

REAL ESTATE DEVELOPMENT MANAGEMENT AGREEMENT^[MT1]
(Suzuki Property, Bainbridge Island, Washington)

THIS REAL ESTATE DEVELOPMENT MANAGEMENT AGREEMENT (this “**Agreement**”) dated for reference purposes only as of December _____, 2017, is made by and between the CITY OF BAINBRIDGE ISLAND, a Washington municipal corporation (“City”), and OLYMPIC PROPERTY GROUP I LLC, a Washington limited liability company (“**Developer**”). The date of mutual acceptance of this Agreement is referred to herein as the “**Effective Date.**”

R E C I T A L S

A. The City owns an approximately 13.83-acre parcel of real property commonly known as the Suzuki property, which is legally described on Exhibit A attached hereto (the “**Property**”) and is located in the City of Bainbridge Island, Kitsap County, Washington. The Property is zoned R-2, which allows residential development at a maximum base density of two units per acre, for a total of approximately 30 units within the Property, subject to potential increase by a factor of 2.5 under the City’s Housing Design Demonstration Program (“**HDDP**”), to allow a maximum residential density of five units per acre, for a total of approximately 75 units within the Property, if certain HDDP requirements are met. The Property also contains potential wetlands, wildlife habitat, and other natural areas valuable for conservation and preservation.

B. Developer is experienced in both the development of commercial and residential real estate projects in Western Washington and in land conservation projects with several different land conservation organizations and government agencies, which have protected from land development thousands of acres of timberlands in Western Washington.

C. In 2015 and 2016, the City conducted a public outreach process to generate proposals for the long-term use of the Property. The City received proposals from Developer and three (3) other parties, which ranged from complete preservation to high levels of development. The City chose to work with Developer, and its proposal dated September 12, 2017, which would conserve a portion of the Property and develop the remainder, subject to the making of this Agreement.

D. In 2016, the City engaged Environmental Science Associates (“**ESA**”) to assess the environmental qualities of the Property in order to guide City decisions regarding conservation, disposition, and use of the Property. ESA’s recommendations are contained in its “Suzuki Property Ecological Assessment” dated March 2017 (the “**ESA Report**”).

E. The City has concluded, based on public hearings, other public comments, the ESA Report, other input from ETAC, the proposals the City received from Developer and others, and other environmental documents reviewed by the City, that the Property has potential value both for land conservation and affordable and market-rate housing.^[MT2]

F. The development of affordable housing within the Property will require the involvement of other parties, which may include profit and nonprofit affordable housing developers, funding sources, and operators, and the availability of significant grant funding. (Would recommend we add language to reflect a will of the Council that any development on Suzuki be 100% affordable) The City and Developer have a goal of maximizing the number of housing units within the Property which will be affordable, understanding that some may be market rate ^[MT3]

G. The City has determined that the City can increase City control of the development of the Property and reduce City costs by retaining ownership of the Property until the completion of Property subdivision and infrastructure development, engaging the services of a private developer to obtain governmental approvals, engage consultants and contractors, advance infrastructure construction costs, establish restrictive covenants and a property owners association, and manage the infrastructure development and disposition of the Property to third party housing developers and conservation organizations or other government agencies.[MT4]

H. The City intends to ensure that a material portion of the Property, which may have significant conservation value, is protected from future development by a conservation easement or other means and either kept by the City or conveyed to another government agency or private nonprofit land conservation organization.[MT5]

I. The City desires to engage Developer to manage the conservation ~~and~~and development, of the Property (collectively, the “**Project**”). except for the permitting and construction of housing and other buildings within the Property, which shall be completed by third party developer purchasers of development lots, tracts, and parcels created by Developer within the Property.[MT6]

A G R E E M E N T

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Appointment; Project. The City hereby retains, engages, and appoints Developer, and Developer hereby accepts retention, engagement, and appointment, to develop the Project. Developer shall execute its obligations diligently hereunder in a professional and workmanlike manner, in accordance with the appropriate standards of care required of prudent, experienced, and skillful developers, using industry standard practices appropriate for the scope and nature of the services to be provided hereunder, in order to develop the Project (the “**Standard of Care**”). The Project is described more fully on Exhibit B attached hereto.

2. Term. The term of this Agreement (the “**Term**”) shall commence on the Effective Date and shall expire, unless sooner terminated pursuant to the provisions of Section 7 hereof, upon completion of the Project.

3. Duties, Obligations and Authority of Developer.

3.1 Generally. Developer shall act as developer for the City with respect to the development and construction of the Project from and after the Effective Date through the Term of this Agreement. Developer’s duties and obligations during the Term shall include the following:

3.1.1 Developer’s Role. Developer shall represent the City and is authorized to and shall be responsible for the selection, hiring, supervision, and management of the following: (i) the Project architects, engineers, planners, and other consultants (“**Project Consultants**”), and (ii) (a) the general contractor(s) (collectively, the “**General Contractor**”), and (b) through its supervision of the General Contractor, any subcontractors (collectively, the “**Subcontractor**”). All contracts with Project Consultants and the General Contractor (collectively the “**Project Contractors**” and such contracts collectively the **Project Contracts**”) shall be entered into and executed by and in the name of Developer. Developer shall make and implement or cause to

be implemented all major decisions regarding the Project, consistent with this Agreement, and shall perform such other normal business functions and otherwise manage the Project for the City.

3.1.2 Budgets, Schedules, and Reports. Developer shall prepare and submit to the City and, during the Term hereof, update as appropriate a “**Project Budget**” and a “**Project Schedule**” and such other reports regarding the Project as the City may reasonably request. As used in this Agreement, the term “**Project Documents**” shall mean the then-current Project Budget, the then-current Project Schedule, and the Plans (as hereinafter defined).

3.1.3 Role of Developer’s September 12, 2017 Proposal. The Parties understand that Developer’s September 12, 2017 proposal does not bind Developer in any respect, except that any invasion of the 300’ buffer referred to in that proposal shall require approval of the City Council before being submitted to the City Department of Planning and Community Development.

3.2 Additional Matters.

3.2.1 In addition to the specific covenants set forth in the balance of this section, Developer shall render the following development management services to the City relating to the development of the Project:

- (a) Preparation of the Project Budget and updates thereto;
- (b) Preparation of the Project Schedule and updates thereto;
- (c) Provision of general scheduling of the architectural, engineering, and environmental review processes and general supervision and review of the Project Consultants throughout the design and development of the Project;
- (d) General representation of the Project before any public or regulatory body in connection with any zoning, environmental, site, easement, title, design, construction, or other matter related to the development of the Project;
- (e) Preparation of contractor bid packages;
- (f) Supervision of the Project Consultants in the preparation and modification of all Plans (as defined in Section 3.2.2) and the infrastructure construction plans and specifications for the Project;
- (g) Causing the subdivision of the Property into a Conservation Tract and Building Lots;
- (h) Management of the Project Consultants and General Contractor (and through the General Contractor, the Subcontractors) and providing general monitoring of the construction process, including, without limitation, ensuring that all infrastructure punch list items are completed;
- (i) Maintaining at its offices books and records, information, and reports of architects, appraisers, engineers, attorneys, accountants, or other professionals in any way relating to the development and construction of the Project, all of which items shall at all reasonable

times during normal business hours be open to the inspection of the City upon at least three (3) business days prior written notice;

(j) Obtaining and maintaining, in Developer's name, all permits, licenses, approvals, entitlements, and other governmental authorizations required to subdivide the Property and permit, construct, and develop the Project ("**Permits**");

(k) Reviewing all draw requests received from the Project Contractors and paying all draw requests approved by Developer;

(l) If the City elects not to continue to own the Conservation Tract after the completion of the Project, and if another government agency or nonprofit land conservation organization approved by the City is willing to accept ownership of the Conservation Tract[GVT7], then managing the disposition of the Conservation Tract to such agency or organization;

(m) Establishing a nonprofit property owner's association for the collection of assessments, maintenance and management of common facilities, and enforcement of covenants and restrictions;

(n) Establishing perpetual covenants to protect the Conservation Tract, preserve its conservation values, and prevent its development, by a conservation easement or otherwise, and to regulate the use of the Building Lots and ensure that the Building Lots will be developed, used, and sold for a mix of affordable and market-rate housing only;

(o) Processing and implementing all change orders for the Project;
and

(p) Complying with all applicable Permits.

3.2.2 Developer shall use commercially reasonable efforts to manage the Project Contractors in the construction of the Project using workmanship and materials of the quality called for in the final Project plans and specifications (the "**Plans**"), free from any and all mechanics' or materialmen's liens, and in accordance with all applicable Permits and all agreements and restrictions relating to the Project.

3.2.3 Except in the exercise of its legislative authority, quasi-judicial authority, and police power, which shall not be impaired or limited by this Agreement, the City reasonably shall cooperate with Developer in good faith to enable the Developer to perform the services and complete the actions described in this Section 3.2 and shall not take any action that is reasonably likely to impair or prevent the performance by Developer of its obligations under this Agreement.[MT8]

3.2.4 Developer shall use commercially reasonable efforts to deliver the following items (the "**Completion Evidence**") to the City with respect to the Project on or before the date on which the applicable portion of the Project is to be completed in accordance with the Project Schedule:

(a) Engineer's Certificate. An engineer's certificate from the Project Engineer, certifying to the City that Project improvements (other than any "Permitted Punch List

Items”) have been completed in accordance with the Plans. As used herein, “**Permitted Punch List Items**” means minor punch list items in connection with the Project.

(b) Full Plans. Full and final as-built plans and specifications showing all the utilities, storm water facilities, and other Project infrastructure improvements.

(c) Permits. All Permits.

(d) Other Evidence. To the extent not theretofore delivered to the City by Developer, evidence reasonably satisfactory to the City that all work and materials shall have been fully paid for, except for customary holdbacks under construction contracts pursuant to the terms thereof (but in no event in an amount exceeding 10% of the stated cost under any such contract), and complete and unconditional waivers of mechanics’ liens have been obtained.

3.3 Employees and Key Personnel. Developer shall dedicate such of its capable employees who are needed to perform Developer’s obligations hereunder.[MT9]

3.4 Correction of Work. Developer shall use its best efforts to enforce any and all warranties and guaranties given by the Contractors (including causing the Contractors to pursue the appropriate Subcontractor) and to assign such warranties and guaranties to the City upon the first to occur of the completion of the Project or the expiration or termination of this Agreement.

3.5 Affordable Housing. The construction of affordable and market-rate housing and other buildings within the Property is not part of the Project but is intended to occur after the sale of Building Lots within the Project. The affordable housing component of the Project is subject to the availability of sufficient funds to pay for building affordable housing within the Property. If Housing Kitsap and other potential buyers of Building Lots for affordable housing do not notify the City and Developer within two (2) grant cycles (that is, within two (2) years) [GVT10]after the date on which Developer obtains the City’s preliminary plat approval of the Property for the Project, then the City shall have the option either (a) to terminate this Agreement for cause as described in Section 7.1 below, or (b) to allow the Developer to complete the Project on such other terms as the Parties may agree.[MT11]

3.6 Further Agreement. Once the contingency contemplated by paragraph 3.5 above has been removed, Developer will submit a Housing Development Plan, including a detailed description of the number and configuration of income qualified affordable units, rental units and market rate units, and the market segment to which market rate units are proposed to be sold. Upon approval of the Housing Development Plan by the City Council, Developer may be authorized to market and sell the Building Lots.[MT12]

4. City Payment of Project Costs. The City shall pay to Developer all amounts owing or paid to Project Contractors under the Project Contracts and all other Project costs incurred by Developer either from Building Lot sale proceeds or otherwise as described on Exhibit C attached hereto (the “Project Costs”), in addition to payment of the Development Fee. The obligations of the City under this section shall survive the expiration or termination of this Agreement.

5. City Payment of Development Fee. In consideration of the performance by Developer of its obligations hereunder, the City shall pay to Developer a development fee either from Building Lot sale proceeds or otherwise as described on Exhibit C attached hereto (the “Development Fee”), in

addition to payment of the Project Costs. The obligations of the City under this section shall survive the expiration or termination of this Agreement.]

6. [MT13]Insurance and Indemnification[MT14].

6.1 Developer's Obligation to Indemnify. As a material inducement to the City to enter into this Agreement, Developer hereby unconditionally and irrevocably covenants and agrees to indemnify, defend and hold harmless the City, its successors and assigns, and all of its and their officers, directors, shareholders, beneficial owners, trustees, partners, affiliates, agents and employees (collectively, the "**City Indemnitees**") against any and all claims, losses, penalties, fines, forfeitures, judgments, attorneys' fees and related litigation costs and expenses and amounts paid in settlement ("**Losses**") incurred in connection with any claim against any and all City Indemnitees that results from or arises out of any act or omission of Developer constituting negligence, intentional misconduct, or breach of this Agreement. Developer further covenants and agrees to make full and timely payment to each and every City Indemnitee of any expenses (including reasonable attorneys' fees and costs and expenses) the City Indemnitee may incur in the enforcement of this section against Developer. This indemnity shall remain in full force and effect notwithstanding any amendment, modification, renewal, expiration, or termination of this Agreement.

6.2 City's Obligation to Indemnify. As a material inducement to Developer to enter into this Agreement, the City hereby unconditionally and irrevocably covenants and agrees to indemnify, defend and hold harmless Developer, its successors and assigns, and all of its and their officers, directors, shareholders, beneficial owners, trustees, partners, affiliates, agents and employees (collectively, "**Developer Indemnitees**") against any and all Losses incurred in connection with any claim against any and all Developer Indemnitees that results from or arises out of any act or omission of City constituting negligence, intentional misconduct, or breach of this Agreement. The City further covenants and agrees to make full and timely payment to each and every Developer Indemnitee of any expenses (including reasonable attorneys' fees and costs and expenses) the Developer Indemnitee may incur in the enforcement of this section against the City. This indemnity shall remain in full force and effect notwithstanding any amendment, modification, renewal, expiration, or termination of this Agreement.

6.3 General. The indemnity rights and obligations set forth in this Agreement shall be, and are, the only indemnity rights and obligations between the Parties, in law or equity, arising out of or related to the Project. The Parties acknowledge and agree that claims by either of them for breach of this Agreement are direct claims and not claims in indemnity.

6.4 City's Insurance. [RESERVED]

6.5 Developer's Insurance. Developer shall maintain at its sole cost, and not as a Project expense, appropriate worker's compensation and employer's liability insurance with statutory limits. Further, Developer shall maintain at all times during this Agreement a policy of Commercial General Liability Insurance written on an "occurrence" basis and automobile liability insurance, each of such policies to be written with a combined single limit of bodily injury and property damage of Two Million Dollars (US\$2,000,000.00), naming the City as an additional insured.

6.6 Contractors and Subcontractors. Developer shall require that each Project Contractor comply with the insurance coverage requirements normal and customary for such Project Contractor.

7. **Termination.** Each Party shall have the right to terminate this Agreement for Cause only, as described in this Section. In the event that either the City or Developer elects to terminate this Agreement for Cause, such party (the “**Terminating Party**”) shall deliver written notice of such election (the “**Election Notice**”) to the other party. The Election Notice shall specify the date upon which this Agreement shall terminate (the “**Termination Date**”), which date shall be determined by the Terminating Party in its sole and absolute discretion, provided, however, that the termination date shall be not less than seven (7) days nor more than sixty (60) days after the date of delivery of the Election Notice. The termination of the Agreement shall not excuse or terminate the obligations of the City to pay Project Costs to the extent provided under Exhibit C attached hereto or to pay the Development Fee to the extent provided under Exhibit C attached hereto. Effective on the Termination Date, Developer shall assign to the City and the City shall assume from Developer all Project Contracts that have not expired or terminated and all construction warranties provided by Project Contractors.

7.1 **Termination by the City for Cause.** The City shall have the right to terminate this Agreement upon the occurrence of any of the following acts, events, or omissions, any of which shall constitute “**Cause**” for termination by the City:

7.1.1 Developer assigns, directly or indirectly, whether voluntarily, involuntarily, or by operation of law, any of its rights or obligations under this Agreement without the prior written consent of the City, which may be given or denied in the City’s sole and absolute discretion; or

7.1.2 Developer commences any voluntary case in bankruptcy, insolvency, or similar proceeding under any federal or state insolvency or debtor-relief law, whether now existing or hereinafter enacted or amended; or

7.1.3 Any petition in bankruptcy, insolvency, or similar proceeding under any federal or state insolvency or debtor-relief law, whether now existing or hereafter enacted or amended, shall be filed against Developer seeking reorganization, liquidation, or appointment of a receiver, trustee, or liquidator for all or substantially all of the assets of Developer, and such petition has not been dismissed within ninety (90) days after the filing thereof; or

7.1.4 An act of war, civil commotion, acts of God or nature, strikes, shortages of materials, fire or other major casualty, or other similar event that is beyond the reasonable control and anticipation of (and not directly caused by acts of) the City makes the completion of the Project impractical or unfeasible; or

7.1.5 The Project is not completed within ten (10) years after the Effective Date; or

7.1.6 A theft, embezzlement, defalcation, or other act or omission constituting willful misconduct or gross negligence of Developer or its employees or agents; or

7.1.7 Housing Kitsap and other potential buyers of Building Lots for affordable housing do not notify the City within GVT15two (2) grant cycles (that is, within two (2) years) after the date on which Developer obtains the City’s preliminary plat approval of the Property for the Project; or MT16

7.1.8 Any material breach or failure of performance by Developer under any provision of this Agreement; provided, however, that if such breach or failure of performance is susceptible to cure by Developer that Developer also fails to cure such breach or failure of performance to the reasonable satisfaction of the City within thirty (30) days after written notice thereof from the City or, if such breach or failure cannot reasonably be cured within thirty (30) days, within a reasonable period of time after such written notice, provided Developer promptly commences to cure such default within fifteen (15) days after its receipt of the City's written notice and thereafter diligently prosecutes said cure to completion.

7.2 Termination by Developer for Cause. Developer shall have the right to terminate this Agreement upon the occurrence of any of the following acts, events, or omissions, any of which shall constitute "Cause" for termination by Developer:

7.2.1 The City assigns, directly or indirectly, whether voluntarily, involuntarily, or by operation of law, any of its rights or obligations under this Agreement without the prior written consent of the Developer, which may be given or denied in Developer's sole and absolute discretion; or

7.2.2 The City commences any voluntary case in bankruptcy, insolvency, or similar proceeding under any federal or state insolvency or debtor-relief law, whether now existing or hereinafter enacted or amended; or

7.2.3 Any petition in bankruptcy, insolvency, or similar proceeding under any federal or state insolvency or debtor-relief law, whether now existing or hereafter enacted or amended, shall be filed against the City seeking reorganization, liquidation, or appointment of a receiver, trustee, or liquidator for all or substantially all of the assets of the City and such petition has not been dismissed within ninety (90) days after the filing thereof; or

7.2.4 An act of war, civil commotion, acts of God or nature, strikes, shortages of materials, fire or other major casualty, or other similar event that is beyond the reasonable control and anticipation of (and not directly caused by acts of) Developer makes the completion of the Project impractical or unfeasible; or

7.2.5 The Project is not completed within ten (10) years after the Effective Date; or

7.2.6 The City denies any application of the Developer for any Permits or imposes on any Project approval such conditions or mitigation measures that the completion of the Project becomes impractical or unfeasible; or^[MT17]

7.2.7 The City takes any action, including without limitation the adoption of any zoning or other ordinance or resolution, that materially impairs the feasibility of the Project or materially increases the Project Costs.

7.3 Delivery of Records. Upon termination of this Agreement, Developer shall immediately deliver to the City all contracts, memoranda, accounting records, warranties, plans, and other documents relating to the Project.

8. Limitation of Liability. Notwithstanding anything to the contrary set forth herein, in no event shall Developer's liability hereunder exceed the amount of the Development Fee paid by the City to Developer hereunder. Developer shall have no liability for any amounts owed on account of delays by the City, failure of the City to fund all amounts required hereunder, or events beyond the reasonable control of Developer.[MT18]

9. Miscellaneous.

9.1 Benefit and Burden. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns, provided, however, that neither Party may assign this Agreement without the prior written consent of the other Party hereto.

9.2 Status of Developer. Developer and the City acknowledge that Developer is acting under this Agreement solely as an independent contractor and not as a partner, joint venture, or employee of the City. Developer's obligation to commence the construction phase of the Project (as outlined in Exhibit C) shall be subject to the satisfaction of the following condition precedent: the delivery by Developer to City of written notice that the Board of Directors of Pope MGP, Inc., a Delaware corporation, the managing general partner of Pope Resources, which are the direct and indirect owners of Olympic Property Group I LLC, the manager of Developer, has approved the costs identified as Site Engineering, Construction, and Development in Exhibit C Cost Proforma of the Project under this Agreement. If Developer does not deliver written notice to City of the satisfaction of this condition precedent, it shall be deemed not satisfied, and Developer shall have no further duties, obligations, or liabilities under this Agreement.[MT19]

9.3 Notices. Any notice or other communication required or permitted to be given hereunder shall be in writing, and shall be delivered personally, or by a recognized overnight national courier service (such as Federal Express) for next Business Day delivery, or shall be sent by certified or registered mail, return receipt requested, first-class postage prepaid, to the Parties at the addresses set forth below (or to such other addresses as the Parties may specify by due notice to the other):

To the City:

To Developer: Jon Rose, President
Olympic Property Group I LLC
19950 Seventh Ave NE, Suite 200
Poulsbo, WA 98370

Any notice delivered to a Party's designated address by (a) personal delivery, (b) recognized overnight national courier service, or (c) registered or certified mail, return receipt requested, shall be deemed to have been received by such Party at the time the notice is delivered to such Party's designated address. Confirmation by the courier delivering any notice given pursuant to this Section shall be conclusive evidence of receipt of such notice. Each Party hereby agrees that it will not refuse or reject delivery of any notice given hereunder, that it will acknowledge, in writing, receipt of the same upon request by any other Party and that any notice rejected or refused by it shall be deemed for all purposes of this Agreement to have been received by the rejecting Party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

9.4 Entire Agreement; Waivers and Modifications in Writing. This Agreement embodies the entire agreement and understanding of the Parties with respect to the subject matters contained herein. There are no representations, warranties, covenants or undertakings other than those expressly set forth or referred to herein or therein. This Agreement supersedes any and all prior agreements and undertakings between the Parties with respect to the specific subject matters discussed herein. Neither this Agreement nor any provisions hereof may be changed, waived, altered or modified, except by written instrument signed by the Party against which enforcement of the change, waiver, discharge or termination is sought. The failure of either Party to enforce at any time, or for any period of time, any provision of this Agreement shall not be construed to be a waiver of such provision.

9.5 Attorneys' Fees. If any litigation is commenced concerning any provision of this Agreement or the rights and duties of any person or entity in relation thereto, the Party or Parties prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for its reasonable attorneys' fees and court costs in such litigation, which shall be determined by the court in such litigation or in a separate action brought for that purpose.

9.6 Validity. If any provision of this Agreement shall be held to be invalid or unenforceable, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

9.7 Waiver. No consent or waiver, express or implied, by a Party to or of any breach or default by another Party in the performance by such other Party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations of such other Party hereunder. Failure on the part of a Party to complain of any act or failure to act of another Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such Party of its rights hereunder. The giving of consent by a Party in any one instance shall not limit or waive the necessity to obtain such Party's consent in any future instance. No waiver shall be effective against either Party unless it is in writing, signed by that Party.

9.8 Terminology. All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. The use herein of the word "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific terms or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter. As used herein, the term "**Party**" or "**Parties**" shall refer to the City and Developer, individually or collectively, as applicable.

9.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which combined together shall constitute one and the same Agreement.

9.10 Survival of Indemnity and Payment Obligations. Any and all indemnity and payment obligations of any Party hereto shall survive any termination of this Agreement.

9.11 Captions. Any captions to, or headings of, the articles, sections, subsections, paragraphs or subparagraphs of this Agreement are solely for the convenience of the Parties, are not a part of this Agreement, and shall not be used for the interpretation or determination of validity of this Agreement or any provision hereof.

9.12 Governing Law. This Agreement shall be construed in accordance with and governed by the laws and the decisions of the courts of the State of Washington, without giving effect to the conflicts of laws principles of such State.

9.13 Further Assurances. Each Party hereto shall from time to time do such additional acts and execute and deliver such further instruments as the other Party or its counsel may reasonably request to effectuate the intent of this Agreement.

9.14 Amendment. This Agreement may be amended or modified only by a written agreement executed by the City and Developer.

9.15 No Third-Party Beneficiaries. No term or provision of this Agreement is intended to or shall be for the benefit of any person or entity not a Party hereto, and no such other person or entity shall have any right or cause of action hereunder.

9.16 Construction. Each Party acknowledges that it and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendments hereto.

9.17 Limitation of Recourse. There shall be no liability under this Agreement of, nor any recourse under this Agreement to, any officer, director, shareholders, employee or agent of the City or of any Affiliate thereof or of Developer or of any Affiliate thereof.

9.18 Time of Essence. Time is of the essence of this Agreement and each and every provision herein.^[MT20]

9.19 Estoppel Certificate. On the written request of either Party hereto, the other Party shall provide the requesting Party with an estoppel certificate stating that, except as otherwise expressly provided by the delivering Party, this Agreement is in full force and effect, there are no amendments hereto, and there are no defaults or claims hereunder and providing or confirming any other information reasonably requested by such requesting Party, including, without limitation, the amount of costs and fees paid and owing to Developer as of the date of the certificate.

(Remainder of page intentionally left blank.)

IN WITNESS WHEREOF, the Parties have executed this Agreement effective the day and year first above written.

City:

CITY OF BAINBRIDGE ISLAND,
a Washington municipal corporation

Developer:

OLYMPICPROPERTY GROUP I LLC,
a Washington limited liability company

By: _____

Name: _____

Its: _____

By: _____

Name: Jon Rose

Its: President

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBITS:

- A - Legal Description of the Property
- B - Project Description
- C - Calculation and Payment of Project Costs and Development Fee

EXHIBIT A

Legal Description of the Property

EXHIBIT B

Project Description^[MT21]

The Project comprises the following:

The Suzuki Project is a residential project located on 13.83 acres in the City of Bainbridge Island (COBI). The property fronts NE New Brooklyn Road and Sportsman Club Road Northeast. The project will utilize approximately 4.2 acres of the 13.83-acre site. The goal of the project is to provide low-income housing on Bainbridge Island.

The project utilizes the Housing Design Demonstration Program (HDDP) to increase the density of the project for a total of up to 75 residential units while meeting the HDDP requirements. It is anticipated that the project will use HDDP Tier 2, which allows up to two times (2.0x) the base density.

As currently proposed, the project will consist of eighteen (18) single-family residential lots and forty-two (42) townhome units. Parking is provided in an open and central parking configuration. None of the proposed residential units will contain garages, and many of the units do not front directly on the common parking areas. All driveways and parking areas will be private and privately maintained by a Homeowners Association that will be created as part of this project. There will be up to two (2) common, landscaped green spaces and hard-surface walking paths for the use of the project's residents.

These targets may be modified during the design process to account for the realities of topography, engineering, tree retention, and the desires of the purchasers of the lots.

As currently proposed, storm water quality will be treated by rain gardens. Peak storm water flows will be controlled through the use of underground detention pipes and a control structure. The use of Low Impact Development techniques will be investigated as a potential substitution for the underground vault/control structure.

The area outside the development area will be placed in an Open Space Tract to be left natural with the only potential improvements to be earthen walking trails. A conservation easement will be recorded that prohibits housing or other development into perpetuity. Ownership of this Open Space Tract will either stay with the City of Bainbridge Island or be transferred to another government or non-profit agency. A set of conditions, covenants, and restrictions (CCR's) will be prepared and recorded against the property. The CCR's shall outline homeowner and association rights and responsibilities.

Based upon preliminary research the only offsite improvements needed will be:

- A single project vehicle approach
- A gravity sewer extension in NE New Brooklyn Road to Three Tree Lane NE^[MT22]
- Two water connections to the existing water main on NE New Brooklyn Road

No other off-site road, storm, or other infrastructure improvements are anticipated.

EXHIBIT C

Calculation and Payment of Project Costs and Development Fee