party of such Tract, at its sole cost and expense, shall perform and/or pay any and all such obligations.

#### ARTICLE VI INSURANCE AND INDEMNITY

##### 6. Insurance and Indemnity.

- 6.1 Owning Party Coverage. Each Owning Party shall maintain, or cause to be maintained, in full force and effect, Commercial General Liability Insurance with a combined single limit of liability of not less than Five Million and 00/100 Dollars (\$5,000,000.00) in Constant Dollars for bodily or personal injury or death, and for property damage, arising out of any one occurrence. Each Owning Party and/or the Owning Party's Occupants shall maintain liquor liability and/or "dram shop" insurance, if alcohol is sold for on premises consumption on such Owning Party's Tract.
- 6.2 Indemnity. Each Owning Party ("Section 6.2 Indemnitor") covenants and agrees to defend, protect, indemnify and hold harmless each other Owning Party and such Owning Party's respective mortgagees, holders of any deeds of trust, and Occupants (together, "Section 6.2 Indemnitees") from and against all claims, including any action or proceedings, and all costs, losses, expenses and liability, including reasonable attorneys' fees and cost of suit, arising from or as a result of the injury to or death of any Person, or damage to the property of any Person located on the Tract owned by each Section 6.2 Indemnitor, except for claims caused by the negligence or willful act or omission of such Section 6.2 Indemnities, such Section 6.2 Indemnitees licensees, concessionaires, agents, servants, or employees, or the agents, servants, or employees of any licensee or concessionaire.

### 6.3 Construction Insurance.

6.3.1 Coverage Requirements. Prior to commencing any construction activities within the Development, each Owning Party, or such Owning Party's Occupants or Permittees, shall obtain, or require its contractor to obtain, and thereafter maintain, so long as such construction activity is occurring, at least the following minimum insurance coverages in Constant Dollars:

- (i) Workers' Compensation – statutory required limits;
- (ii) Employers' Liability – One Million and 00/100 Dollars (\$1,000,000.00);
- (iii) Comprehensive General/Commercial General Liability (bodily injury and property damage) – One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate per project;
- (iv) Independent Contractors Liability (bodily injury and property damage) – One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate per project;
- (v) Products/Completed Operations Coverage (which shall be kept in effect for two (2) years after completion of work);
- (vi) "XCU" Hazard Endorsement, if applicable;
- (vii) "Broad Form" Property Damage Endorsement;
- (viii) "Personal Injury" Endorsements; and
- (ix) "Blanket Contractual Liability" Endorsement.

6.3.2 Construction on another Tract. If the construction activity involves the use of another Owning Party's Tract, then such other Owning Party, and such other Owning Party respective mortgagees (or holders of deeds of trust), if any, and Occupants, shall be named an additional insured, and such insurance shall provide that the same shall not be canceled, or reduced in amount or coverage below the requirements of this Declaration, without at least thirty (30) days prior written notice to the named insureds and each additional insured. If such insurance is canceled or expires then the constructing Owning Party shall immediately stop all work on, or use of, the other Owning Party's Tract, until either the required insurance is reinstated or replacement insurance obtained.

- 6.3.3 **All Risk.** Effective upon the commencement of construction of any building on an Owning Party's Tract and so long as such building exists, such Owning Party shall carry, or cause to be carried, property insurance with "all-risk" coverage, including flood, earthquake and builder's risk coverage, in the amount of 100% of full replacement cost thereof (excluding footings, foundations or excavations) subject to (i) the right of such Owning Party (and/or any Occupant of such Owning Party's Tract, as set forth below) to self-insure such required insurance coverage as set forth in section 6.6 below, (ii) the right of such Owning Party to elect not to restore such building pursuant to 4.1.4 above and (iii), reasonable changes in insurance-industry standards.
- 6.4 **Waiver.** Notwithstanding any provision of this Declaration to the contrary, each Owning Party (the "**Releasing Owning Party**") hereby releases and waives for such Owning Party, and each Person claiming by, through or under such Owning Party, each other Owning Party (the "**Released Owning Party**") from any liability for any loss or damage to all property located upon the Releasing Owning Party's Tract, which loss or damage is of the type covered by the insurance, including deductible, coinsurance, and self-insurance portions, required to be maintained by the Releasing Owning Party under this Declaration or otherwise insured against, irrespective either of any negligence on the part of the Released Owning Party, or such Owning Party's Occupants or Permittees, which may have contributed to or caused such loss, or of the amount of such insurance required or actually carried, including any deductible, coinsurance, or self-insurance reserve. Each Owning Party agrees to use such Owning Party reasonable efforts to obtain, if needed, appropriate endorsements to such Owning Party policies of insurance with respect to the foregoing release; provided, however, that failure to obtain such endorsements shall not affect the release set forth in this Section. Each Owning Party ("**Section 6.4 Indemnitor**") covenants and agrees to indemnify, defend and hold harmless each other Owning Party, and such Owning Party's Occupants and Permittees ("**Section 6.4 Indemnitee**") from and against all claims asserted by or through any Permittees of the Section 6.4 Indemnitor's Tract for any loss or damage to the property of such Permittee located upon the Section 6.4 Indemnitor's Tract, which loss or damage is covered by the insurance required to be maintained pursuant to the terms and conditions of this Declaration or otherwise covered by other insurance maintained by such Owning Party, irrespective of any negligence on the part of the Section 6.4 Indemnitee which may have contributed to or caused such loss. For purposes of this Section, to the extent that any Owning Party may have elected to self-insure and/or not insure the risks required to be insured against as set forth in this Declaration, including deductible portions and/or coinsurance amounts, then such Owning Party shall be deemed to have carried such insurance.

6.5 Insurance Company Providers. All insurance required by this Section shall be procured from companies licensed in the State of Washington and shall be rated by Best's Insurance Reports not less than A/VIII, or with equivalent financial responsibility.

6.6 Acceptable Forms of Coverage. All insurance may be provided under (i) an individual policy covering this location, (ii) a blanket policy or policies which includes other liabilities, properties and locations of such insuring Person; provided, however, that if such blanket commercial general liability insurance policy or policies contain a general policy aggregate of less than Twenty Million and 00/100 Dollars (\$20,000,000.00) in Constant Dollars, then such insuring Person shall also maintain excess liability coverage necessary to establish a total liability insurance limit of Twenty Million and 00/100 Dollars (\$20,000,000.00) in Constant Dollars, (iii) a plan of self-insurance, provided that any Person so self-insuring (a) notifies all Owning Parties of the intent to self-insure and (b) agrees that upon written request such Person shall deliver to all Owning Party's each calendar year either (1) a copy of such Person's annual report that is audited by an independent certified public accountant which discloses that such Person has One Hundred Million and 00/100 Dollars (\$100,000,000.00) in Constant Dollars or more of tangible net worth, or (2) a written certification by an applicable officer of such Person that such Person maintains One Hundred Million and 00/100 Dollars (\$100,000,000.00) in Constant Dollars or more of tangible net worth, and that such program of self-insurance provides reasonably comparable protection as would be provided had such Person carried such insurance, or (iv) a combination of any of the foregoing insurance programs. Notwithstanding the foregoing, any Owning Party shall not be obligated to comply with the requirements set forth above to the extent that any Occupants of the Tract of such Owning Party have elected to self-insure and/or to assume the risks for matters which would otherwise be subject to the insurance coverages required above, provided that such Occupant satisfies the requirements of this Section 6.6 with respect to such self-insurance and/or assumption. To the extent any deductible is permitted or allowed as a part of any insurance policy carried by a Person in compliance with this Section, such Person shall be deemed to be covering the amount under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed Fifty Thousand and 00/100 Dollars (\$50,000.00) in Constant Dollars unless such Person complies with the requirements regarding self-insurance pursuant to subsection (iii) above. Each Person agrees to furnish to any Owning Party requesting the same, a certificate of insurance evidencing that the insurance required to be carried by such Person is in full force and effect.

Notwithstanding anything to the contrary contained herein, for so long as 7-Eleven, Inc. ("7-Eleven"), its successors, assigns, franchisees or subtenants, is the Occupant of Tract A, 7-Eleven shall have the right to self-insure all risks covered in



this Section 6 without the requirement of providing notice to the Owing Parties of such election pursuant to Section 6.6(iii)(a) above.

- 6.7 **Required Policy Provisions.** All insurance policies obtained pursuant to this Section shall provide (i) that the policy may not be canceled or reduced in amount or coverage below the requirements of this Declaration, without at least thirty (30) days prior written notice by the insurer to each insured and to each additional insured, (ii) for severability of interests, (iii) that an act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other named insureds and (iv) for contractual liability coverage with respect to the indemnity obligation set forth in this Section.

## ARTICLE VII DEFAULT

### 7. **Default.**

- 7.1 **Events of Default.** The occurrence of any one or more of the following events shall constitute a material default and breach of this Declaration by the non-performing Owing Party (the “**Defaulting Owing Party**”): (i) the failure to make any payment required to be made hereunder within ten (10) days of the due date or (ii) the failure to observe or perform any of the covenants, conditions or obligations of this Declaration, other than as described in (i), within thirty (30) days after the issuance of a notice by another Owing Party (the “**Non-Defaulting Owing Party**”) specifying the nature of the default claimed, or if such default cannot be cured within such thirty (30) day period, then the failure to commence to cure such default within such thirty (30) day period and to diligently pursue such cure to completion thereafter.
- 7.2 **Remedies.** In the event of any default, the Non-Defaulting Owing Party, or any Occupants of Tract of such Non-Defaulting Owing Party to whom such Non-Defaulting Owing Party has granted such rights, shall have the right to enforce this Declaration against Non-Defaulting Owing Party. In addition, with respect to any default above, any Non-Defaulting Owing Party shall have the right, but not the obligation, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the Defaulting Owing Party; provided, however, that in the event the default shall constitute an emergency condition, the Non-Defaulting Owing Party, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the Non-Defaulting Owing Party shall have the right to enter upon the Tract of the Defaulting Owing Party (but not into any building) to perform any necessary work

or furnish any necessary materials or services to cure the default of the Defaulting Owning Party. Each Owning Party shall be responsible for the default of its Occupants and Permittees. In the event any Non-Defaulting Owning Party shall cure a default, the Defaulting Owning Party shall reimburse the Non-Defaulting Owning Party for all costs and expenses incurred in connection with such curative action, plus interest as set forth in Section 7.6 of this Declaration, within ten (10) days of receipt of demand, together with reasonable documentation supporting the expenditures made.

- 7.3 **Lien of Costs and Expenses.** The costs and expenses accruing and/or assessed pursuant to this Section, including, without limitation, reasonable attorneys' fees, shall constitute a lien against the Defaulting Owning Party's Tract. The lien shall attach and take effect only upon recordation of a claim of lien in the office of the Recorder of Skagit County, Washington, by the Owning Party making the claim. The claim of lien shall be subordinate to existing mortgages and/or deeds of trust, and all extensions, modifications, supplements, and replacements of the same, and lease rights.
- 7.4 **No Waiver.** No waiver by any Owning Party of any default under this Declaration shall be effective or binding on such Owning Party unless made in writing by such Owning Party and no such waiver shall be implied from any omission by an Owning Party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers or any default under any provision of this Declaration shall not be deemed to be a waiver of any subsequent default in the performance or the same provision or any other term or provision contained in this Declaration.
- 7.5 **Enforcement.** Each Non-Defaulting Owning Party, and/or any Occupants to whom any Non-Defaulting Owning Party has granted the rights to enforce this Declaration against the Defaulting Owning Party, shall have the right to prosecute any proceedings at law or in equity against any Defaulting Owning Party, or any other Person, violating or attempting to violate or defaulting upon any of the provisions contained in this Declaration, and to recover damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another of any of the terms, covenants, or conditions of this Declaration, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition, except those, if any, requiring the payment of a liquidated sum, is not adequate. All of the remedies permitted or available to an Owning Party under this Declaration or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy. Any mortgagee shall have

the right, within the time period set out for curing a default, to cure any default by the Owning Party of the Tract securing its mortgage.

- 7.6 Interest. Any time an Owning Party shall not pay any sum payable hereunder to another within five (5) days after the due date, such delinquent Owning Party shall pay interest on such amount from the due date to and including the date such payment is received by the Person entitled thereto, at the lesser of (i) highest rate permitted by law to be paid on such type of obligation by the Person obligated to make such payment or the Person to whom such payment is due, or (ii) three percent (3%) per annum in excess of the prime rate from time to time publicly announced by Huntington National Bank, Cleveland, Ohio, or its successor.

#### ARTICLE VIII MISCELLANEOUS

8. Miscellaneous Provisions.

- 8.1 Estoppel Certificate. Each Owning Party agrees that within twenty (20) days of a written request of any other Owning Party, such Owning Party shall will issue to such requesting Owner Party, or to any prospective Occupant, mortgagee, holder of a deed of trust, or purchaser of the Tract of such requesting Owning Party, an estoppel certificate which shall act as a waiver of any claim by the Person furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement. Each such estoppel certificate shall state (i) to the best of such Owning Party's knowledge, whether any party subject to this Declaration is in default or whether any violation of this Declaration exists, and if so identifying such default or violation; (ii) that this Declaration is in full force and effect, and identifying any amendments to this Declaration as of the date of such certificate; and (iii) such other matters as may be reasonably requested with respect to this Declaration.
- 8.2 Notices. All notices, demands and requests (collectively the "Notice") required or permitted to be given under this Declaration shall be in writing and sent to that party by certified mail, return receipt requested, or sent by a nationally recognized "overnight" courier to the addresses set forth in this Declaration. Notices shall be effective the day the notice was deposited with the courier. The purported giving of notice by any means other than written notice given in strict compliance with this Section shall be null, void and of no force or effect, even if any such other means of communication succeeds in conveying the information contained in such notice. The initial address of the Developer and the Owning Party shall be:

**Developer:**

VWA - Mount Vernon, LLC  
Attn: Dominic A. Visconsi, Jr.  
30050 Chagrin Boulevard, Suite 360  
Pepper Pike, Ohio 44124

**With a copy to:**

Taft Stettinius & Hollister LLP  
Attn: William M. Phillips  
200 Public Square, Suite 3500  
Cleveland, Ohio 44114

- 8.3 Approval Rights. Except as otherwise expressly required under this Declaration, nothing contained in this Declaration shall limit the right of an Owning Party to exercise its business judgment, or act, in a subjective manner, with respect to any matter as to which it has specifically been granted such right, or the right to act in its sole discretion or sole judgment whether "objectively" reasonable under the circumstances, and any such exercise shall not be deemed inconsistent with any covenant of good faith and fair dealing otherwise implied by law to be part of this Declaration and this Declaration sets forth all terms, covenants, conditions and standards pursuant to which the obligations of the Owning Parties are to be judged and their performance measured. Unless provision is made for a specific time period, each response to a request for an approval or consent shall be given by the Person to whom directed within twenty (20) days of receipt. Each disapproval shall be in writing. If a response is not given within the required time period, the requested Owning Party shall be deemed to have given such requested Owning Party's approval.
- 8.4 Condemnation. In the event any portion of the Development shall be condemned, the award shall be paid to the Owning Party owning the land or the improvement taken, except that (i) if the taking includes improvements belonging to more than one Owning Party, such as Utility Lines or signs, a portion of the award equal to the value of such improvements shall be used to relocate, replace or restore such jointly owned improvements to a useful condition, and (ii) if the taking includes easement rights which are intended to extend beyond the term of this Declaration, a portion of the award equal to the value of such easement rights shall be paid to the respective grantee of the same. In addition to the foregoing, if a separate claim can be filed for the taking of any other property interest existing pursuant to this Declaration which does not reduce or diminish the amount paid to the Owning Party owning the land or the improvement taken, then the owner of such other property interest shall have the right to seek an award for the taking thereof.

- 8.5 **Binding Effect.** The terms of this Declaration and all easements granted hereunder shall constitute covenants running with the land and shall bind the real estate described herein and inure to the benefit of and be binding upon the signatories hereto and their respective successors and assigns who become Owning Parties as set forth in this Declaration. This Declaration is not intended to supersede, modify, amend, or otherwise change the provisions of any prior instrument affecting the land burdened hereby.
- 8.6 **Construction and Interpretation.** Whenever required by the context of this Declaration, (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa and (ii) use of the words "including", "such as", or words of similar import, when following any general term, statement or matter shall not be construed to limit such statement, term or matter to specific items, whether or not language of non-limitation, such as "without limitation", or "but not limited to", are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, terms or matter. The captions preceding the text of each article and section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Declaration. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Declaration. Invalidation of any of the provisions contained in this Declaration, or of the application thereof to any person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.
- 8.7 **Amendment.** Except as otherwise permitted under this Declaration, this Declaration may be amended by, and only by, a written agreement which has received the Approval of the Owning Parties and shall be effective only when recorded in the county and state where the Development is located; provided, however, that no such amendment shall impose any materially greater obligation, or materially impair any right of, an Owning Party or its Tract without the consent of such Owning Party. No consent to the amendment of this Declaration shall ever be required of any Occupant or Person other than the Owning Parties, nor shall any Occupant or Person other than the Owning Parties have any right to enforce any of the provisions hereof, unless the Owning Party having the right to enforce any of the provisions hereof shall have granted to such Occupant or Person such right of enforcement, and notice of such grant shall have been delivered to the Person against whom such enforcement is prosecuted. Each Owning Party may consider, approve or disapprove any proposed amendment to this Declaration to which its approval is required under this Declaration in its sole and absolute discretion without regard to reasonableness or timeliness.

- 8.8 Negation of Partnership. None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the Owning Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Owning Party shall be considered a separate owner, and no Owning Party shall have the right to act as an agent for another Owning Party, unless expressly authorized to do so herein or by separate written instrument signed by the Owning Party to be charged.
- 8.9 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Development or of any Tract or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any Owning Party hereto shall inure to the benefit of any third-Owning Party Person, nor shall any third-Owning Party Person be deemed to be a beneficiary of any of the provisions contained herein.
- 8.10 Excusable Delays. Whenever performance is required of any Person hereunder, such Person shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, including but not limited to, epidemics and pandemics, emergency declarations issued by the state or federal government, adverse or inclement weather beyond that typically experienced in the area of the Development, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of such Person, then the time for performance specified as set forth in this Declaration shall be appropriately extended by the amount of the delay actually so caused. The provisions of this section shall not operate to excuse any Person from the prompt payment of any monies required by this Declaration.
- 8.11 Mitigation of Damages. In all situations arising out of this Declaration, all Owning Parties shall attempt to avoid and mitigate the damages resulting from the conduct of any other Owning Party. Each Owning Party hereto shall take all reasonable measures to effectuate the provisions of this Declaration.
- 8.12 Declaration Shall Continue Notwithstanding Breach. It is expressly agreed that no breach of this Declaration shall (i) entitle any Owning Party to cancel, rescind, or otherwise terminate this Declaration, or (ii) defeat or render invalid the lien of any mortgage or deed of trust or the leasehold interest of any lease made in good faith and for value as to any part of the Development. Notwithstanding the foregoing, such limitation shall not affect in any manner any other rights or remedies which an Owning Party may have hereunder by reason of any such breach.
- 8.13 Time. Time is of the essence of this Declaration.

- 8.14 No Waiver. The failure of any Owing Party to insist upon strict performance of any of the terms covenants of conditions hereof shall not be deemed a waiver of any rights or remedies which that Owing Party may have hereunder, at law or in equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.
- 8.15 Limitation of Liability. Except as specifically provided below, there shall be absolutely no corporate or personal liability of persons, firms, corporations or entities who constitute an Owing Party hereto, including, but not limited to, officers, directors, employees or agents of an Owing Party hereto with respect to any of the terms, covenants, conditions, and provisions of this Declaration. In the event of default by a Defaulting Owing Party any Non-Defaulting Owing Party who seeks recovery from a Defaulting Owing Party hereto shall look solely to the interest of such Defaulting Owing Party, its successors and assigns, in the Defaulting Owing Party's Tract for the satisfaction of each and every remedy of the Non-Defaulting Owing Party; provided, however, the foregoing shall not in any way impair, limit or prejudice the right of any Owing Party: (i) to pursue equitable relief in connection with any term, covenants or condition of this Declaration, including a proceeding for temporary restraining order, preliminary injunction, permanent injunction or specific performance; and (ii) to recover from another Owing Party all losses suffered, liabilities incurred or costs imposed arising out of or in connection with, or on account of, such Owing Party not funding its self-insurance obligations which were assumed pursuant to the terms and conditions of this Declaration.
- 8.16 Term of this Declaration. Except as specifically provided herein, the easements, rights and privileges created hereby shall be perpetual. Notwithstanding the foregoing, if any restrictive covenant set forth herein would expire by operation of law if not renewed, then it shall be automatically renewed for successive ten (10) year periods unless all of the Owing Parties of Tract and any parties owning at that time any security interest in any of the Tracts shall execute and record in the Skagit County, Washington real estate records a statement terminating such restrictive covenant within sixty (60) days of the expiration of such statutory period or any ten (10) year renewal of the same.

*(Signature Page to Follow)*

In witness whereof, the parties have caused this Declaration to be executed effective as of the day and year first above written.

DEVELOPER:

VWA - Mount Vernon, LLC,  
an Ohio limited liability company

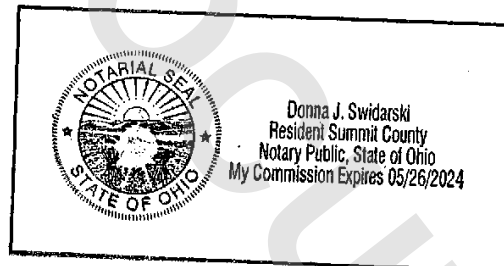
By: Donna J. Swidarski  
Name: Dominic A. Visconsi, Jr.  
Its: Manager

STATE OF OHIO :  
: SS:  
COUNTY OF CUYAHOGA :

This is an acknowledgment clause. No oath or affirmation was administered to the signer.

On this 19<sup>th</sup> day of JULY, 2021, before me, a Notary Public within and for said county, personally appeared Dominic A. Visconsi, Jr. to me personally known, being duly sworn by me, did say that he is the Manager of VWA - Mount Vernon, LLC, and that said instrument was signed on behalf of said limited liability company by authority of its Manager and Manager acknowledged said instrument to be the free act and deed of said limited liability company.

Donna J. Swidarski  
NOTARY PUBLIC





**Exhibit "A"**

**Legal Description of the Land**

**[See attached]**



**Pacific Surveying & Engineering, Inc**  
 land surveying • civil engineering • consulting • environmental  
 909 Squallcum Way #111, Bellingham, WA 98225  
 Phone 360.671.7387 Facsimile 360.671.4685 Email [info@pacificsurvey.com](mailto:info@pacificsurvey.com)

# EXHIBIT 'A'

LOTS 1, 2, 4, 6 AND 7, CITY OF MOUNT VERNON BOUNDARY LINE ADJUSTMENT NO. ENGR19-0308, APPROVED OCTOBER 2, 2019, AND RECORDED UNDER SKAGIT COUNTY AUDITOR'S FILE NO. 201910040056, TOGETHER WITH THAT PORTION OF FORMER REMNANT RAILROAD PROPERTY AS DEEDED TO VWA-MOUNT VERNON, LLC UNDER SKAGIT COUNTY AUDITOR'S FILE NO. 201910280074, AND TOGETHER WITH TRACTS CONVEYED TO VWA-MOUNT VERNON, LLC BY THE CITY OF MOUNT VERNON UNDER SKAGIT COUNTY AUDITOR'S FILE NO. 201910040083, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

## LOT 1 ALFCO BLA

THOSE PORTIONS OF LOTS 1 THROUGH 4, INCLUSIVE, BLOCK 2, "KINCAID'S ADDITION TO MT. VERNON, SKAGIT CO., WASH.", AS PER PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 84, RECORDS OF SKAGIT COUNTY, WASHINGTON, TOGETHER WITH THE SOUTHERLY ONE-HALF OF VACATED ALLEY BETWEEN BLOCK 1 AND SAID BLOCK 2, ALSO BEING WITHIN A PORTION OF THE WEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M., SKAGIT COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE ORIGINAL SOUTHERLY RIGHT-OF-WAY LINE OF KINCAID STREET, ACCORDING TO THE RECORDED PLAT OF THE TOWN OF MOUNT VERNON, WASHINGTON, AND A LINE DRAWN PARALLEL WITH AND DISTANT 54.0 FEET EASTERLY OF, AS MEASURED AT RIGHT ANGLES TO BURLINGTON NORTHERN RAILROAD COMPANY'S (FORMERLY GREAT NORTHERN RAILWAY COMPANY'S) MAIN TRACK CENTERLINE, AS ORIGINALLY LOCATED AND CONSTRUCTED; THENCE SOUTHERLY PARALLEL WITH SAID MAIN TRACK CENTERLINE SOUTH 01°53'12" WEST 14.95 FEET TO THE CURRENT SOUTHERLY RIGHT OF WAY MARGIN OF KINCAID STREET AS DESCRIBED UNDER SKAGIT COUNTY AUDITOR'S FILE NO. 200005080050; THENCE ALONG SAID CURRENT SOUTHERLY RIGHT OF WAY MARGIN THE FOLLOWING COURSES AND DISTANCES:

SOUTH 01°53'12" WEST 10.00 FEET;  
 THENCE SOUTH 88°09'10" EAST 78.10 FEET;  
 THENCE SOUTH 77°03'33" EAST 25.99 FEET;  
 THENCE SOUTH 88°09'10" EAST 75.45 FEET TO AN ANGLE POINT;  
 THENCE SOUTH 22°35'48" EAST 10.98 FEET;

THENCE DEPARTING SAID RIGHT OF WAY MARGIN SOUTH 01°50'50" WEST 89.00 FEET; THENCE SOUTH 88°09'10" EAST 29.94 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 88°09'10" EAST 0.06 FEET TO THE NORTHWEST CORNER OF LOT 1, BLOCK 2, "KINCAID'S ADDITION TO MT. VERNON, SKAGIT CO., WASH.", AS PER PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 84, RECORDS OF SKAGIT COUNTY, WASHINGTON, THENCE ALONG THE NORTHERLY EXTENSION

OF THE WEST LINE OF SAID LOT 1 NORTH 01°50'50" EAST 7.00 FEET TO THE CENTERLINE OF SAID VACATED ALLEY; THENCE ALONG SAID ALLEY CENTERLINE SOUTH 88°09'10" EAST 141.44 FEET; THENCE DEPARTING SAID CENTERLINE SOUTH 01°53'12" EAST 47.63 FEET; THENCE AT RIGHT ANGLES NORTH 88°06'48" WEST 19.00 FEET; THENCE AT RIGHT ANGLES SOUTH 01°53'12" WEST 131.51 FEET; THENCE AT RIGHT ANGLES NORTH 88°06'48" WEST 122.50 FEET; THENCE AT RIGHT ANGLES NORTH 01°53'12" EAST 172.04 FEET TO THE POINT OF BEGINNING.

**LOT 2 ALFCO BLA**

COMMENCING AT THE INTERSECTION OF THE ORIGINAL SOUTHERLY RIGHT-OF-WAY LINE OF KINCAID STREET, ACCORDING TO THE RECORDED PLAT OF THE TOWN OF MOUNT VERNON, WASHINGTON, AND A LINE DRAWN PARALLEL WITH AND DISTANT 54.0 FEET EASTERLY OF, AS MEASURED AT RIGHT ANGLES TO BURLINGTON NORTHERN RAILROAD COMPANY'S (FORMERLY GREAT NORTHERN RAILWAY COMPANY'S) MAIN TRACK CENTERLINE, AS ORIGINALLY LOCATED AND CONSTRUCTED; THENCE SOUTHERLY PARALLEL WITH SAID MAIN TRACK CENTERLINE SOUTH 01°53'12" WEST 14.95 FEET TO THE CURRENT SOUTHERLY RIGHT OF WAY MARGIN OF KINCAID STREET AS DESCRIBED UNDER SKAGIT COUNTY AUDITOR'S FILE NO. 200005080050, THENCE ALONG SAID CURRENT SOUTHERLY RIGHT OF WAY MARGIN THE FOLLOWING COURSES AND DISTANCES:

SOUTH 01°53'12" WEST 10.00 FEET;  
THENCE SOUTH 88°09'10" EAST 78.10 FEET;  
THENCE SOUTH 77°03'33" EAST 25.99 FEET;  
THENCE SOUTH 88°09'10" EAST 75.45 FEET TO AN ANGLE POINT;  
THENCE SOUTH 22°35'48" EAST 10.98 FEET;

THENCE DEPARTING SAID RIGHT OF WAY MARGIN SOUTH 01°50'50" WEST 89.00 FEET; THENCE SOUTH 88°09'10" EAST 30.00 FEET TO THE NORTHWEST CORNER OF LOT 1, BLOCK 2, "KINCAID'S ADDITION TO MT. VERNON, SKAGIT CO., WASH.", AS PER PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 84, RECORDS OF SKAGIT COUNTY, WASHINGTON; THENCE ALONG THE NORTHERLY EXTENSION OF THE WEST LINE OF SAID LOT 1 NORTH 01°50'50" EAST 7.00 FEET TO THE CENTERLINE OF SAID VACATED ALLEY; THENCE ALONG SAID ALLEY CENTERLINE SOUTH 88°09'10" EAST 141.44 FEET TO THE POINT OF BEGINNING; THENCE DEPARTING SAID CENTERLINE SOUTH 01°53'12" EAST 47.63 FEET; THENCE AT RIGHT ANGLES NORTH 88°06'48" WEST 19.00 FEET; THENCE AT RIGHT ANGLES SOUTH 01°53'12" WEST 131.51 FEET; THENCE AT RIGHT ANGLES NORTH 88°06'48" WEST 122.50 FEET; THENCE AT RIGHT ANGLES SOUTH 01°53'12" EAST 24.00 FEET; THENCE AT RIGHT ANGLES SOUTH 88°06'48" EAST 122.50 FEET; THENCE AT RIGHT ANGLES SOUTH 01°53'12" WEST 9.50 FEET; THENCE AT RIGHT ANGLES SOUTH 88°06'48" EAST 36.70 FEET TO A POINT ON THE EAST LINE OF SAID BLOCK 2; THENCE ALONG SAID EAST LINE NORTH 01°50'50" EAST 209.13 FEET, MORE OR LESS, TO THE WESTERLY MARGIN OF INTERSTATE 5; THENCE ALONG SAID WESTERLY MARGIN NORTH 23°33'59" WEST 3.89 FEET, MORE OR LESS, TO SAID ALLEY CENTERLINE; THENCE ALONG SAID ALLEY CENTERLINE NORTH 88°09'10" WEST 15.89 FEET TO THE POINT OF BEGINNING.

**LOT 3 ALFCO BLA**

THAT PORTION OF THE WEST ¼ OF THE SOUTHWEST ¼ OF SECTION 20,  
TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M., SKAGIT COUNTY, WASHINGTON,  
DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE ORIGINAL SOUTHERLY RIGHT-OF-WAY LINE OF KINCAID STREET, ACCORDING TO THE RECORDED PLAT OF THE TOWN OF MOUNT VERNON, WASHINGTON, AND A LINE DRAWN PARALLEL WITH AND DISTANT 54.0 FEET EASTERLY OF, AS MEASURED AT RIGHT ANGLES TO BURLINGTON NORTHERN RAILROAD COMPANY'S (FORMERLY GREAT NORTHERN RAILWAY COMPANY'S) MAIN TRACK CENTERLINE, AS ORIGINALLY LOCATED AND CONSTRUCTED, THENCE SOUTHERLY PARALLEL WITH SAID MAIN TRACK CENTERLINE SOUTH 01°53'12" WEST 14.95 FEET TO THE CURRENT SOUTHERLY RIGHT OF WAY MARGIN OF KINCAID STREET AS DESCRIBED UNDER SKAGIT COUNTY AUDITOR'S FILE NO. 200005080050, THENCE ALONG SAID CURRENT SOUTHERLY RIGHT OF WAY MARGIN THE FOLLOWING COURSES AND DISTANCES:

SOUTH 01°53'12" WEST 10.00 FEET;  
THENCE SOUTH 88°09'10" EAST 78.10 FEET;  
THENCE SOUTH 77°03'33" EAST 25.99 FEET;  
THENCE SOUTH 88°09'10" EAST 61.01 FEET TO THE POINT OF BEGINNING,

THENCE CONTINUING ALONG SAID SOUTHERLY RIGHT OF WAY MARGIN SOUTH 88°09'10" EAST 14.45 FEET TO AN ANGLE POINT; THENCE SOUTH 22°35'48" EAST 10.98 FEET; THENCE DEPARTING SAID RIGHT OF WAY MARGIN SOUTH 01°50'50" WEST 89.00 FEET; THENCE SOUTH 88°09'10" EAST 29.94 FEET; THENCE SOUTH 01°53'12" WEST 197.54 FEET; THENCE AT RIGHT ANGLES NORTH 88°06'48" WEST 49.00 FEET; THENCE AT RIGHT ANGLES NORTH 01°53'12" EAST 296.50 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ANY PORTION OF SAID LOT 3 LYING WITHIN THE AREA DEDICATED TO THE CITY OF MOUNT VERNON FOR PUBLIC STREET UNDER SKAGIT COUNTY AUDITOR'S FILE NO. 202102170166.

**LOT 4 ALFCO BLA**

THAT PORTION OF THE WEST ¼ OF THE SOUTHWEST ¼ OF SECTION 20,  
TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M., SKAGIT COUNTY, WASHINGTON,  
DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE ORIGINAL SOUTHERLY RIGHT-OF-WAY LINE OF KINCAID STREET, ACCORDING TO THE RECORDED PLAT OF THE TOWN OF MOUNT VERNON, WASHINGTON, AND A LINE DRAWN PARALLEL WITH AND DISTANT 54.0 FEET EASTERLY OF, AS MEASURED AT RIGHT ANGLES TO BURLINGTON NORTHERN RAILROAD COMPANY'S (FORMERLY GREAT NORTHERN RAILWAY COMPANY'S) MAIN TRACK CENTERLINE, AS ORIGINALLY LOCATED AND CONSTRUCTED, THENCE SOUTHERLY PARALLEL WITH SAID MAIN TRACK CENTERLINE SOUTH 01°53'12" WEST 14.95 FEET TO THE CURRENT SOUTHERLY RIGHT OF WAY MARGIN OF KINCAID STREET AS DESCRIBED UNDER SKAGIT COUNTY AUDITOR'S FILE NO. 200005080050 AND THE POINT OF BEGINNING;

THENCE ALONG SAID CURRENT SOUTHERLY RIGHT OF WAY MARGIN THE FOLLOWING COURSES AND DISTANCES:

SOUTH 01°53'12" WEST 10.00 FEET;  
THENCE SOUTH 88°09'10" EAST 78.10 FEET;  
THENCE SOUTH 77°03'33" EAST 25.99 FEET;  
THENCE SOUTH 88°09'10" EAST 61.01 FEET;

THENCE DEPARTING SAID SOUTHERLY MARGIN AND PARALLEL WITH SAID MAIN TRACK CENTERLINE SOUTH 01°53'12" WEST 250.50 FEET; THENCE AT RIGHT ANGLES NORTH 88°06'48" WEST 178.01 FEET TO A POINT 40.60 FEET EAST OF SAID MAIN TRACK CENTERLINE; THENCE AT RIGHT ANGLES, BEING PARALLEL WITH AND 40.60 FEET EASTERLY OF SAID MAIN TRACK CENTERLINE NORTH 01°53'12" EAST 265.38 FEET TO SAID CURRENT SOUTHERLY RIGHT OF WAY MARGIN OF KINCAID STREET; THENCE ALONG SAID MARGIN SOUTH 88°09'10" EAST 13.40 FEET TO THE POINT OF BEGINNING

**LOT 6 ALFCO BLA**

THAT PORTION OF THE WEST ¼ OF THE SOUTHWEST ¼ OF SECTION 20, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M., SKAGIT COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE ORIGINAL SOUTHERLY RIGHT-OF-WAY LINE OF KINCAID STREET, ACCORDING TO THE RECORDED PLAT OF THE TOWN OF MOUNT VERNON, WASHINGTON, AND A LINE DRAWN PARALLEL WITH AND DISTANT 54.0 FEET EASTERLY OF, AS MEASURED AT RIGHT ANGLES TO BURLINGTON NORTHERN RAILROAD COMPANY'S (FORMERLY GREAT NORTHERN RAILWAY COMPANY'S) MAIN TRACK CENTERLINE, AS ORIGINALLY LOCATED AND CONSTRUCTED; THENCE SOUTHERLY PARALLEL WITH SAID MAIN TRACK CENTERLINE SOUTH 01°53'12" WEST 14.95 FEET TO THE CURRENT SOUTHERLY RIGHT OF WAY MARGIN OF KINCAID STREET AS DESCRIBED UNDER SKAGIT COUNTY AUDITOR'S FILE NO. 200005080050 AND THE POINT OF BEGINNING; THENCE ALONG SAID CURRENT SOUTHERLY RIGHT OF WAY MARGIN THE FOLLOWING COURSES AND DISTANCES:

SOUTH 01°53'12" WEST 10.00 FEET;  
THENCE SOUTH 88°09'10" EAST 78.10 FEET;  
THENCE SOUTH 77°03'33" EAST 25.99 FEET;  
THENCE SOUTH 88°09'10" EAST 61.01 FEET;

THENCE DEPARTING SAID SOUTHERLY MARGIN AND PARALLEL WITH SAID MAIN TRACK CENTERLINE SOUTH 01°53'12" WEST 250.50 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 01°53'12" WEST 46.00 FEET; THENCE AT RIGHT ANGLES SOUTH 88°06'48" EAST 30.00 FEET; THENCE AT RIGHT ANGLES SOUTH 01°53'12" WEST 102.47 FEET; THENCE NORTH 88°09'10" WEST 194.61 FEET; THENCE PARALLEL WITH SAID MAIN TRACK CENTERLINE SOUTH 01°50'50" WEST 3.11 FEET; THENCE SOUTH 88°09'10" EAST 194.61 FEET; THENCE SOUTH 01°53'12" WEST 46.89 FEET TO A POINT ON THE WESTERLY EXTENSION OF THE SOUTH LINE OF LOT 1, BLOCK 1 OF THE PLAT OF "PICKEN'S ADDITION TO THE TOWN OF MT. VERNON", AS PER THE PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 105,

RECORDS OF SKAGIT COUNTY, WASHINGTON; THENCE ALONG SAID WESTERLY EXTENSION NORTH 88°09'10" WEST 207.98 FEET; THENCE PARALLEL WITH SAID MAIN TRACK CENTERLINE NORTH 01°50'50" EAST 50.00 FEET; THENCE PARALLEL WITH SAID MAIN TRACK CENTERLINE NORTH 01°53'12" EAST 148.62 FEET; THENCE AT RIGHT ANGLES SOUTH 88°06'48" EAST 178.01 FEET TO THE POINT OF BEGINNING.

**LOT 7 ALFCO BLA**

THAT PORTION OF LOTS 4 THROUGH 6, BLOCK 2, PLAT OF "KINCAID'S ADDITION TO MT. VERNON, SKAGIT CO., WASH.", AS PER PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 84, RECORDS OF SKAGIT COUNTY, WASHINGTON, TOGETHER WITH LOT 1, BLOCK 1 AND LOT 16, BLOCK 2 OF THE PLAT OF "PICKEN'S ADDITION TO THE TOWN OF MT. VERNON", AS PER THE PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 105, RECORDS OF SKAGIT COUNTY, WASHINGTON, AND A PORTION OF THE WEST ¼ OF THE SOUTHWEST ¼ OF SECTION 20, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M., SKAGIT COUNTY WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 1, BLOCK 1 OF SAID PICKEN'S ADDITION PLAT; THENCE ALONG THE WESTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 1 NORTH 88°09'10" WEST 19.30 FEET; THENCE NORTH 01°53'12" EAST 48.89 FEET; THENCE PARALLEL WITH SAID WESTERLY EXTENSION SOUTH 88°09'10" EAST 19.27 FEET TO THE WEST LINE OF SAID LOT 1; THENCE ALONG SAID WEST LINE NORTH 01°50'50" EAST 3.11 FEET TO THE NORTHWEST CORNER OF SAID LOT 1; THENCE ALONG THE WESTERLY EXTENSION OF THE NORTH LINE OF SAID LOT 1 NORTH 88°09'10" WEST 19.27 FEET; THENCE NORTH 01°53'12" EAST 102.47 FEET; THENCE AT RIGHT ANGLES SOUTH 88°06'48" EAST 19.00 FEET; THENCE AT RIGHT ANGLES NORTH 01°53'12" EAST 1.50 FEET; THENCE AT RIGHT ANGLES SOUTH 88°06'48" EAST 122.50 FEET; THENCE AT RIGHT ANGLES SOUTH 01°53'12" WEST 9.50 FEET; THENCE AT RIGHT ANGLES SOUTH 88°06'48" EAST 36.70 FEET TO THE WEST LINE OF VACATED 6<sup>TH</sup> STREET AS DEDICATED ON SAID KINCAID'S ADDITION PLAT; THENCE ALONG SAID WEST LINE SOUTH 01°50'50" WEST 94.35 FEET TO THE SOUTH LINE OF SAID PLAT; THENCE ALONG SAID SOUTH LINE SOUTH 88°09'10" EAST 136.54 FEET, MORE OR LESS, TO THE WESTERLY RIGHT OF WAY MARGIN OF INTERSTATE 5; THENCE ALONG SAID WESTERLY MARGIN SOUTH 18°41'06" EAST 53.39 FEET TO THE SOUTH LINE OF SAID LOT 16, BLOCK 2, PICKEN'S ADDITION PLAT; THENCE ALONG SAID SOUTH LINE AND EXTENSION THEREOF NORTH 88°09'10" WEST 314.27 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH THAT PORTION OF VACATED 6<sup>TH</sup> STREET ABUTTING SAID LOTS 1 AND 16 OF PLAT OF PICKEN'S ADDITION, AS VACATED UNDER CITY OF MT. VERNON ORDINANCE NUMBER 201908270086.

EXCEPT ANY PORTION THEREOF CONTAINED WITHIN WARRANTY DEED TO STATE OF WASHINGTON FOR HIGHWAY PURPOSES UNDER SKAGIT COUNTY AUDITOR'S FILE NO. 771195.

**BNSF GAP PROPERTY:**

THAT PORTION OF THE SOUTHWEST ¼ OF THE SOUTHWEST ¼ OF SECTION 20, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M., DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE WEST LINE OF SAID SOUTHWEST ¼ OF THE SOUTHWEST ¼ THAT IS 462.11 FEET SOUTH OF THE NORTHWEST CORNER THEREOF; THENCE EASTERLY PERPENDICULAR TO SAID WEST LINE, A DISTANCE OF 65 FEET, MORE OR LESS, TO A POINT PERPENDICULAR AND 54 FEET EASTERLY, FROM THE CENTER LINE OF THE MAIN TRACK OF THE RAILWAY OF THE GREAT NORTHERN RAILWAY COMPANY, AS LOCATED ON MAY 8, 1955 TO THE TRUE POINT OF BEGINNING, WHICH POINT IS ALSO THE NORTHWEST CORNER OF THE SECOND PARCEL OF LAND DESCRIBED ON THAT CERTAIN DEED IN FAVOR OF LIBBY, MCNEILL & LIBBY CORPORATION BY DEED RECORDED OCTOBER 31, 1955 AS SKAGIT COUNTY AUDITOR'S FILE NUMBER 526435; THENCE EASTERLY ALONG THE NORTH LINE OF SAID LIBBY, MCNEILL & LIBBY PARCEL 215 FEET, MORE OR LESS, TO THE NORTHEAST CORNER THEREOF, SAID POINT BEING ON A LINE 280 FEET PERPENDICULAR TO THE WEST LINE OF SAID SUBDIVISION; THENCE NORTH, A DISTANCE OF 3.11 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF THAT CERTAIN TRACT OF LAND CONVEYED TO THE GLACIER PARK COMPANY AS PARCEL 1 ON THAT CERTAIN DEED RECORDED JULY 2, 1989 AS AUDITOR'S FILE NO. 8906020025; THENCE WESTERLY ALONG THE SOUTH LINE OF SAID GLACIER PARK PARCEL 215 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER THEREOF; THENCE SOUTH 3.11 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING.

**PARCEL "1" AF NO. 201910040083:**

THAT PORTION OF LOTS 8, 9, 10 AND 11, BLOCK 3, AND THAT PORTION OF SOUTH 6TH STREET LYING BETWEEN SAID BLOCK 3 AND BLOCK 2 OF KINCAID'S ADDITION TO MOUNT VERNON, AS PER PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 84, RECORDS OF SKAGIT COUNTY, WASHINGTON, LYING WESTERLY OF A LINE DRAWN PARALLEL WITH AND 85 FEET DISTANT SOUTHWESTERLY MEASURED AT RIGHT ANGLES, FROM THE KINCAID STREET RAMP CENTERLINE OF PRIMARY HIGHWAY NO. 1, CONWAY JCT., PRIMARY STATE HIGHWAY NO. 1, NORTH OF BURLINGTON, THE SPECIFIC DETAILS CONCERNING ALL OF WHICH ARE TO BE FOUND WITHIN THAT CERTAIN MAP OF DEFINITE LOCATION NOW OF RECORD AND ON FILE IN THE OFFICE OF THE DIRECTOR OF HIGHWAYS AT OLYMPIA, AND BEARING DATE OF APPROVAL JANUARY 27, 1953, REVISED NOVEMBER 3, 1954.

EXCEPT THAT PORTION, THEREOF, IF ANY, NOT LYING WITHIN THE PROPERTY CONVEYED TO THE CITY OF MOUNT VERNON BY DEED RECORDED UNDER AUDITOR'S FILE NO. 842193.

**PARCEL "2" AF NO. 201910040083:**

LOTS 1 TO 4 INCLUSIVE, BLOCK 1, KINCAID'S ADDITION TO MT. VERNON, SKAGIT CO., WASH., AS PER PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 84, RECORDS OF SKAGIT COUNTY.

EXCEPTING THEREFROM THAT PORTION LYING NORTHEASTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT OF INTERSECTION OF THE SOUTH LINE OF SAID LOT 4 WITH THE WESTERLY RIGHT OF WAY LINE OF SR 5, AS SHOWN ON SR 5, MOUNT VERNON, BLACKBURN ST. TO SKAGIT RIVER, AS IT EXISTED ON JULY 7, 2018, THENCE NORTHWESTERLY ALONG SAID WESTERLY RIGHT OF WAY LINE TO A POINT ON THE WEST LINE OF SAID LOT 1, BEING A POINT OPPOSITE HIGHWAY ENGINEER'S STATION K 2+80, ON THE K LINE SURVEY OF SAID HIGHWAY, AND 70 FEET SOUTHERLY THEREFROM AND THE TERMINUS OF THIS LINE DESCRIPTION.

**PARCEL "BB":**

THAT PORTION OF THE SOUTH 129 FEET OF THE NORTH 159 FEET OF THE EAST 30 FEET OF THE WEST 280 FEET OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M. LYING WITHIN THE PROPERTY CONVEYED TO THE CITY OF MOUNT VERNON BY DEED RECORDED AS SKAGIT COUNTY AUDITOR'S FILE NO. 842193.

EXCEPTING THEREFROM ANY PORTION OF SAID PARCEL "BB" LYING WITHIN THE AREA DEDICATED TO THE CITY OF MOUNT VERNON FOR PUBLIC STREET UNDER SKAGIT COUNTY AUDITOR'S FILE NO. 202102170166.

TOGETHER WITH VACATED ROADS AND ALLEYS ABUTTING, AS THE SAME HAVE EITHER BEEN OR ARE TO BE VACATED.

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





Exhibit "B-1"

Original Lots [see attached]

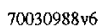
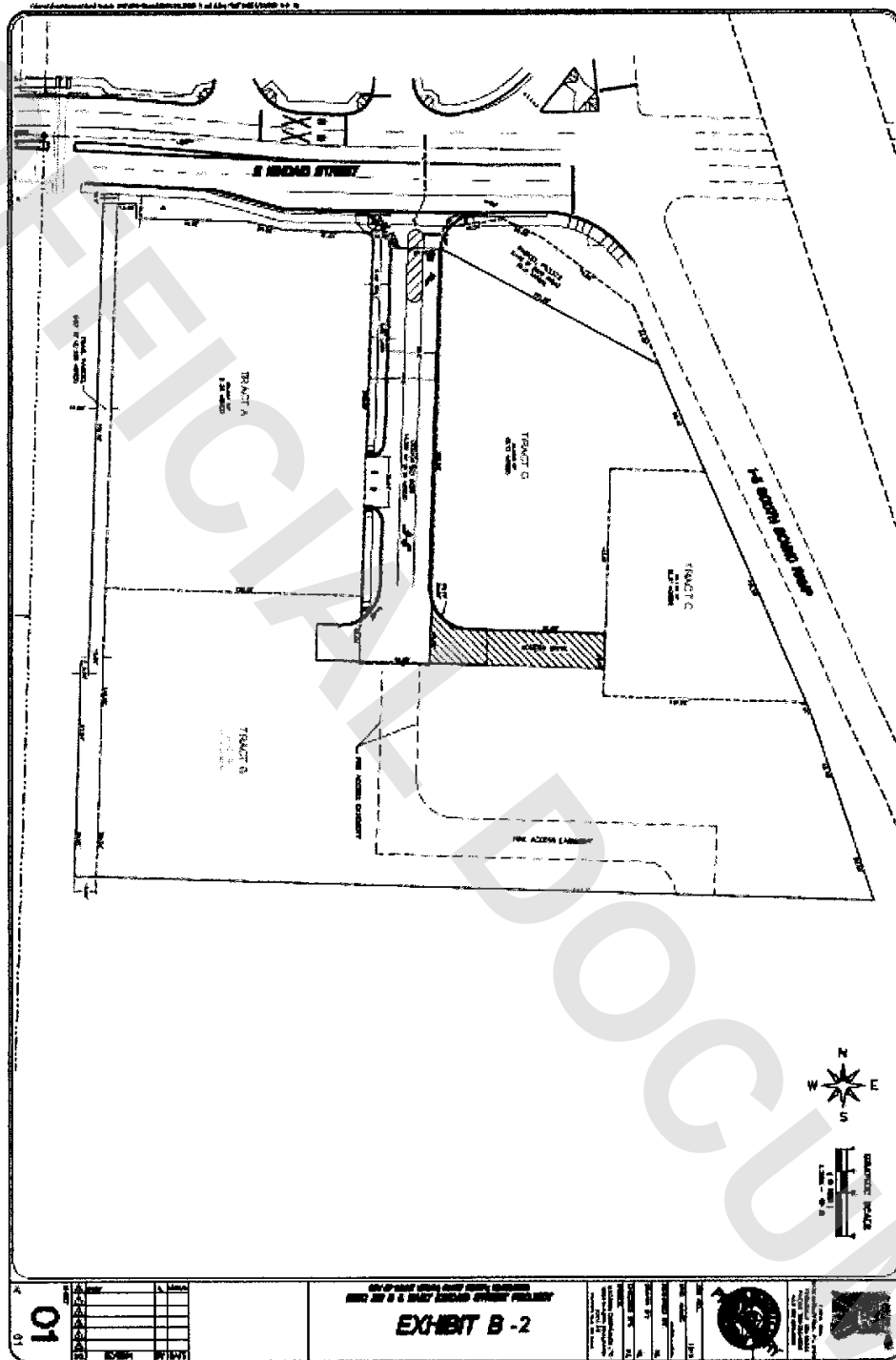


Exhibit "B-2"

Site Plan [see attached]



## Exhibit "C"

## Use Restrictions

7-11

(A) A retail motor fuels dispensing business, (B) a Convenience Store (as defined below), (C) a drug-store business, such as, by way of example and not limitation, Bartell Drugs, Walgreens, CVS, Rite Aid, or (D) a vehicle or business which offers for sale in connection with all or any part of its business operations upon such premises any of the following items:

- (i) packaged fluid milk in one quart or larger containers;
- (ii) fresh or commercially packaged bakery or bread products commonly sold from a Convenience Store, unless sold from a restaurant or another business primarily engaged in serving prepared to order ready-to-eat food items for consumption on or off the premises, regardless of whether such business has waiter and/or waitress service (such a business being referred to herein as an "Excluded Food Business");
- (iii) delicatessen and delicatessen type items, including, but not limited to, packaged lunch meats, pre-prepared sandwiches and foods, chicken wings and chicken fingers, grill items (such as hot dogs), burritos, taquitos, pre-made salads and fruit cups or fruit salad for consumption on or off premises, unless sold from an Excluded Food Business;
- (iv) pizza, by the slice or otherwise, unless sold from an Excluded Food Business;
- (v) grocery items commonly sold from a Convenience Store for consumption or use off premises;
- (vi) cigarettes, tobacco products and devices which simulate tobacco or other smoking, such as, for example, electronic cigarettes and vaporizers, unless vended by machine;
- (vii) beer and wine sold for consumption off premises (excluding such sales by an Excluded Food Business);
- (viii) health and beauty care products, except for sales of such items from a business which is primarily engaged in sales of health or beauty care products;

- (ix) chilled, single-serve frozen or semi-frozen carbonated beverages, unless sold from an Excluded Food Business;
- (x) energy drinks by the case or single-serve bottles or cans for consumption off premises, unless sold from a cooler or other display area not exceeding four (4) feet in width;
- (xi) beverages in six pack, eight pack, twelve pack, case lots, or half, one or two-liter bottles;
- (xii) candy, unless sold from a candy store or gift boxed or sold in bulk or sold from an Excluded Food Business;
- (xiii) hot coffee drinks, cold coffee drinks, and/or frozen drinks unless sold from an Excluded Food Business or from a Coffee Shop (as hereafter defined);
- (xiv) newspapers, magazines and paperback books, unless sold from a bookstore (other than newspapers, magazines and/or paperback books sold by an occupant of premises within the Development and which relate to the primary business of such occupant on such premises);
- (xv) lottery tickets, money order (except from a bank), phone cards (except from a phone specialty store); and/or
- (xvi) gift cards (other than gift cards sold by an occupant of premises within the Development for the particular business operated by such occupant on such premises).

Notwithstanding the foregoing, the sale by any other tenant or occupant of the Development of products subject to the restrictions in (i) (xvi) above on an incidental basis (i.e., sales of all such items from a total of less than three percent (3%) of the total sales floor area and retail shelving, counter, and similar facilities within the premises occupied by such tenant or occupant within the Development) shall not be deemed a violation of such restrictions.

For purposes hereof, a "Convenience Store" shall mean a retail store selling, renting or providing a combination of staple groceries, health and beauty aids, snacks, beverages, prepared foods, and beer, wine, and alcohol products, and including by way of example, but not limited to, merchandise and/or services customarily sold, rented or provided from time to time at stores such as a Main Street Grocery, Sunbow Food Mart, Reservation Outpost, Circle K, or EZ Mart.

For purposes hereof, a "Coffee Shop" shall mean any specialty coffee shop or any business operation whose primary or significant trade is the retail sale of coffee or coffee-related food and beverages, including, but not limited to a Starbucks, Peels, Seattle's Best Coffee, Caribou Coffee, Gloria Jeans, and other national, regional or "mom and pop" coffee shops or businesses.

Wendy's:

The primary business of a fast-food restaurant with a drive-thru window and non-table service primarily selling hamburgers, chicken sandwiches, any other type of products served in sandwich form, ground meat or meat substitute, or a combination of ground meat and meat substitute and substitute chicken sandwiches.

The Wendy's exclusive shall not prohibit the sale of hamburgers, chicken sandwiches, any other type of products served in sandwich form, ground meat or meat substitute, or a combination of ground meat and meat substitute and substitute chicken sandwiches by any tenant or occupant of the Development to the extent such sales are equal to, or less than, fifteen percent (15%) of the gross sales of such tenant or occupant.

## MOB

- A. So long as Tenant is not in default under this Lease and is operating in the Premises for purposes of the Medical Office Building Use, during the term of this Lease Landlord shall not enter into a lease with any tenant for space within the Project which would permit such tenant to operate for purposes of the Medical Office Building Use (the "Restricted Use"). Landlord shall not be obligated to enforce the Restricted Use if Landlord shall receive any claim from any third party and/or governmental agency that the Restricted Use violates any federal, state, or local ordinance, rule, or regulation, unless Tenant agrees to pay the cost thereof; provided that nothing herein this subsection (ii) shall otherwise limit Landlord's obligations under B below.
- B. So long as Tenant is not in default under this Lease, and is open and operating in the Premises for purposes of the Medical Office Building Use, Landlord shall not enter into a lease, license or other similar agreement with any tenant for space within the Project with any other medical provider which would cause material commercial damage to Tenant or adversely impact Tenant's health oriented mission (the "Prohibited Use") without the prior written consent of Tenant; provided, however that the "Prohibited Use" shall not be deemed to prohibit any medical providers who primarily provide optical, dental, chiropractic, and/or naturopathic medical services.
- C. Notwithstanding the foregoing, the Restricted Use and the Prohibited Use shall not be applicable to existing leases or other existing occupancy agreements in effect as of the effective date of the MOB lease.

Exhibit "D"

**Development Agreements**

1. Public Benefits Agreement by and between Landlord and the City of Mount Vernon recorded October 4, 2019 under Auditor's File No. 201910040085.
2. Public Trail Access and Maintenance Easement Agreement recorded October 4, 2019 as Auditor's File No. 201910040088
3. Covenant and Easement for Maintenance recorded October 4, 2019 under Auditor's File No. 201910040087.