

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE TOWN OF LA CONNER
AND LA CONNER ASSOCIATES LLC, FOR THE
TRANSITIONAL COMMERCIAL ZONE DEVELOPMENT**

THIS DEVELOPMENT AGREEMENT is made and entered into this 15 day of MAY 2007, by and between the Town of La Conner, a municipal corporation, hereinafter the "Town," and La Conner Associates LLC, a Washington limited liability company, hereinafter the "Developer."

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, local governments may also enter into a development agreement for real property outside its boundaries as part of a proposed annexation or service agreement (RCW 36.70B.170 (1)); and

WHEREAS, development agreements are authorized by the La Conner Uniform Development Code (UDC) (UDC 15.135.210); and

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 UDC 15.135.210 (2)); and

WHEREAS, for the purposes of this development agreement, "development standards" includes, but is not limited to, all of the standards listed in RCW 36.70B.170 (3) and the applicable provisions of UDC; 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, UDC 15.135.210 provides that a development agreement must be approved by the Town Council by ordinance or resolution after public hearing; and

WHEREAS, this Development Agreement by and between the Town of La Conner and the Developer (hereinafter the "Development Agreement"), relates to the development known as Moore-Clark, which is located in the 800 block between South First and South Third Streets; and

WHEREAS, the following events have occurred prior to the processing of the Developer's application:

- a) By Ordinance No. 877, the Town amended the Town's Comprehensive Plan land use designation and Uniform Development Code to rezoning the Property to Transitional Commercial Zone;
- b) By Ordinance No. 878, the Town amended the Town's Shoreline Master Program environment designation for the property to Urban Commercial;
- c) After a public hearing, by Resolution No. ___, the Town Council authorized the Mayor to sign this Development Agreement with the Developer; and

NOW, THEREFORE, the parties hereto agree as follows:

GENERAL PROVISIONS

Section 1. *The Project.* The Project is the development and use of the Property, consisting of 3.02 acres in the Town of La Conner. The Project is described as Moore-Clark Property. Full description and Project map attached as exhibit "A."

Section 2. *The Subject Property.* The Project site is legally described in Exhibit B, attached hereto and incorporated herein by this reference.

Section 3. *Definitions.* As used in this Development Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section.

- a) "Adopting Resolution" means the Resolution which approves this Development Agreement, as required by RCW 36.70B.200 and UDC 15.135.210 (8).
- b) "Certificate of Occupancy" means either a certificate issued after inspections by the Town authorizing a person(s) in possession of property to dwell or otherwise use a specified building or dwelling unit, or the final inspection if a formal certificate is not issued.
- c) "Council" means the duly elected legislative body governing the Town of La Conner.
- d) "Design Guidelines" means the La Conner Design Manual, as adopted by the Town.
- e) "Director" means the Town's Planning Director.
- f) "Effective Date" means the effective date of the Adopting Resolution.
- g) "Existing Land Use Regulations" means the ordinances adopted by the Town Council of La Conner in effect on the Effective Date, including the adopting ordinances that govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards and specifications applicable to the development of the Subject Property, including, but not limited to the Comprehensive Plan, the Town's Official Zoning Map, the Town's Shoreline Master Program and development standards, the Design Manual, the Public Works Standards, SEPA, Concurrency Ordinance, and all other ordinances, codes, rules and regulations of the Town establishing subdivision

standards, park regulations, building standards. Existing Land Use Regulation does not include non-land use regulations, which includes building, fire, electrical and flood control codes, taxes and impact fees.

h) "Landowner" is the party who has acquired any portion of the Subject Property from the Developer who, unless otherwise released as provided in this Agreement, shall be subject to the applicable provisions of this Agreement. The "Developer" is identified in Section 5 of this Agreement.

i) "Project" means the anticipated development of the Subject Property, as specified in Section 1 above and as provided for in all associated permits/approvals, and all incorporated exhibits.

Section 4. Exhibits. Exhibits to this Agreement are as follows:

- a) Exhibit A—Description and Project map of Project
- b) Exhibit B – Legal description of the Subject Property.

Section 5. Parties to Development Agreement. The parties to this Agreement are:

- a) The "Town" is the Town of La Conner, 204 Douglas Street, P.O. Box 400, La Conner, Washington 98257.
- b) The "Developer" or Owner is a private enterprise which owns the Subject Property in fee, and whose principal office is located at 823 South Second Street, La Conner, Washington.
- c) The "Landowner." From time to time, as provided in this Agreement, the Developer may sell or otherwise lawfully dispose of a portion of the Subject Property to a Landowner who, unless otherwise released, shall be subject to the applicable provisions of this Agreement related to such portion of the Subject Property.

Section 6. Project is a Private Undertaking. It is agreed among the parties that the Project is a private development and that the Town has no interest therein except as authorized in the exercise of its governmental functions.

Section 7. Term of Agreement. This Agreement shall commence upon the effective date of the Adopting Resolution approving this Agreement, and shall continue in force for a period of seven (7) years 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 or Landowner.

Section 8. Permits and Vested Rights of Developer. The Developer shall obtain the following permits for the Project: (List) Shoreline Master Program Substantial Development Permit(s) and Shoreline Conditional Use Permit for residential units.

- 1. Uniform Development Code Conditional Use Permit for residential units outside the Shoreline.
- 2. Site Plan and Design Review Permit for Transitional Commercial Zone
- 3. Building Permits from the Town of La Conner and Skagit County.
- 4. Street Excavation Permit for all excavation work done in Town rights-of-way.

5. Right-of-Way Use Permit for any prolonged use of adjacent rights-of-ways during development.

Developer agrees that it shall not request any variance nor any amendment to any Existing Development Regulation for the term of this Agreement. During the term of this Agreement, unless sooner terminated in accordance with the terms hereof, in developing the Subject Property consistent with the Project described herein, Developer is assured, and the Town agrees, that the development rights, obligations, terms and conditions specified in this Agreement, are fully vested in the Developer and may not be changed or modified by the Town, except as may be expressly permitted by, and in accordance with, the terms and conditions of this Agreement or as required by State or Federal law, including the Exhibits hereto, or as expressly consented thereto by the Developer. In particular, the Developer acknowledges that the Town Administration will diligently and promptly process amendments to the Existing Development Regulations as follows:

I. Amend §15.36.030

(2) Residential Uses.

(a) Residential Mixed with Commercial.

- (i) Residential dwelling units, attached or detached, shall not exceed 49 percent of the square footage of the gross floor area westerly of the right of way of vacated Second Street located within the urban commercial environment as designated by the shoreline master program. The percentage outside the shoreline area shall be governed by the total residential percentage maximum for the zone;
- (ii) Private Residential units shall be prohibited on the ground floor of a commercial building when the buildings fronts on First Street or Caledonia Street between First Street and the vacated Second Street right of way;
- (iii) The applicant must apply for and submit a site plan for the entire development and no occupancy of the residential component of a mixed-use building shall occur until the commercial portion of the building is ready for occupancy;

(b) Multifamily residential.

- (i) Multifamily residential buildings may be allowed when located east of the vacated portion of Second Street; west of Third Street; south of Moore Street; and north of Caledonia Street;
- (ii) If phased development occurs, all street improvements for streets abutting the Transitional Commercial Zone, utilities and public amenities required for the build-out of the Transitional Commercial Zone shall be installed prior to, or concurrent with, the attached townhouse development;

- (c) Residential Unit Limit. A maximum of 26 residential units, whether pursuant to subsection (2)(a) or (b) of this section, may be sited in the entire Transitional Commercial Zone; provided, that maximum units may be

increased to 36 units if the entire development meets the density bonus criteria set forth in LCMC 15.36.050;

- (3) The total square footage of multifamily residential development, townhouse and residential portions of mixed buildings within the Transitional Commercial Zone shall not exceed 65 percent of the total building square footage within the zone;

II. Add §15.36.070 Nonconforming structures and changes of use within Transitional Commercial Zones.

Nonconforming structures within the shoreline area may continue in form, and may be reconfigured to alternate uses consistent with required building codes in any manner which does not expand the extent of nonconformity of the size of the structure, consistent with the definition of “non-conforming structures” in the Shoreline Master Program, to achieve uses consistent with the Transitional Commercial Zone and the Shoreline Master Program for the shoreline area.

III. Amend §15.36.060 Dimensional standards.

- (7) Maximum Building Heights – 30 feet above the average lot grade determined by averaging the lowest and highest existing elevation points on the lot to the highest point of the roof.
Exception: In the 100-year floodplain, the height may be measured 30 feet from the finished lot grade at base flood elevation of eight feet plus one foot above mean sea level to the highest point of the roof, provided:
 - (a) The building shall not exceed three stories;
 - (b) Residential portions of commercial buildings shall have quick-response sprinkler heads;
 - (c) For one and two stories with residential uses, the sprinkler system for the residential portion shall comply with NFPA 13R. The remainder of the structure shall comply with NFPA 13;
 - (d) If any occupied portion of the structure is over two stories, the entire building shall comply with NFPA 13;
 - (e) The sprinkler system shall be centrally monitored;
 - (f) Eave height shall not exceed 30 feet from grade unless the building has multiple roof access platforms, as approved by the La Conner fire chief, for roof ladder access at or below 30 feet;
 - (g) Roofs shall be constructed of noncombustible materials.
- (9) The side yard setbacks within the shoreline area shall be, in combination, equal to 25 percent of the property width, but such calculation may include any “view corridors” in the shoreline area. Development features enhancing east and west view corridors may be considered, in part, to satisfy side yard setback requirements. Side yard setbacks outside of the shoreline area shall be consistent with the adjoining commercial zone.

The Town cannot and does not make any assurance that such amendments will be approved by the Town Council.

Section 9. *Permitted Uses and Development Standards.* The Developer agrees that for the term of this Agreement, the permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation and dedication of land or payment of fees in lieu of dedication for public purposes, the construction, installation and extension of public improvements, development guidelines and standards for development of the Subject Property shall be those in the Existing Land Use Regulations, those set forth in any required SEPA threshold determinations, those set forth in this Agreement, the permits and approvals identified herein, and all exhibits incorporated herein.

Section 10. *Minor Modifications.* Minor modifications from the approved permits or the Exhibits attached hereto may be approved in accordance with the provisions of the Town's code, and shall not require an amendment to this Agreement.

Section 11. *Further Discretionary Actions.* Developer acknowledges that the Existing Land Use Regulations contemplate the exercise of further discretionary powers by the Town. These powers include, but are not limited to, review of additional permit applications under SEPA. Nothing in this Agreement shall be construed to limit the authority or the obligation of the Town to hold legally required public hearings, or to limit the discretion of the Town and any of its officers or officials in complying with or applying Existing Land Use Regulations.

Section 12. *Financing of Public Facilities.*

- a) Developer acknowledges and agrees that it shall pay in full the costs of transportation improvements indicated as mitigation measures in any SEPA threshold determination and for its pro rata share of any drainage improvements indicated as mitigation in any threshold determination.
- b) At the request of the Developer, the Town may pursue a reimbursement mechanism to Developer for expenses incurred by Developer associated with the transportation improvements, subject to the Town's ordinances and state law.

Section 13. *Existing Land Use Fees and Impact Fees.*

- a) Land use fees adopted by the Town by ordinance as of the Effective Date of this Agreement may be increased by the Town from time to time, and applicable to permits and approvals for the Subject Property, as long as such fees apply to similar applications and projects in the Town.
- b) All impact fees shall be paid as set forth in the approved permit or approval, or as addressed in the La Conner Municipal Code.

Section 14. *Phasing of Development.* The parties acknowledge that the most efficient and economic development of the Subject Property depends upon numerous factors, such

as market orientation and demand, interest rates, competition and similar factors, and that generally it will be most economically beneficial to the ultimate purchasers of the Subject Property to have the rate of development determined by the Developer. However, the parties also acknowledge that because the Development will be phased, certain amenities associated with the Project must be available to all phases of the Project, in order to address health, safety and welfare of the residents. Therefore, the parties agree that the improvements associated with the Project shall be constructed according to the following schedule:

- A. Street Improvements.....Phase I
- B. Potable Water and Fire Flow Facilities.....Phase I
- C. Sewer Facilities.....Phase I
- D. Utilities.....Phase I & II
- E. Parks and Open Space.....Phase I , II & III
- F. Fire Department SEPA Measures.....Phase I

Section 15. *Access, Roads and Open Space.* Except as otherwise provided herein, the Developer shall petition the Council to vacate South First Street adjacent to the development within ninety (90) days of the Effective Date of this Agreement. The Developer shall provide easements for access, egress, utilities and open space as follows:

- a) **Open Space Public Areas.** With regard to open space public amenities within the Subject Property, each site shall have an easement on the site map for the phases of the development that are approved and recorded, as shown in Exhibit A, attached hereto.
- b) **Private Road Easements.** Easements shall be established following the vacation of the South First Street 800 Block adjacent to the development.
 - i. An easement for emergency vehicle and public access from Caledonia Street along the vacated South First Street right-of-way.
 - ii. An easement extending from South First Street through the development to Caledonia Street for vehicle access/egress and public utilities.

Section 16. *Default.*

- a) Subject to extensions of time by mutual consent in writing, failure or delay by either party or Landowner not released from this Agreement, to perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party or Landowner not less than thirty (30) days notice in writing, specifying the nature of the alleged default and the manner in which said default may be cured. During this thirty (30) day period, the party or Landowner charged shall not be considered in default for purposes of termination or institution of legal proceedings.

b) After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party or Landowner to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement. In addition, the Town may decide to file an action to enforce the Town's Codes, and to obtain penalties and costs as provided in the La Conner Municipal Code for violations of this Development Agreement and the Code.

Section 17. *Annual Review.* The Town shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by Developer and Landowner with this Agreement. The Town may charge fees as necessary to cover the costs of conducting the annual review.

Section 18. *Termination.* This Agreement shall expire and/or terminate as provided below:

a) This Agreement shall expire and be of no further force and effect if the development contemplated in this Agreement and all of the permits and/or approvals issued by the Town for such development are not substantially underway prior to expiration of such permits and/or approvals. Nothing in this Agreement shall extend the expiration date of any permit or approval issued by the Town for any development.

b) This Agreement shall expire and be of no further force and effect if the Developer does not construct the Project as contemplated by the permits and approvals identified in this Agreement, and submits applications for development of the Property that are inconsistent with such permits and approvals.

c) This Agreement shall terminate upon the expiration of the term identified in Section 7 above or when the Subject Property has been fully developed, whichever first occurs, and all of the Developer's obligations in connection therewith are satisfied as determined by the Town. Upon termination of this Agreement, the Town shall record a notice of such termination in a form satisfactory to the Town Attorney that the Agreement has been terminated. This Agreement shall automatically terminate and be of no further force and effect as to any single-family residence, any other residential dwelling unit or any non-residential building and the lot or parcel upon which such residence or building is located, when it has been approved by the Town for occupancy.

Section 19. *Effect upon Termination on Developer Obligations.* Termination of this Agreement as to the Developer of the Subject Property or any portion thereof shall not affect any of the Developer's obligations to comply with the Town Comprehensive Plan and the terms and conditions or any applicable zoning code(s) or subdivision map or other land use entitlements approved with respect to the Subject Property, any other conditions of any other development specified in the Agreement to continue after the termination of this Agreement or obligations to pay assessments, liens, fees or taxes.

Section 20. *Effects upon Termination on Town.* Upon any termination of this Agreement as to the Developer of the Subject Property, or any portion thereof, the

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Section 4. *Exhibits.* Exhibits to this Agreement are as follows:

- a) Exhibit A—Description and Project map of Project
- b) Exhibit B – Legal description of the Subject Property.

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(a) Residential Mixed with Commercial.

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as market orientation and demand, interest rates, competition and similar factors, and that generally it will be most economically beneficial to the ultimate purchasers of the Subject Property to have the rate of development determined by the Developer. However, the parties also acknowledge that because the Development will be phased, certain amenities associated with the Project must be available to all phases of the Project, in order to address health, safety and welfare of the residents. Therefore, the parties agree that the improvements associated with the Project shall be constructed according to the following schedule:

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- F. Fire Department SEPA Measures.....Phase I

Section 15. Access, Roads and Open Space. Except as otherwise provided herein, the Developer shall petition the Council to vacate South First Street adjacent to the development within ninety (90) days of the Effective Date of this Agreement. The Developer shall provide easements for access, egress, utilities and open space as follows:

- a) Open Space Public Areas. With regard to open space public amenities within the Subject Property, each site shall have an easement on the site map for the phases of the development that are approved and recorded, as shown in Exhibit A, attached hereto.
- b) Private Road Easements. Easements shall be established following the vacation of the South First Street 800 Block adjacent to the development.
 - i. An easement for emergency vehicle and public access from Caledonia Street along the vacated South First Street right-of-way.
 - ii. An easement extending from South First Street through the development to Caledonia Street for vehicle access/egress and public utilities.

Section 16. Default.

- a) Subject to extensions of time by mutual consent in writing, failure or delay by either party or Landowner not released from this Agreement, to perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party or Landowner not less than thirty (30) days notice in writing, specifying the nature of the alleged default and the manner in which said default may be cured. During this thirty (30) day period, the party or Landowner charged shall not be considered in default for purposes of termination or institution of legal proceedings.

b) After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party or Landowner to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement. In addition, the Town may decide to file an action to enforce the Town's Codes, and to obtain penalties and costs as provided in the La Conner Municipal Code for violations of this Development Agreement and the Code.

Section 17. *Annual Review.* The Town shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by Developer and Landowner with this Agreement. The Town may charge fees as necessary to cover the costs of conducting the annual review.

Section 18. *Termination.* This Agreement shall expire and/or terminate as provided below:

a) This Agreement shall expire and be of no further force and effect if the development contemplated in this Agreement and all of the permits and/or approvals issued by the Town for such development are not substantially underway prior to expiration of such permits and/or approvals. Nothing in this Agreement shall extend the expiration date of any permit or approval issued by the Town for any development.

b) This Agreement shall expire and be of no further force and effect if the Developer does not construct the Project as contemplated by the permits and approvals identified in this Agreement, and submits applications for development of the Property that are inconsistent with such permits and approvals.

c) This Agreement shall terminate upon the expiration of the term identified in Section 7 above or when the Subject Property has been fully developed, whichever first occurs, and all of the Developer's obligations in connection therewith are satisfied as determined by the Town. Upon termination of this Agreement, the Town shall record a notice of such termination in a form satisfactory to the Town Attorney that the Agreement has been terminated. This Agreement shall automatically terminate and be of no further force and effect as to any single-family residence, any other residential dwelling unit or any non-residential building and the lot or parcel upon which such residence or building is located, when it has been approved by the Town for occupancy.

Section 19. *Effect upon Termination on Developer Obligations.* Termination of this Agreement as to the Developer of the Subject Property or any portion thereof shall not affect any of the Developer's obligations to comply with the Town Comprehensive Plan and the terms and conditions or any applicable zoning code(s) or subdivision map or other land use entitlements approved with respect to the Subject Property, any other conditions of any other development specified in the Agreement to continue after the termination of this Agreement or obligations to pay assessments, liens, fees or taxes.

Section 20. *Effects upon Termination on Town.* Upon any termination of this Agreement as to the Developer of the Subject Property, or any portion thereof, the

entitlements, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the property affected by such termination (provided that vesting of such entitlements, conditions or fees may then be established for such property pursuant to then existing planning and zoning laws).

Section 21. *Assignment and Assumption.* The Developer shall have the right to sell, assign or transfer this Agreement with all their rights, title and interests therein to any person, firm or corporation at any time during the term of this Agreement. Developer shall provide the Town with written notice of any intent to sell, assign, or transfer all or a portion of the Subject Property, at least thirty (30) days in advance of such action.

Section 22. *Covenants Running with the Land.* The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties. The Developer, Landowner and every purchaser, assignee or transferee with an interest in the Subject Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Subject Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of a Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Subject Property sold, assigned or transferred to it.

Section 23. *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 and UDC 15.135.230) However, nothing in this Agreement shall prevent the Town Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations affecting the Subject Property during the next five (5) years, as the Town Council may deem necessary to the extent required by a serious threat to public health and safety. Nothing in this Development Agreement shall prevent the Town Council from making any amendments of any type to the Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations relating to the Subject Property five (5) years from the anniversary date of the Effective Date of this Agreement.

Section 24. *Releases.* Developer, and any subsequent Landowner, may free itself from further obligations relating to the sold, assigned, or transferred property, provided that the buyer, assignee or transferee expressly assumes the obligations under this Agreement as provided herein.

Section 25. *Notices.* Notices, demands, or correspondence to the Town and Developer shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated in Section 5 above. Notice to the Town shall be to the attention of both the Town Administrator and the Town Attorney. Notices to subsequent Landowners shall be required to be given by the Town only for those

Landowners who have given the Town written notice of their address for such notice. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

Section 26. *Reimbursement for Agreement Expenses of the Town.* Developer agrees to reimburse the Town for actual expenses incurred over and above fees paid by Developer as an applicant incurred by Town directly relating to this Agreement, including recording fees, publishing fees and reasonable staff and legal costs not otherwise included within application fees. This Agreement shall not take effect until the fees provided for in this Section. Upon payment of all expenses, the Developer may request written acknowledgement of all fees. Such payment of all fees shall be paid, at the latest, within thirty (30) days from the Town's presentation of a written statement of charges to the Developer.

Section 27. *Applicable Law and Attorney Fees.* This Agreement shall be construed and enforced in accordance with the laws of the state of Washington. If litigation is initiated to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees and costs from the non-prevailing party. Venue for any action shall lie in Skagit County Superior Court.

Section 28. *Third Party Legal Challenge.* In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner to challenge this Agreement or any provision herein, the Town may elect to tender the defense of such lawsuit or individual claims in the lawsuit to Developer and/or Landowner(s). In such event, Developer and/or such Landowners shall hold the Town harmless from and defend the Town from all costs and expenses incurred in the defense of such lawsuit or individual claims in the lawsuit, including but not limited to, attorney fees and expenses of litigation, and damages awarded to the prevailing party or parties in such litigation. The Developer and/or Landowner shall not settle any lawsuit without the consent of the Town. The Town shall act in good faith and shall not unreasonably withhold consent to settle.

Section 29. *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 Development Agreement by any party in default hereof.

Section 30. *Severability.* If any phrase, provision or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the state of Washington which became effective after the effective date of the ordinance adopting this Agreement, and either party in good faith determines that such provision or provisions are material to its entering into this Agreement, that party may elect to terminate this Agreement as to all of its obligations remaining unperformed.

Section 31. *Recordation.* The Town may cause this Agreement to be recorded with the office of the Skagit County Auditor.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the dates set forth below:

LA CONNER ASSOCIATES LLC:

By: Vaughn W. Jolley

Its: Manager

Date: 5/15/07

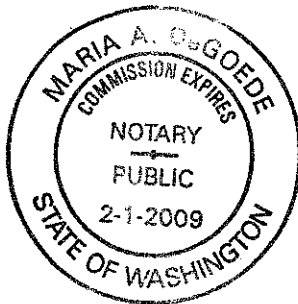
STATE OF WASHINGTON)

) ss.

COUNTY OF SKAGIT)

On this 15th day of May 2007 before me, the undersigned, a Notary Public in and for the state of Washington, duly commissioned and sworn, personally appeared Vaughn W. Jolley to me known to be the owner of La Conner Associates LLC the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute the said instrument.

Witness my hand and official seal hereto affixed the say and year first above written.



Maria A DeGoede
Notary Public

Maria A DeGoede
Printed Name

In and for the state of Washington

Residing at: Bow, WA

My commission expires: 2-1-09

TOWN OF LA CONNER:

By: Wayne Everton
Its: Mayor
Date: 5/10/07

ATTESTATION:

Lorraine Taylor
TOWN CLERK/TREASURER

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

On this 10th day of May 2007 before me, the undersigned, a Notary Public in and for the state of Washington, duly commissioned and sworn, personally appeared Wayne Everton and Lorraine Taylor to me known to be the Mayor and Town Clerk/Treasurer, respectively, of the Town of La Conner, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

Witness my hand and official seal hereto affixed the say and year first above written.



Maria A DeGoede
Notary Public
Maria A DeGoede
Printed Name
In and for the State of Washington
Residing at: Bow
My commission expires: 2-1-09