

AFTER RECORDING RETURN TO:

Jeffrey E. Hamilton
Sultan 144, LLC
15 Lake Bellevue Drive, Suite 102
Bellevue, WA 98005-2485

**CITY OF SULTAN
DEVELOPER/SUBDIVISION AGREEMENT
GREENS ESTATES**

GRANTOR: **SULTAN 144, LLC**
GRANTEE: **CITY OF SULTAN, a municipal corporation**
Parcel Numbers: **28083300200700**

A. PREAMBLE

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 2009, by and between the City of Sultan, a Municipal Corporation, hereinafter referred to as "City," and Sultan 144, LLC (c/o Jeff Hamilton), hereinafter referred to as the "Developer."

B. RECITALS

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

WHEREAS, this Agreement by and between the City and the Developer relates to the development known as Greens Estate, which is located at 32522 132nd Street S.E., Sultan WA 98294 (hereinafter the "Property"); and

WHEREAS, this Agreement is intended to implement the conditions of approval for Greens Estate planned unit development and application No. FPPUD05-001, including the Conditions of Approval of the Hearing Examiner, and the revised and additional conditions established by City Resolution No. 08-03, a copy of which is attached hereto as Exhibit A, both hereby incorporated by reference; and

WHEREAS, the legal description for the Green's Estate is attached as Exhibit B.

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

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by a local government planning under chapter 36.70A RCW (RCW 36.70B.170(1)); and

WHEREAS, a development agreement must be approved by ordinance or resolution after a public hearing (RCW 36.70B.200); and

WHEREAS, a public hearing for this Agreement was held on _____, 2009, and the City Council approved this Agreement on _____, 2009;

NOW THEREFORE, in consideration of the mutual promises set forth herein, the parties hereto agree as follows:

C. AGREEMENT

I. The Subject Property. The Subject Property is that property legally and commonly described in the City of Sultan file entitled “Greens Estates, A Planned Unit Development, (“Final PUD Approval”) which file is fully incorporated herein by this reference.

II. Parties to Development Agreement. The parties to this Agreement are:

1. The “City” is the City of Sultan, 319 Main Street, Suite 200, Sultan, Washington 98294.

2. The “Developer” Sultan 144, LLC, hereinafter referred to as the “Developer,” whose principal office is located at 15 Lake Bellevue, Suite 102, Bellevue, WA 98005 (mail and notice to be sent c/o Mr. Jeff Hamilton).

III. Effective Date and Term. This Agreement shall commence upon the effective date of the City Council action approving this Agreement, and shall continue in force until Developer completes all residential construction with the Property, unless extended or terminated as provided herein. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject, however, to post-termination obligations of the Developer.

IV. Compliance with Existing Laws. The Developer agrees that this Preliminary Subdivision Plat and Planned Unit Development are subject to compliance with all applicable

provisions, requirements, and standards of the Sultan Municipal Code and standards adopted pursuant thereto. The Developer is responsible to obtain all necessary State and Federal permits and approvals required for completion of the project. In addition, development shall comply with the following special conditions.

V. Special Development Terms and Conditions. This Agreement shall serve to supplement and to clarify Developer's obligations under the conditions of the Final PUD Approval. In particular, Developer and City agree that the following Conformance and Conditions of Approval.

VI. Conformance with Conditions of Approval. The Developer agrees to the conform with the following Conditions of Approval, which include the revised and new conditions established by the City Council in Resolution No. 08-03 (Exhibit A hereto):

1. The general configuration, lot shapes and sizes, setbacks, site density, and areas of open space shall be as indicated on the site plan resubmitted June 27, 2007 (Exhibit 4Y), subject to and as revised by these Conditions of Approval.
2. The application shall generally comply with the House Plans submitted December 6, 2006. (Exhibit 4S) Prior to building permit submittal, house plans that deviate from the submitted House Plans shall be subject to the approval from the Community Development Director.
3. Prior to issuance of a certificate of occupancy and/or occupancy of any residence within the subdivision, a combination of developer agreements and public funds, including additional tax adoptions (such as an increased real estate excise tax and a B & O tax), other funding sources (such as potential Developer loans to advance the receipt of payment of needed funds), and monies contributed by the proposed development for its impacts on the LOS, shall put in place the required public services for police concurrent with the development impacts, and provide appropriate strategies for the six years from the time of development to achieve the necessary police LOS as now established or as subsequently revised; or, in the alternative, the police services LOS in existence at the time of final building permit inspections shall be met before approval for occupancy is granted.¹
4. Prior to approval of the Final Plat, all site improvements, including streets, sidewalks, bicycle lanes, frontage improvements, drainage improvements, open space landscaping and improvements, mitigation plantings and other common area improvements shall be installed, inspected and approved by the City of Sultan. All improvements shall be constructed in accordance with the approved engineering plans, landscaping and recreation plans, mitigation plans, and Preliminary PUD and Plat. Alternatively, the City may approve a financial bond

¹ See item 1 in Section VII Clarifications to Selected Conditions of Approval

or assurance for items not completed prior to Final Plat, as approved by the City Engineer and/or Community Development Director.

5. The following notes shall appear on the face of the Final Plat:
 - a. Pursuant to SMC 16.10.120(B)(1)(a) and (d), those lots where the rear lot lines are adjacent to dedicated open space are permitted to have reduced rear yard setbacks of ten (10) feet. Other lots that apply for a reduced yard setback of up to ten (10) feet shall provide a 6-foot fence or landscaping that provides a full screen within 5 years of planting, in order to meet the privacy requirements of this section of the code. All other lots shall have rear yard setbacks of twenty (20) feet.²
 - b. Pursuant to SMC 16.10.120(B)(1)(f), porches may extend into the setback, up to fifteen (15) feet from the front property line. The houses may not extend into the setback – the minimum setback for the houses, including second stories, shall be twenty (20) feet measured from the front lot line.³
 - c. There shall be no direct vehicular access from any lot directly to either Sultan Basin Road or 132nd Street SE. All lots abutting either or both such streets shall provide and be limited to vehicular access from an internal plat street.
 - d. Garages whose vehicular door(s) face a street with reduced right-of-way and a sidewalk easement must maintain a 20 foot setback between the back edge of the constructed sidewalk and the near face of the garage.
 - e. PSE's facilities may require tree and brush cutting within and adjacent to the easement right-of-way. PSE retains the right to cut, remove, and dispose of any and all brush, trees, and other vegetation upon the easement area. PSE shall also have the right to control, on a continuing basis and by any prudent and reasonable means, the establishment and growth of bushes, trees and other vegetation upon the easement areas which, in the opinion of PSE, interfere with the exercise of PSE rights or create a hazard to PSE systems. PSE shall, prior to the exercise of such rights, identify such trees and make a reasonable effort to give prior notice that such trees will be cut, trimmed, removed or disposed of (except that PSE shall have no obligation to identify such trees or give such prior notice when trees are cut, trimmed, removed or otherwise disposed of in response to emergency conditions). Owners shall be entitled to no compensation for trees cut, trimmed, removed or disposed of, except for the actual market value of merchantable timber (if any) cut and removed from the property by PSE. All shrubs and trees to be situated in the easement area must be of low-growing varieties that normally do not exceed 15 feet in height at maturity.

² See item 2 in Section VII Clarifications to Selected Conditions of Approval

³ See item 3 in Section VII Clarifications to Selected Conditions of Approval

- f. The Developer or future lot owners must pay for any and all costs associated with changes in vertical line clearance, re-stabilization of any electrical structure or anchor, or facilities access as a result of uses that do not comply with PSE conditions or restrictions outlined herein.
6. Proposed Lots 54 and 55 shall be sold as one and treated as a single lot for building purposes until such time as the existing garage on Lot 54 is removed or until such time as a building permit is obtained to build a single-family residence on Lot 54.
7. Private street and stormwater maintenance agreements shall be prepared for review by the City as part of the Final Plat applications and recorded with the Final Plat.
8. A drainage easement between the *Greens Property* and *Skoglund Property* to the east will be required to be recorded with the Final Plat.
9. The following revisions shall be made to the Final Plat Map:
 - a. The required setbacks shall be shown.
 - b. Correct square footages for all lots and tracts shall be shown.
 - c. Remove Parcel A from the plat (unless it is shown simply as adjacent property).
 - d. Label those tracts that contain wetlands and wetland buffer as “Native Growth Protection Areas” (NGPA).
 - e. The Puget Sound Energy aerial high voltage transmission easement shall be delineated with particularity.
10. Prior to any activity on-site, the NGPA buffers and the property corners of the adjacent lots shall be staked out in the field under the supervision of a professional surveyor licensed in the State of Washington. No clearing activities shall occur until the location of the survey stakes are inspected and accepted by the City of Sultan.
11. In order to enforce SMC 16.10.110(B)(2), final engineering drawings shall show a bus turnout adjacent to Road F on Sultan Basin Road for future bus service to this area. Final design shall comply with Community Transit’s design standards, subject to the City Engineer’s approval.
12. Roads A, B, C, and E will provide the standard City of Sultan road section within a reduced right-of-way (50 feet instead of 60 feet) and will place the required sidewalks within easements on private property. All sidewalk easements on private property shall allow for public access. Roads D and F, as shown on the preliminary plans, are permitted to deviate from the design standards. Roads D

and F have a reduced right-of-way width (50 feet instead of 60 feet) and have eliminated one (1) parking lane. Sidewalks will be within the right-of-way for Roads D and F. "No parking" signs shall be installed where no on-street parking is allowed.

13. All public rights-of-way shall be dedicated to the City with road improvements constructed to current City standards, with approved deviations. Roads A through F shall be dedicated to the public. Dedications shall be completed prior to Final Plat approval.
14. Prior to construction, the Developer shall prepare a final Construction Stormwater Pollution Prevention Plan (SWPPP) for approval by the City Engineer and the Department of Ecology. The Developer shall provide a copy of the Department of Ecology, Construction Stormwater General Permit, issued for this project prior to issuance of City permits.
15. Site development shall follow all recommendations of the final stormwater report.
16. All phases of plat development, including drainage and earthwork construction, shall be in accordance with the geotechnical reports prepared for the project, including the Earth Solutions NW, LLC report dated November 27, 2006, and the Terra Associates, Inc. report dated July 27, 2005 (Exhibit 4M); as well as any subsequent addendums as accepted by the City Engineer. A note to this effect shall be placed on the Final Plat.
17. Prior to permit issuance, a final geotechnical report shall be submitted with recommendations on the final design of the plat improvements. The final report shall also state which lots require a separate report to be submitted with building permit application. The required note on the Final Plat under the above condition shall reference the final geotechnical report, and any subsequent addendums as accepted by the City Engineer.
18. A geotechnical addendum shall be submitted with each house design at the time of building permit submittal for those lots that are subject to the requirement. The geotechnical addendum shall address foundations, setbacks, drainage control and any other issues deemed pertinent by the geotechnical engineer or the City Engineer. A note to this effect shall be placed on the face of the Final Plat, stating which lots are subject to this requirement.
19. All phases of plat development shall be in accordance with the critical area study and mitigation plans prepared for the project by the Jay Group, Inc. revised December 4, 2006 (Exhibit 4J), and any subsequent reports as accepted by the Community Development Director.

20. The critical areas study states that invasive species removal will be undertaken within the wetland buffer by mechanical means. All removal of invasive species shall be done using only handheld equipment. The Community Development Director and City Engineer may approve mechanical equipment under the supervision of a qualified professional. No equipment may be used within any wetland.
21. A 20 foot wide easement shall be established/dedicated through the Final Plat process allowing the City to access from Road D, for mitigation and maintenance purposes, the property dedication accepted under Resolution No. 07-17 (a.k.a. Wetland DT).
22. The conditions recommended by Graham-Bunting Associates, dated March 19, 2007, regarding the wetland and buffer mitigation shall be followed. (Exhibit 9)
23. The final mitigation plan shall be submitted with the following revisions:
 - a. A split rail fence shall be installed on all reduced buffers and adjacent to proposed lots and active open space areas. The fence shall allow for the movement of wildlife in and out of the wetlands and shall protect the critical areas and the newly installed plans from human impacts. The design and location of the fence is subject to the approval of the Community Development Director.
 - b. Increased buffer plantings shall be shown on the north side of Wetland AA to increase the functions and values of that wetland, as it is being used as a mitigation to reduce buffers on the other wetlands and for the wetland fill.
 - c. Show that species compatible with the storm drainage system will be planted within Tracts 986 and 987.
 - d. All trails shown within wetland buffers shall demonstrate compliance with the requirements of former SMC 16.80.080.
 - e. A maintenance bond shall be provided to ensure compliance with the mitigation plan.
24. A Time-Zero/As-Built mitigation planting plan report shall be submitted to the City with Final Plat submittal.
25. The mitigation plantings shall be monitored annually for three (3) years. A monitoring report shall be submitted to the City each year on the anniversary of the completion approval of the mitigation plantings. Success of the mitigation plan will depend on adherence to the minimum standards below, the detailed goals in the mitigation report, and the proposed Contingency Plan:
 - a. 100% replacement/survival of plants after Year 1
 - b. Minimum 80% survival at end of Year 2

- c. Minimum 80% survival at end of Year 3.
 - d. Adherence to the proposed Contingency Plan if 80% is not reached.⁴
26. As part of the proposed Covenants, Conditions and Restrictions of the Homeowners Association shall address the potential increase of litter or garbage in the critical areas. Maintenance for these areas shall be the responsibility of the Homeowners Association after the monitoring period.
27. All phases of plat development shall be in accordance with the Vegetation Inventory and Plant Preservation Management Plan prepared the Jay Group, Inc. revised August 4, 2005 (Exhibit 4K), and any subsequent reports as accepted by the Community Development Director.
28. The following revisions to the Recreation Plan shall be made prior to permit issuance:
- a. Correct square footages that also match the square footages shown on the plat maps and on the civil plans.
 - b. Delineate between the general open space areas and those areas that will be designated recreation areas.
 - c. Recalculate the open space areas to include the bus turnaround adjacent to Road F.
 - d. Provide a landscaping plan for each of the recreation areas, per SMC 16.72.040. The landscaping for these areas shall meet the requirements of SMC 16.72.040, Recreation Design Requirements. At a minimum, there shall be a ten (10) foot landscaped perimeter and protective fencing a minimum of four (4) feet in height. All fences require a separate permit under SMC 15.08. This landscaping plan is subject to the approval of the Community Development Director and City Engineer.
 - e. Provide details for the recreation area equipment and amenities.
 - f. Specified the construction details for the trail. Pursuant to the pre-application meeting, a five (5) foot wide path made of 5/8 inch minus gravel is required.
 - g. A pedestrian path is required to be installed within the Plat, in conformance with the 2004 Comprehensive Plan. This trail shall be installed as shown on the approved plans, and shall connect through the property dedicated to the City (Parcel C) through the Boundary Line Adjustment process to the south, at no cost to the City.
29. The latecomers fee due under the Bethany Terrace Ordinance shall be due prior to permit issuance.

⁴ See item 4 in Section VII Clarifications to Selected Conditions of Approval

30. The development is subject to traffic mitigation measures as assessed by the Washington State Department of Transportation (WSDOT) for impacts upon the State Highway System. The pro-rata share payment for the Sultan WCL West Bound Passing Lane project as determined by WSDOT shall be paid directly to WSDOT and verification of that payment shall be provided to the City prior to issuance of City permits.
31. Prior to permit issuance for plat development, the easement recorded under AFN 9711070477 shall be vacated, and new plans and a new title report shall be submitted to the City showing this easement removed. If this easement cannot be vacated, new plat and civil drawings shall show no buildable area within this easement; a major revision to the plat may be necessary.
32. The Developer, contractor, and any geotechnical or wetland specialist required to be on-site during construction, shall attend a pre-construction meeting with City staff to discuss expectations and limitations of the project permit before starting the project.
33. The project shall comply with the Consent for Use of Puget Sound Energy, Inc. Transmission Line Easement executed by Sultan 144, LLC on December 13, 2007, and the Consent shall be recorded prior to approval of the final plat. Final civil drawings shall demonstrate compliance with the Use Agreement, the December 12, 2007 letter from PSE, and the February 13, 2008 email from PSE.
34. Each lot shall provide four off-street parking spaces. Up to two spaces may be within an enclosed garage. These spaces shall be a minimum of eight and one-half feet wide and eighteen feet long.

VII. Clarifications to Selected Conditions of Approval in VI.

1. Condition 3. Police Concurrence. This condition no longer applies since the Level of Service requirement for police was removed from the Comprehensive Plan on September 9, 2008. No further action on this condition is required.
2. Condition 4. Financial Assurances. Paragraph 4 is amended by adding the following underlined language:
Prior to approval of the Final Plat, all site improvements, including streets, sidewalks, bicycle lanes, frontage improvements, drainage improvements, open space landscaping and improvements, mitigation plantings and other common area improvements shall be installed, inspected and approved by the City of Sultan. All improvements shall be constructed in accordance with the approved engineering plans, landscaping and recreation plans, mitigation plans, and Preliminary PUD and Plat approvals. Alternatively, the City may, in its sole discretion, accept a financial bond or other financial assurance with a date certain

set for completion for items not completed prior to Final Plat, as approved by the City Engineer and/or Community Development Director. The City shall require maintenance bonds for a period of not less than two (2) years for all City infrastructure, including, but not necessarily limited to, mitigation plantings and final paving. Notwithstanding the foregoing, where the Agreement requires improvements or mitigation with a specific date, the Developer shall provide a maintenance bond for the length of time stated in the condition to ensure that those conditions are met.

3. Condition 7. Private Street and Stormwater Maintenance. Paragraph 7 is amended by adding the following sentence to the end of the paragraph. “The City shall require the agreement to contain adequate provisions to ensure that the stormwater facilities will be maintained.”
4. Condition 12. Sidewalk Easements. It is understood that the easements for the sidewalks on private property are easements granted to the City.
5. Condition 21. Access Easement. It is understood that the 20 foot wide easement shall be granted to the City for the required access.
6. Condition 23. Mitigation Plan. The following subparagraph (e) is added to paragraph 23: “A maintenance bond shall be provided to ensure compliance with the mitigation plan.”
7. Condition 26. Homeowners CC&R’s. The following is added as a condition to paragraph 26: “If the Homeowners Association fails to maintain the critical areas, the City may clean the areas and charge all costs and expenses to the Homeowners Association.”
8. Condition 5.a. – Rear Yard Setbacks – It has been agreed by the Developer and the City to adopt the following revised language for this condition in order to clarify the intent of this requirement as follows:

“Pursuant to SMC 16.10.120(B)(1)(a) and (d), those lots where the rear lot lines are adjacent to dedicated open space are permitted to have rear yard building setbacks of ten (10) feet. All other lots shall have a rear yard building setback of twenty (20) feet unless a reduced setback is applied for. This setback can be reduced to a total rear yard building setback of ten (ten) feet if one of the following is provided: a) 6-foot fence or b) landscaping that provides a full screen within 5 years of planting.”
9. Condition 5.b - Front Yard Setbacks – It has been agreed by the Developer and the City to adopt the following revised language for this condition in order to clarify the intent of this requirement as follows:

“Pursuant to SMC 16.10.120(B)(1)(f), porches may extend into the setback, up to five (5) feet. This will provide a minimum of fifteen (15) feet from the front property line to the building setback line for the porch. Houses may not extend into the porch setback area. The minimum front yard building setback for the houses, including second stories, shall be twenty (20) feet measured from the front lot line.”

10. Condition 25 – Wetland Mitigation Planting - It has been agreed by the Developer and the City to adopt the following revised language for this condition in order to clarify the intent of this requirement as follows:

“The mitigation plantings shall be monitored annually for three (3) years. A monitoring report shall be submitted to the City each year on the anniversary of the completion approval of the mitigation plantings. Success of the mitigation plan will depend on adherence to the minimum standards below, the detailed goals in the mitigation report, and the proposed Contingency Plan:

- a. 100% replacement/survival of plants after Year 1 of the original approved plantings
- b. Minimum 80% survival at end of Year 2 of the original approved plantings
- c. Minimum 80% survival at end of Year 3 of the original approved plantings
- d. Adherence to the proposed Contingency Plan if 80% of the original approved plantings are not reached.”

VIII. Plan Submittals, Review, Construction, Inspections, and Bonding.

1. The Developer agrees that the construction of any infrastructure items or additions thereto, shall not commence until the following conditions have been fulfilled:
 - A. The Developer shall furnish the City with four sets (4) of detailed plans for the proposed improvement, or additions thereto, at the Developer’s own expense, prepared by a qualified engineer currently licensed in the State of Washington.
 - B. The above plans shall require the review and approval by the City of Sultan and its Engineer, and the cost of such review shall be at Developer’s expense.
 - C. Once the plans are ready for issuance and prior to commencement of construction the Developer agrees that any changes to the City’s construction specification or details will be incorporated into the design plans. The Parties agree that the cost of the changes will not increase the cost of the design or construction by more

than 10 percent of the estimated cost of construction and design determined at the time that the permits are issued.

2. The construction of the Developer's proposed improvements or additions thereto, for the subdivision shall be inspected by the City in such a manner and at such times as the City deems reasonably necessary to assure that construction of the improvements and additions thereto will conform to the approved plans and specifications and minimum City standards. The Developer herewith agrees to allow such access and inspections and agrees to cooperate providing reasonable advance notice of his construction schedule during the various construction phases as requested by the City. The Developer further agrees to deposit the sum of \$8,000.00 with the City to be applied against the City's cost for engineering fees and expenses incurred by the City for inspections including special testing if required by the City. The Developer shall schedule and pay for testing services and copy testing reports to the City. In addition, special inspections for the installation of the retaining walls shall be included. Normal City inspections will involve an allowance of four (4) hours per day in addition to any time required beyond the 4 hours when underground utilities are being installed. For the purpose of this agreement, the anticipated daily site inspections will involve approximately four (4) hours per day for a four (4) month construction period for a total of three hundred and fifty two (352) hours based on twenty two (22) working days per month at four (4) hours per day. The City will provide detailed invoices to the Developer for that billing period. The City shall withdraw funds from the deposit amount until the balance approaches \$4,000.00. Once the balance approaches \$4,000.00 the City will request additional funds from the Developer so the balance of the deposit does not drop below \$4,000.00.
3. The Developer's proposed improvements, or additions thereto, shall not be accepted for service and use until the same have been fully inspected, approved and accepted by the City Council.

IX. Final Approval, Acceptance of Improvements and Maintenance Bonds. Upon performing all requirements as set forth in this Agreement, the City's codes and regulations, and providing the appropriate maintenance bond(s), the City shall accept the public improvements as provided for in this Agreement, and issue final approval of the subject subdivision.

X. Intent and Termination of Agreement. This Developer/Subdivision Agreement is intended to memorialize the requirements of law for the preliminary approval of the subject subdivision. This Agreement shall expire and be of no further force and effect upon:

1. When the Property has been fully developed, and all of Developer's obligations in connection therewith are satisfied as determined by the City; or
2. If an extension is made and approved by Council per SMC 16.10.200, the Final PUD approval shall expire concurrent with the expiration of the five (5) year term for the

preliminary subdivision approval if construction has not commenced as required by 16.10.200.

XI. Covenants and Assigns. This Agreement shall run with the land and bind and inure to the benefit of the Parties hereto and their respective successors, heirs, legatees, representatives, receivers, trustees, successors, transferees and assigns.

1. This Agreement shall be binding upon the parties and their respective heirs, successors and assigns.

XII. Recordation of Agreement. Developer shall record an executed copy of this Agreement with the Snohomish County Auditor, pursuant to RCW 36.70B.190, no later than fourteen (14) days after the Effective Date.

XIII. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

XIV. Severability. This Agreement does not violate any federal or state statute, rule, regulation or common law known; but any provision that is found to be invalid or in violation of any statute, rule, regulation or common law shall be considered null and void, with the remaining provisions remaining viable and in effect.

XV. Equal Opportunity to Participate in Drafting. The Parties have participated and had an equal opportunity to participate in the drafting of this Agreement. No ambiguity shall be construed against any Party based upon a claim that that Party drafted the ambiguous language.

XVI. Full Understanding. The Parties each acknowledge, represent and agree that they have read this Agreement; that they fully understand the terms thereof; that they have had the opportunity to be fully advised by their legal counsel, accountants and other advisors with respect thereto; and that they are executing this agreement after sufficient review and understanding of its contents.

XVII. Amendment to Agreement. Effect of Agreement on Future Actions. This Agreement may be amended by mutual consent of all of the parties, provided that any such amendment shall follow the process established by law for the adoption of a development agreement (see, RCW 36.70B.200). However, subject to Developer's vested rights, nothing in this Agreement shall prevent the City Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations affecting the Subject Property.

XVII. Notices. Notices, demands, or correspondence to the City and Developer shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated in Section C(II)), above. Notice to the City shall be to the attention of both the Mayor and the City Attorney. Notices to subsequent owners of

lots in the PUD, if any, shall be deemed to have been given by notifying the Homeowners Association.

XVIII. Authority Reserved. Nothing in this Agreement shall be construed to diminish, restrict, or limit the police powers of the City granted by the Washington State Constitution or by general law. Pursuant to RCW 36.70B.170(4), the City of Sultan reserves authority to impose new or different regulations upon the plat or any other permit or approval issued for the Development, together or separately, to the extent required by a serious threat to public health and safety.

XIX. Counterpart Originals. This Agreement may be executed in multiple counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by a party shall have the same force and effect as if that party had signed all other counterparts.

XX. No Third-Party Beneficiaries. This Agreement is for the benefit of the parties hereto only and is not intended to benefit any other person or entity. No other person or entity not a party to this Agreement may enforce the terms and provisions of this Agreement.

XXI. Integration. This Agreement represent the entire agreement of the parties with respect to the subject matter hereof. There are no other agreements between the parties, oral or written, except as expressly set forth herein.

XXII. Specific Performance. The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Agreement by any party in default hereof.

XXIII. Attorneys' Fees. In any action between the parties to this Agreement to enforce any of its terms, the prevailing party shall be entitled to recover expenses, including reasonable attorneys' fees and costs incurred in preparation for and prosecuting the action.

The undersigned covenant and represent that they are fully authorized to enter into and execute this Agreement.

CITY OF SULTAN

By _____
Carolyn Eslick, Mayor

_____ Date

Attest:

By _____
Laura Koenig, City Clerk Date _____

SULTAN 144, LLC

By _____
Jeffrey E. Hamilton Date _____

Approved as to form:

By _____
City Attorney Date _____

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

On this _____ day of _____, 2009, before me personally appeared CAROLYN ESLICK, to me known to be the individual that executed the within and foregoing instrument, and acknowledged the said instrument to be her free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated that she is authorized to execute said instrument.

Print name: _____
NOTARY PUBLIC in and for the State of
Washington
Residing at _____
Commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2009, before me personally appeared JEFFREY E. HAMILTON, to me known to be the individual that executed the within and foregoing instrument, and acknowledged the said instrument to be his free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument as the Chief Financial Officer of Sultan 144, LLC.

Print name: _____

NOTARY PUBLIC in and for the State of
Washington
Residing at _____
Commission expires: _____

EXHIBIT "A"
RESOLUTION No. 08-03

EXHIBIT "B"
LEGAL DESCRIPTION
GREENS ESTATES SUBDIVISION