

## ISSAQUAH ZERO ENERGY PROJECT DEVELOPMENT AGREEMENT

This Issaquah Zero Energy Project Development Agreement ("Agreement") is made and entered into as of November 14, 2007 ("Effective Date"), by and among **Noland LLC**, a Washington limited liability company ("Developer"); the **City Of Issaquah**, a Washington municipal corporation ("City"); and **Grand Glacier LLC**, a Washington limited liability company ("Master Developer").

### RECITALS

A. The real property (the "Property") that is the subject of this Agreement is generally shown (to the extent now possible) on Exhibit A - Site Plan attached hereto and incorporated herein by this reference, is a portion of the Highlands Drive Transit Oriented Development Urban Village ("Highlands Drive TOD"), Issaquah, Washington, which is owned by Master Developer. Upon recordation of boundary line adjustment establishing the boundaries of the Property, the parties agree that a legal description of the Property will be attached to this Agreement as part of Exhibit A in accordance with Section 1.1.2.

B. The City of Issaquah Comprehensive Plan Goal 9.17 and Policies L-7.2, L-7.1.4, L-7.1.4.1, L-7.1.2.4, L-7.1.4.3, L-7.1.5, and L-7.3.4 encourage advancement of sustainable building practices within the City.

C. The City has a long history of successful encouragement of sustainable building, having provided green-building consulting services to development projects within the City; completed Fire Station 73, the State's first LEED Silver building, in 2003; and managed the education program for the Built Green Idea Home, which catalyzed green, new-home construction in the City.

D. In 2004, the City of Issaquah adopted the Sustainable Building and Infrastructure Policy which calls for increasing the amount and degree of green building within the City, improving environmental performance by reducing energy and water consumption, minimizing site impacts and storm water runoff, protecting and restoring natural habitats and ecological processes, providing healthier indoor environments for building occupants and visitors, providing for alternative modes of transportation, and utilizing resource-efficient building materials such as recycled content building materials and certified lumber.

E. As of 2007, as the result of the City's efforts, 1,500 Built Green 4 Star homes have been built, and six LEED certified buildings have been completed or are under construction. Currently, 4,500 City residents are living in greener homes as a result of this effort.

F. Approximately 4,000 residential units are under some stage of consideration at this time within the City, which units are expected to house approximately 10,000 future new residents. An opportunity exists for the City to provide these future residents with significantly greener housing.

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G. The City desires to continue to find innovative ways to transform building practices to achieve its myriad environmental goals.

H. The Property is part of the Highlands Drive TOD and is being made available pursuant to the terms and conditions of the Highlands Drive Transit Oriented Development Agreement (“TOD Development Agreement”) by and between the City and Master Developer, attached hereto as Exhibit B - TOD Development Agreement and incorporated herein by this reference.

I. Master Developer is committed to innovation in sustainability, having partnered extensively with the City to make Issaquah Highlands a premier example of sustainable development within the Pacific Northwest.

J. The City has worked with the Master Developer and the City’s partners King County, the King-Snohomish County Master Builders Association, Puget Sound Energy, and the WSU Energy Office (the City’s partners are referred to collectively as the “Technical Advisory Committee” or “TAC”) to develop the concept of a market-transforming, sustainable development demonstration project.

K. The City has undergone an extensive builder selection process to select Developer as its preferred builder to develop this project.

L. The City, Developer, and Master Developer wish to enter into this Agreement to outline the terms under which this demonstration project will be built; to provide a mechanism for the City to perform its governmental review of the development of the Project; to insure that the Project is developed consistently with the vision and goals of the City, TAC and Developer, and with the TOD Development Agreement; to provide a mechanism for the City to assign the City’s rights to acquire the Property and to rescind its assignment, reassign or purchase the Property if the Project does not proceed in accordance with this Agreement; to specify the timing of a separate Purchase and Sale Agreement; and to provide a framework for cooperation between the City and Developer.

**Now, therefore,** in consideration of the promises and mutual covenants contained herein, and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

## **ARTICLE 1.**

### **PROJECT DESCRIPTION**

#### **1.1 Project Description.**

1.1.1 General Project Description. The project will consist of construction of a cutting-edge, 10-unit attached residential sustainable building demonstration project, known as

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the Issaquah Zero Energy Project ("Project"). The Project is intended to significantly accelerate highly green, energy-efficient development throughout the region, by demonstrating advanced, yet practical, green-building design and technologies to the public, architects, remodelers, and developers. The Project is intended to demonstrate the feasibility of, and significant latent demand for, affordable, highly sustainable homes, serving as a replicable model for the future of mainstream production residential housing, to achieve the environmental goals of the City and region. The Project is to be built on the Property, which consists of approximately four-tenths of an acre (.4 acre) (the actual size to be established by the BLA pursuant to Section 1.1.2) in a portion of the Highlands Drive TOD, as conceptually shown on Exhibit A - Site Plan. The Project shall include 10 attached residential units. Unit sizes shall be a range of square footages, as described in Exhibit C - Unit Sizes and Target Pricing attached hereto and incorporated herein by this reference.

1.1.2 Boundary Line Adjustment. The units shall be platted as fee-simple, zero-lot-line townhomes and shall not be condominiumized. The parties acknowledge that a boundary line adjustment ("BLA") shall be necessary to establish the boundaries of the Property. Developer shall prepare a boundary line adjustment application ("BLA Application") and submit it to the parties for their approval of the boundary lines. Upon agreement as to the boundary lines, Master Developer shall deliver the BLA Application to the City and shall diligently prosecute such Application to its completion, approval, and recordation. Upon approval and recordation of the BLA, the parties agree that a legal description of the Property will be attached to this Agreement as part of Exhibit A in accordance with Section 1.1.2.

## 1.2 Regulatory Obligations.

1.2.1 Compliance with Laws. Developer shall obtain all required permits for the construction of the Project. Developer shall comply with all applicable City ordinances, regulations, and laws, in addition to all other applicable local, state, or federal statutes, regulations or laws.

1.2.2 Expedited Review. City, at no additional cost to the Developer, will expedite land use, site construction, and building permits for the Project, by placing permits at the front of the permit review line for initial permit submittals and resubmittals, provided, however, that Project permits will be reviewed sequentially with other City-expedited permits (such as affordable-housing permits). This expediting provides no guaranteed timeframes for the Developer. Except as specifically set forth in this Agreement, the City will process applications for permits and approvals as if such applications were made without any City participation in such Project, and nothing herein shall obligate the City to treat Developer any differently from any other applicant when undertaking City's permitting and other regulatory functions or to provide Developer any benefit not provided to other applicants with regard to such permits or other regulatory approval. Nothing herein shall be deemed to create an agency or joint venture relationship between the parties. No officer, agent, or employee of the Developer shall be deemed an agent of the City or the Master Developer for any purpose.

1.2.3. TOD Development Agreement. Concurrent with the adoption of this Agreement, the City and Master Developer will enter into the TOD Development Agreement which shall govern development of the Property. Developer shall comply with all provisions of the TOD Development Agreement. For issues not addressed by the TOD Development Agreement, the City of Issaquah Municipal Code shall prevail.

1.2.4. Project Timeline. Developer shall make timely submission of all permit applications and approvals for the Project. Developer shall develop the Project in compliance with the timeline ("Project Timeline") attached hereto as Exhibit D - Timeline and incorporated herein by this reference. Development of the Project shall not materially vary from the Project Timeline without prior written approval by the City. In no case shall the construction of the Project extend beyond December 31, 2009. Notwithstanding the foregoing, the deadlines established in the Project Timeline and this Section shall be subject to extension upon the occurrence of a "Force Majeure Event", as such term is defined in Section 1.2.5, below.

1.2.5. Force Majeure Extension. To the extent any failure by Developer to comply with the deadlines set forth in the Project Timeline or set forth in this Agreement are caused by a Force Majeure Event, such deadlines shall be extended by the period of delay that reasonably and unavoidably occurs as a direct result of such Force Majeure Event. For purposes of this Agreement, "Force Majeure Event" shall mean any event beyond the reasonable control of the Developer, provided that such event is not foreseeable or, if such event is foreseeable, the effects of the event could not by customary, commercially reasonable measures be avoided or substantially mitigated, including, without limitation: (a) acts of God including fire, storm, flood, earthquake, or other casualty, (b) war, civil commotion, or enemy or hostile government action that impacts a substantial portion of the construction activities in King County, Washington, (c) unavoidable delays in City processing of permits or approvals by the Issaquah Highlands Architectural Review Committee required for Project completion, or (d) judicial orders. Force Majeure Events shall not include contractor default or insolvency or any party's lack of funds.

1.3 Ownership of Property. The Property is currently owned by Master Developer. Pursuant to the TOD Development Agreement, the City has the right to direct Master Developer to transfer the Property to a developer of the City's choosing to complete the Project. Not later than one hundred (100) days from the Effective Date of this Agreement, Master Developer and Developer shall enter into a Purchase and Sale Agreement for transfer of the Property to the Developer, pursuant to Section 2.2.

1.4 Construction Financing. All financing to be obtained by the Developer relating to the Project or utilizing the Property as collateral (collectively referred to as "Construction Financing") shall be obtained from an institutional lender (the "Lender") on commercially reasonable terms that are customary in the industry and shall be subject to prior approval by the City. In no case shall the aggregate amount of indebtedness secured by the Project exceed eighty-five percent (85%) of the appraised projected fair market value of the completed Project. All Construction Financing shall require Lender to notify City of any defaults thereunder. The Developer shall not use the Property as collateral for any purpose other than the Project.

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1.4.1. Surety. Immediately upon obtaining Construction Financing and in any case prior to starting construction, the Developer shall provide and maintain throughout the term of this Agreement financial security to guarantee performance and completion of the Project, in the form of an irrevocable stand-by letter of credit ("Letter of Credit") or other security acceptable to City. The Letter of Credit shall not constitute a limit or restriction upon the City's or the Master Developer's rights to pursue enforcement of this Agreement or any other remedies available to the City or the Master Developer under this Agreement or applicable laws. The Letter of Credit shall be in a form satisfactory to Developer and the City, run in favor of the City and the Master Developer, and be drawable in an amount equal to the Construction Financing which may be outstanding at any time during the term of this Agreement, including any interest, late fees, charges for transfer or default, yield maintenance fee or assumption or acquisition fee, prepayment penalty or premium, or similar charge or fee which may be due upon default or repayment of the Construction Financing. The issuer of the Letter of Credit shall be a financial institution licensed to do business in Washington. The City and the Master Developer shall release the Letter of Credit upon expiration of the Public Open House Period. The Letter of Credit shall be drawable and payable to the City or the Master Developer, as applicable, only (a) if the City exercises its option to purchase the Property from Developer under Section 2.4.4 below or the Master Developer exercises its option to purchase the Property from Developer under Section 2.5 below, and takes title subject to the Deed of Trust (defined in 1.4.2, below) securing the Construction Financing, or (b) at any time within the five (5) days prior to a scheduled foreclosure sale of Lender's Deed of Trust. If any draw on the Letter of Credit is made by the City or the Master Developer, the proceeds of such draw shall be immediately paid to Lender in payment of the Construction Financing. The terms and conditions pursuant to which the Letter of Credit shall be drawable shall be set forth in more detail in a separate agreement between the City, the Master Developer, and Developer in a form consistent with the foregoing and mutually acceptable to such parties, and shall provide that Letter of Credit will be drawn upon a written statement signed by the Mayor of the City, or the CEO or COO of the Master Developer, as applicable, certifying that the City has a right to draw on such Letter of Credit under this Section 1.4.1 of this Agreement.

1.4.2 Lien Priority Agreement. The parties agree to enter into a four-party agreement (the "Lien Priority Agreement") with the City, Developer, Master Developer, and Lender setting forth the respective rights and lien priorities of the City's Purchase Rights set forth in Section 2.4.4, and the Master Developer's Purchase Rights in Section 2.5, of this Agreement and the lien of the Lender's deed of trust (the "Deed of Trust"). Such agreement shall be subject to reasonable approval of all parties, but shall contain provisions that are customary in the industry with respect to the lien priorities of the Purchase Rights and Deed of Trust and shall, without limitation, provide the City or its assignee and the Master Developer the option, upon Default of this Agreement by Developer or in the event foreclosure proceedings are initiated by the Lender, to (a) assume the Deed of Trust with the Lender's consent; (b) purchase Lender's rights under its loan documents; or (c) pay off Construction Financing and obtain a release of the Deed of Trust. Developer agrees to negotiate for Lender to agree to a form of Lien Priority Agreement that is preferred by the City and Master Developer. The City's and the Master

Developer's Purchase Rights shall not be subordinated to any lower priority liens or encumbrances without the express written consent of the City.

1.5 Budget. The Developer shall provide to City an initial Project cost estimate and budget, monthly cost accounting and updates, and final Project costs, with detailed breakouts for all green components. All accounting records shall be prepared in accordance with open book accounting, see Exhibit G - Accounting.

1.6 Project Design.

1.6.1 Design.

a. The Developer shall design the Plans for the Project in a manner that complies with the sustainable design benchmarks outlined in Exhibit E - Benchmarks ("Benchmarks"), and shall build the Project materially in accordance with the Plans, as the same may be revised with Developer and City approval during construction in accordance with the requirements of this Agreement. The Developer recognizes that achieving the Benchmarks and building in accordance with the Plans will require a non-standard design process, design, and building program. However, the Project shall use existing, though potentially non-typical, construction methods and technologies. All Project components shall be replicable by the mainstream building industry, recognizing that Project components may not be current industry standard. Project design and components shall include measures which are applicable to both new construction and remodels. Inherent in the Benchmarks are certain energy savings and other goals for how the Project will operate when complete and occupied. The Benchmarks require the Plans to be designed in a manner intended to allow such goals to be met. However, because actual energy consumption and other goals are affected by the Unit occupants, usage, and other variables beyond the control of Developer, so long as the Project is built in accordance with the City-approved Plans, Developer shall not have any liability or be required to make any post-construction renovations in the event such goals are found not to be met in one or more respects once the Units are occupied. This section shall control and supersede over any other conflicting terms of this Agreement or the Benchmarks.

b. The Project will have "signature" architecture, reflecting its role as a regional demonstration project which may receive tens of thousands of visitors and significant press. The signature architecture should reflect the sustainable nature of the Project, highlighting its unique green features and its cutting-edge, groundbreaking nature. It should have unique, stand-out architecture relative to its surroundings. At the same time, the architecture should reasonably integrate with the architecture of the adjacent buildings. Master Developer acknowledges the intent for the Project to have such signature, green architecture ("Green Architecture") that will reflect in the exterior facades of the Project and agrees to take any reasonable measures within its power to provide that any approvals required to be obtained under or pursuant to the Covenants, Conditions, and Restrictions to be recorded against the Property pursuant to the TOD Development Agreement are promptly obtained. The Covenants, Conditions, and Restrictions will contain a provision that in the event of a conflict between the architectural review requirements of the Issaquah Highlands Community Association ("IHCA")

and the Benchmarks and Green Architecture of the Project under this Agreement, the Benchmarks and Green Architecture shall govern.

c. Project design will include initial Project design charrettes, to include the project architect, the City Project Manager, the Developer Project Manager, specialized consultants, the Master Developer, and the TAC.

d. The Project is to be designed from the ground up, rather than retrofitting an existing design.

e. The Developer is responsible for designing the Project in accordance with the Benchmarks.

f. The ground floor of at least one of the units shall be constructed by the Developer to be ADA accessible.

g. The Developer shall remain solely liable for design and construction of the Project. The Developer shall independently verify the functionality and viability of all designs and components incorporated into the Project. Developer should anticipate green design expense including but not limited to:

- i. Increased costs of the overall design
- ii. Integrated project design process
- iii. Conceptual energy design
- iv. Energy/carbon offset/water/stormwater modeling

h. The Developer shall consult with the City and the TAC regarding methods to achieve the sustainability benchmarks. The Developer shall provide the City with reasonable notice of all design meetings between Developer, its architect, and other consultants. Representatives of the City and the Master Developer may attend all such meetings.

i. Project plans and specifications shall include detailed electrical, plumbing, and other utility plans.

1.6.2 City approval. The City shall have the right to review and approve the Project plans and specifications (collectively, the "Plans"), which approval shall not be unreasonably withheld, conditioned, or delayed so long as the Plans have been designed in a manner that complies with this Section 1.6. The Plans include but are not limited to:

a. basic Project architecture, including site plan, exterior elevations, and basic floor plans, and changes thereto; and

b. sustainability components, designs, and specifications affecting green benchmarks in project design, including energy, carbon offset, and water modeling.

1.6.3 Selection of Consultants. The Developer shall be responsible for hiring the Project architect and any consultants it deems necessary for the Project (collectively, "Consultants"), including sustainability-related design consultants. The Developer shall consult with the City and TAC on Consultant selection and obtain the City's approval of any Consultants Developer intends to retain. Selection of the architect shall proceed immediately after the signing of this Agreement in accordance with Exhibit D - Timeline. The City shall have a right to review and approve all contracts and agreements with Consultants ("Consultant Agreements"). Developer shall use its best, good-faith efforts to ensure that all Consultant Agreements contain:

a. A clause granting the City and TAC members a limited right or license to use all information, documents, and material obtained or created for the Project, including drafts, be available with no additional authorization or restriction for use by the City or TAC members for educational and promotional purposes in accordance with this Agreement, which purposes shall include, without limitation, publication and access to such records by the public; and

b. A clause permitting assignment of such contract or agreement to the City or its assignee in the event the Property is purchased or assigned in accordance with Article 2.

The City may in its sole discretion withhold approval of any Consultant Agreement that does not contain the clauses set forth in subsections (a) and (b) above.

1.6.4 City's Right to Use Project Documentation. Developer shall provide the City with copies of all Project Documents as defined below. Subject to any limitations contained in the Project Documents approved by the City, the City shall retain the right to use all Project Documents for any purposes the City or TAC members deem appropriate, including, without limitation, publication and access to such records by the public. "Project Documents" shall include but not be limited to the following, including drafts thereof:

- a. architectural plans and other design materials and documentation;
- b. detailed building construction drawings, "as-builts" and plans, including detailed plans and specifications for electrical, plumbing, and all utilities; and
- c. project costs and accounting records (as defined in Exhibit G - Accounting, attached hereto and by this reference incorporated herein), including budget documents required pursuant to Section 1.5.

1.6.5 Access to Project Documents. Subject to any limitations contained in the Project Documents approved by the City, the City and TAC members shall have access to or copies of all Project Documents without the requirement of any additional authorization from the Developer or any architect or consultant.



1.6.6 Design to Facilitate Tours. The interior and exterior public tour areas shall be designed and constructed to facilitate the public education/marketing program, including without limitation limited interior wall cutaways, access panels, durable exterior pathways, and similar features, as determined reasonably necessary or desirable by the City. Elements which require the most extensive display and restoration shall be focused in the Long Term Demonstration Unit (as defined in Section 1.9.3 below). The Long Term Demonstration Unit shall include componentry which demonstrates key green-building components of the Project, including energy, water, and materials. It shall have a fit and finish consistent with the other units.

1.7 Construction process. The Developer shall construct the Project in accordance with the specified timeline, as shown in Exhibit D - Timeline, subject, however, to extension due to a Force Majeure Event, as described in Section 1.2.5, above. Developer shall promptly pay all persons furnishing labor and materials with respect to any work performed in or on the Property or with respect to the Project. Developer shall not permit construction, mechanics', materialman or other liens (excluding liens for Construction Financing pursuant to Section 1.4) in excess of one hundred thousand dollars (\$100,000) to be recorded against the Property. Notwithstanding the foregoing, so long as the Project is not in danger of being lost or forfeited as a result thereof, Developer is not required to pay such charge or claim if: (i) Developer is contesting payment in good faith and by appropriate proceedings promptly instituted and diligently conducted, (ii) Developer has given the City notice of its action to contest such charge or claim and provided the City with any and all related information it may reasonably require, and (iii) Developer has deposited with the City (or with the Lender on the Construction Financing, if required under the applicable loan documents), a bond, letter of credit, title insurance endorsement, or other acceptable security, or has established a reserve or other appropriate provision acceptable to the City, in an amount reasonably acceptable to the City, which amount shall not be unreasonable if it is at least 125% of the amount of the contested claim.

1.7.1 Monthly Documentation. Developer shall document photographically the installation and, to the extent feasible, performance of all green measures and components and provide the same to the City on a monthly basis, as construction occurs.

1.7.2 Inspection by City. The City Project Manager may enter the site for inspection at any time. The City Project Manager shall comply with all Developer-established safety requirements when on site.

1.7.3 Change Orders. All change orders/design changes which affect compliance with green benchmarks are subject to City approval. The Developer shall provide the City with an outline summary of all design changes on a monthly basis.

1.7.4 Contingency Fund. Developer shall establish a separate construction contingency fund in the amount of Fifty Thousand Dollars (\$50,000) to enable Developer to make any design changes, as may be recommended by the City or TAC in collaboration with the Developer, necessary or desirable to achieve the Benchmarks.

## 1.8 Management Process.

1.8.1 Project Managers. The interface for all decision-making and communication between the City and Developer shall be the Developer Project Manager and City Project Manager (collectively, the "Project Managers"). These Project Managers shall be fully available to each other on short notice. The City Project Manager shall act as an interface to the Developer for the Technical Advisory Committee. Each party shall designate a back-up person fully qualified to make decisions in the event of the extended absence (in excess of one week) of a Project Manager.

1.8.2 Initial Project Managers. The initial Project Managers shall be:

City – Brad Liljequist  
Developer – Dennis Rominger.

1.8.3 Change of Project Manager. The Project Managers for the City and Developer may be changed with notice to the other party. The parties shall consult regarding the selection of the new Project Manager.

1.9 Education/Marketing. The Project is being constructed with the intent that it shall serve as an educational model for sustainability, including an educational tour program.

1.9.1 City Management. The City, with support from members of the TAC, shall manage the sustainability education, marketing, and tour program for the Project, provided that sales marketing for unit sales shall remain the Developer's responsibility. The City is not required to design marketing materials to enhance unit sales.

a. The Developer and Master Developer are encouraged to participate in any components of education/marketing they choose, and the City shall work with the Developer and Master Developer to enable Developer's and Master Developer's full participation and involvement in the education and marketing program, including selection of any Project education/marketing consultants if Developer or Master Developer so requests.

b. All inquiries from the press shall be directed to the City and responses coordinated by the City, but Developer shall not be prohibited from responding to such inquiries so long as they are coordinated with the City.

c. The City retains right to film or photograph the project design and construction process (e.g., any design/TAC meeting, including those involving the Developer and their architect) and may enter the Project site during any stage of construction for such purposes, provided that such filming and photography does not cause any delay or additional expense or unreasonable difficulties in development and construction of the Project. The City shall own all media it creates in process of construction. The City shall provide the Developer with access to

all City-generated media and hereby grants Developer a license to use all such media, any educational materials, and any other documents or materials of any kind related to the Project that are generated by the City for purposes of marketing and selling the Units and/or promoting and advertising the Developer and the Project.

d. To the extent they exist, and except as prohibited in the City-approved Consultant Agreements, the Developer shall supply digital versions of all Project Documents in its possession to the City. The City and members of the TAC may use these documents for any education/marketing-related purposes in accordance with Section 1.6.3.

#### 1.9.2 Project Access During Construction.

a. The Project will be fully accessible to the City Project Manager and up to five of his/her guests at the end of construction workdays, on weekdays, and on the weekends. Larger educational tours, photo shoots intended for significant public distribution, or any press related tours shall occur with at least 72 hours advance notice from the City to the Developer.

b. The Developer shall develop a safety plan for tours/visits during construction, and the City shall comply with such plan. The Developer, with consultation with the City Project Manager, may cordon off portions of the Project it deems unsafe. The Developer may also require indemnification forms to be signed by visitors during construction as a condition of their entry on the premises of the Project.

1.9.3 Access Following Completion. For a period of three months following receipt of the final Certificate of Occupancy ("Public Open House Period"), the City shall have access to the Project for its public education/marketing program as follows:

- a. the entire Project exterior;
- b. three units selected by the City in its sole discretion ("Public Tour Units"); and
- c. a fourth unit selected by the City to which the City will retain the rights set forth in Section 1.11 ("Long Term Demonstration Unit"). The Long Term Demonstration Unit shall include a ground floor, which shall be ADA accessible pursuant to Section 1.6.1(f).

1.9.4 Cost of Education Materials. The City and the TAC member organizations shall pay for all education-related materials (except for ADA accessibility as set forth in Section 1.6.1(f) and design to facilitate tours as set forth in Section 1.6.6) as set forth in Exhibit F - City Education Materials.

1.9.5 Cleaning and Maintenance During Public Open House Period. The City shall be responsible for cleaning and maintenance of the Project during the Public Open House Period, the cost of which shall be billed to Developer. The Developer will set aside Ten Thousand Dollars (\$10,000) as a cleaning and maintenance budget for this purpose, which amount shall be in addition to the City's Project costs that Developer is required to pay pursuant to Section 1.12.

1.9.6 Cleaning and Maintenance Units Following Public Open House Period. Preparation of units for sale after the Public Open House Period (signage removal, wall restoration, required repainting, etc.) shall be the responsibility of Developer. Normal wear and tear based on the extensive tour program is expected, and the Developer recognizes that repainting, floor refinishing, and other cleaning and maintenance will be necessary and will be Developer's responsibility. The City will work to minimize Project damage from open houses and tours, but is not liable for such damage. The Developer shall obtain insurance in accordance with Section 5.13 to insure against any damage which may be caused by the tour program, the Developer may be concerned about.

#### 1.10 Sales of Units.

1.10.1 No Transfer During Open House Period. The Developer shall not transfer ownership of any units until (fourteen) 14 days following the Public Open House Period.

1.10.2 Target Pricing. The parties shall collaborate to establish target sales pricing and building standard of quality for the Project as set forth in Exhibit C - Unit Sizes and Target Pricing. However, the Developer may sell units for whatever actual sales price the market will bear.

1.10.3 Covenant to Allow Monitoring. All unit sales shall include a covenant that allows the City or its assignee the right to continue to monitor indefinitely utility usage by such units, including water, electric, and natural gas usage.

1.10.4 Covenants, Conditions, and Restrictions. Sale of any unit shall be subject to the Covenants, Conditions and Restrictions set forth in Section 2.2.1.

1.10.5 Developer shall sell the Long Term Demonstration Unit (referenced in Section 1.11, below) as an affordable housing unit. "Affordable housing unit" shall mean that the unit is affordable to households earning sixty percent (60%) or less of the King County Median Income, adjusted for household size, unless otherwise authorized by the City. Prior to any sale of the Long Term Demonstration Unit, Developer shall record a covenant, in a form approved by the City, against the Property in accordance with Appendix C of the TOD Development Agreement governing affordability of housing. Such covenant shall run with the land and be binding upon the assigns, heirs, and successors of the Developer. The sale of the Long Term Demonstration Unit as an affordable housing unit shall take place no later than six

(6) years after expiration of the Public Open House Period. Such Unit shall not be sold during the term of any City Lease that may be entered into pursuant to Section 1.11, below.

1.11 City Lease of Long Term Demonstration Unit. Upon completion of construction of the Project, the City and Developer shall enter into a lease ("City Lease") pursuant to which the City shall lease the Long Term Demonstration Unit for educational, marketing, and any other purpose deemed appropriate by the City. The City Lease shall be on the terms and conditions mutually agreed upon by the parties, provided that:

1.11.1 The City Lease shall be for a term not to exceed five (5) years at a cost not to exceed one dollar (\$1.00) annually;

1.11.2 No rent shall be due until the Long Term Demonstration Unit has received a Certificate of Occupancy;

1.11.3 The Developer shall be responsible for utilities, IHCA dues, property and casualty insurance, taxes and assessments on the Long Term Demonstration Unit during the term of the City Lease;

1.11.4 The City shall be responsible for ordinary maintenance, cleaning, and general liability insurance for use of the Long Term Demonstration Unit; and

1.11.5 The City Lease may be terminated by the City in its sole discretion at any time.

It is the intention of the parties that any such City Lease shall satisfy RCW 35.42.010 - .090, and the City Lease shall be written and interpreted to comply therewith.

1.12 Developer Reimbursement to City for Project Costs. The Developer recognizes that the City has incurred and will continue to incur substantial administrative, educational, marketing, and staff costs as a result of the Project. The Developer shall reimburse for the City for all costs directly attributable to the Project as invoiced by City to Developer on a periodic basis, but not more frequently than monthly, excluding the City's permit review costs and the actual cost of education-related materials as set forth in Exhibit F - City Education Materials, not to exceed Three Hundred Thousand Dollars (\$300,000) ("City Project Costs"). Developer shall reimburse the City for City Project Costs incurred by the City prior to execution of this Agreement not to exceed Fifty Thousand Dollars (\$50,000) of the total Three Hundred Thousand Dollars (\$300,000), which pre-execution Project Costs shall be paid upon closing of the purchase of the Property by Developer. Upon execution of this Agreement, Developer shall reimburse the City on a monthly basis for the City Project Costs within thirty (30) days of receipt of City's invoice; provided, that City shall give Developer thirty (30) days' prior notice of any invoices estimated to be in excess of Ten Thousand Dollars (\$10,000) in any given month.

## ARTICLE 2. OWNERSHIP OF PROPERTY

2.1 Assignment of City's Rights. The City assigns to Developer the City's rights to purchase the Property pursuant to the Purchase and Sale Agreement (defined in Section 2.2 below) subject to the terms hereof and the TOD Development Agreement. By entering this Agreement, Developer accepts assignment from the City of the City's rights under the TOD Development Agreement.

2.2 Real Estate Purchase and Sale Agreement. Within one hundred (100) days of the Effective Date of this Agreement or such longer period as may be necessary to effect the BLA in accordance with Section 1.1.2, the Developer shall enter into a Real Estate Purchase and Sale Agreement with the Master Developer, using a form as determined by the Master Developer (the "Purchase and Sale Agreement") and approved by the City, for a purchase price of One Dollar (\$1.00). The Developer shall use its best efforts towards meeting the objective that the Property, as it is identified and described in the Purchase and Sale Agreement, meets all applicable requirements of the TOD Development Agreement. Developer shall investigate the Property and the feasibility of the Project for the purposes set forth herein pursuant to the provisions of the Purchase and Sale Agreement. The City is not warranting or guaranteeing to Developer that the Property is suitable for development. Conveyance of the Property shall not occur until the City approves a basic Project design which achieves Project benchmarks (consistent with Sections 1.6.1 and 1.6.2), including demonstration of zero energy, zero carbon, and water efficiency benchmarks, recognizing that some detailed design specifications and refinements will occur after conveyance of the property.

2.2.1 Covenants. Master Developer shall not transfer the Property until such time as certain covenants, conditions, and restrictions are approved by the City and recorded against the Property. Such Covenants, Conditions, and Restrictions shall include (a) covenants, conditions and restrictions as set forth in the TOD Development Agreement including membership in the IHCA and compliance with architectural review requirements of the IHCA (subject to Section 1.6.1(b) of this Agreement); (b) restrictions on uses to those consistent with this Agreement; (c) architectural approvals including acknowledgement that zero energy and other sustainable exterior features are necessary, acceptable, and expected; (d) cost sharing for maintenance of landscaping and community facilities similar to community common area charges; (e) all units shall be subject, in perpetuity, to a covenant that allows the City or its assignee the right to continue to monitor utility usage by such units, including water, electric, and natural gas usage; and (f) compliance with all provisions of this Agreement.

### 2.2.2 Required Terms.

a. The Purchase and Sale Agreement shall include the following provision:

Developer acknowledges that the Master Developer has agreed to enter into this Purchase and Sale Agreement on

the basis of the Developer's proposal to develop the Project as proposed in the **Issaquah Zero Energy Project Development Agreement** between the Developer, the City, and Master Developer dated \_\_\_\_\_ ("ZEP Agreement"). To ensure that the City's requirements as set forth in the Assignment Agreement for the Property are fulfilled, at Closing, the Developer and Master Developer will record a memorandum of the Assignment Agreement in the form attached as Exhibit \_\_\_, to provide public notice of such development requirements and to allow the City to enforce the provisions of the Assignment Agreement. In addition Developer and Master Developer acknowledge that prior to start of construction, certain covenants, conditions, and restrictions shall be recorded against the Property, including (a) covenants, conditions and restrictions as set forth in the TOD Development Agreement, including membership in the Issaquah Highlands Community Association and compliance with architectural review requirements of the Issaquah Highlands Declaration (subject to Section 1.6.1(b) of the ZEP Agreement); (b) restrictions on uses to those consistent with the ZEP Agreement; (c) architectural approvals, including acknowledgement that zero energy and other sustainable exterior features are necessary, acceptable, and expected; (d) cost sharing for maintenance of landscaping and community facilities similar to community common area charges; (e) all units in the Project shall be subject, in perpetuity, to a covenant that allows the City or its assignee the right to continue to monitor utility usage by such units, including water, electric, and natural gas usage; and (f) compliance with all provisions of the ZEP Agreement.

b. The Purchase and Sale Agreement shall also include provisions acknowledging the City's right (a) prior to the Developer's closing, to terminate the Developer's rights under the Purchase and Sale Agreement in the event the Developer is in Default under this Agreement, or (b) after the Developer's closing of the Property purchase under the Purchase and Sale Agreement, to repurchase the Property from the Developer pursuant to section 2.4.4 below and to propose a substitute developer to assume the responsibilities of the Purchase and Sale Agreement. This Agreement is not intended to replace, alter, or control the Purchase and Sale Agreement, except as expressly written herein.

2.2.3 Memorandum of Assignment. At Closing of the Purchase and Sale Agreement, Developer shall deliver to the City a Memorandum of Assignment of Purchase and

Sale, in a form mutually agreed upon by the parties, to place the public on notice of the City's Purchase Right, and to be recorded immediately after the Deed conveying the Property to Developer is recorded. The City's right to purchase shall not be subordinated to any lower priority liens or encumbrances without the express written consent of the City.

2.2.4 Right of Entry. Developer, at its sole cost, may enter the Property at reasonable times prior to entering into the Purchase and Sale Agreement to inspect and make surveys and to conduct soil and engineering studies and environmental analysis. Developer shall: (a) provide Master Developer with at least two (2) business days' prior notice of the intended access and investigation; (b) not materially interfere with Master Developer's work within the Issaquah Highlands Project; (c) not excavate (with the exception of soils testing) or alter the grade or remove or damage any trees on the Property; (d) not cause Master Developer to violate any erosion control standards or other governmental restrictions; (e) repair and restore the Property to its condition existing prior to Developer's entry in connection with modifications caused by Developer's entry; (f) keep the Property free from any liens arising out of Developer's entry or investigations; (g) indemnify and hold Master Developer harmless as provided in Section 5.12; (h) prior to entry, have in place and name Master Developer as an additional insured under liability insurance meeting the requirements of Section 5.13; and (i) not drill or undertake any level 2 environmental analysis relating to the Property such as testing, sampling or lab analysis unless the initial environmental review calls for same, but any level 2 analysis shall require Master Developer's consent. Developer shall provide, without representation or warranty, copies to the City and the Master Developer within three (3) business days after Developer's receipt of any studies or investigations undertaken on the Property prepared by third parties, but not including any appraisals or market feasibility studies.

2.3 Default. In the event of a Default by the Developer of this Agreement or the TOD Development Agreement, the City, in addition to any other remedies at law or in equity, shall have the right to rescind the Developer's assignment of rights under this Agreement, and/or repurchase or assign the Property.

2.3.1 Definition of Default. "Default" shall mean any material failure of Developer to comply with this Agreement after any notice and opportunity to cure as provided in Section 2.3.2, the TOD Development Agreement, Purchase and Sale Agreement. "Default" shall include, but not be limited to, Developer's failure to:

a. Proceed to develop the Project in accordance with Exhibit D - Timeline (unless Developer has requested in writing the City's and Master Developer's approval to extend the dates in the timeline and has provided justification of the appropriateness of an extension);

b. Enter into a Purchase and Sale Agreement with the Master Developer within one hundred (100) days of the Effective Date of this Agreement;

c. Close the Purchase and Sale Agreement within fourteen (14) days of approval of the final building permit for the Project;

ISSAQUAH ZERO ENERGY PROJECT DEVELOPMENT AGREEMENT



d. Design the Project in accordance with the Section 1.6 and Exhibit E - Benchmarks and the ARC design guidelines;

e. Build the Project in accordance with the Plans approved by the City and the ARC pursuant to Section 1.6.2; or

f. Substantially complete the Project by December 31, 2009.

2.3.2 Right to Cure. Developer shall have the right to cure a Default within thirty (30) days after written notice from the City or the Master Developer specifying the Default, or such a reasonable time as may be necessary to cure such Default, so long as Developer is proceeding with diligence. However, unless approved by the Issaquah City Council and Master Developer, in no event shall revisions to the timeline in Exhibit D - Timeline result in the construction extending beyond December 31, 2009. All other deadlines set forth in section 2.3.1 and in the timeline shall be subject to extension upon the occurrence of a Force Majeure Event.

2.4 Remedies. In the event of Default, the City, in addition to any other remedies at law or in equity, shall have the following rights:

2.4.1 Default Prior to Execution of Purchase and Sale Agreement. In the event of Default by Developer before the Purchase and Sale Agreement has been entered into, this Agreement will be terminated upon the City's delivery of written termination notice, and upon such termination the City will have the right to acquire or assign its right to acquire the Property to another developer and request approval from the Master Developer that the new assignee assume the role of the City under the TOD Development Agreement.

2.4.2 Default After Execution but Prior to Close of Purchase and Sale Agreement. In the event of Default by Developer after the Purchase and Sale Agreement has been entered into and before Closing of the sale, the Purchase and Sale Agreement between the Developer and Master Developer will be terminated upon the City's delivery of written termination notice (or upon the Master Developer's delivery of written termination notice if the City has not terminated after expiration of 120 days after the Default), and upon such termination the City will have the right to assign its right to acquire the Property to another developer and request approval from the Master Developer that the new assignee assume the role of the Developer under the Purchase and Sale Agreement. Nothing in this Agreement shall limit the Master Developer's right to pursue any remedies set forth in the Purchase and Sale Agreement for any default by the Developer either before or after closing of the Property purchase.

2.4.3 Default After Purchase of Property. In the event of Default by Developer after the Developer has closed its purchase of the Property, then the City (or the Master Developer if the City has not terminated after expiration of 180 days after the Default) has the right to terminate this Agreement upon delivery of written notice to the Developer, whereupon the City will have the right to purchase or assign such right pursuant to Section 2.4.4, in which case the provisions of the Purchase and Sale Agreement will continue to bind the Property, including any new assignee designated by the City and approved by the Master Developer. If the

new assignee assumes the role of the Developer under the Purchase and Sale Agreement, the new assignee will be required to reimburse the Developer for any costs paid to the Master Developer and other third parties under the Purchase and Sale Agreement. In addition to the Master Developer's remedies under the Purchase and Sale Agreement, and subject to the City's right to purchase the Property in Section 2.4.4, the Master Developer shall have the right to repurchase the Property as provided in Section 2.5 below.

#### 2.4.4 City's Purchase Rights.

a. Upon a Default by Developer after it has purchased the Property, the City shall have the right to terminate the Developer's rights under this Agreement and to purchase all but not a portion of the Property on the terms described herein ("Purchase Rights"). Closing shall occur thirty (30) days (or such longer time as the City may determine is necessary to release the Construction Financing, clear title, and complete the transaction) after notice by City of its intent to exercise its Purchase Rights, and at any closing, the Developer shall convey the Property by statutory warranty deed and the parties shall pay equally all closing costs. The City's Purchase Rights under this Section 2.4.4 shall be fully assignable by the City, if the assignee is approved by the Master Developer.

b. The City's Purchase Rights shall commence on the date of Closing under the Purchase and Sale Agreement and shall expire on the date the residential dwelling units may be sold in accordance with Section 1.10.1. The City shall, upon expiration of its Purchase Rights, execute and deliver to Developer and cause to be recorded against the Property a release of the City's Purchase Rights.

c. Upon exercise of its Purchase Rights, the City shall pay a sum (the "Purchase Price") equal to eighty-five percent (85%) of the total out-of-pocket costs incurred by Developer in connection with the design, development, and construction of Project ("Developer Costs"). Developer Costs shall include, without limitation, (i) hard construction costs such as those for materials, supplies, labor, and payments to subcontractors in connection with development of the Project, installation of infrastructure improvements, and construction of the Units; (ii) soft costs such as payments to the Project architect and other Consultants, any payments for environmental or engineering reports, appraisal fees, title and escrow costs, fees for permits, assessments, any sewer and water hook-up fees, and interest and fees paid on Construction Financing; and (iii) any payments or reimbursements to the City for City Project Costs made by Developer pursuant to this Agreement. Developer Costs shall include the indirect, in-house costs of Developer's on-site development and construction supervisor(s) (allocated between the Project and other projects on a pro rata basis, if such supervisor(s) work on the Project on a less than full-time basis), but shall not include the costs of Developer's other employees, overhead, or any fees or payments made by Developer to itself or its affiliates. Developer shall provide the City with a schedule showing all Development Costs included within the Purchase Price a minimum of thirty (30) business days prior to the scheduled closing of any such purchase pursuant to exercise of the Purchase Rights, and, at the City's request, shall provide copies of receipts, invoices, or other documentation of such costs.

d. Upon exercise of its Purchase Rights, the City, in its sole and absolute discretion, may (i), with the agreement of the Lender, agree to assume loans secured by the Property, (ii) take title to the Property "subject to" such loan(s); or (iii) pay in full any such loan. In the event that the City repays loan(s) on behalf of Developer, or assumes such loan(s) and obtains a fully and final release from the Lender in a form acceptable to Developer, relieving Developer of its obligation to repay such loan(s), the City shall receive a credit against the Purchase Price in the amount of the loan(s) whether or not such amounts were paid by draw of the Letter of Credit, but in no event shall the amount of such credit exceed the Purchase Price. To ensure the City will pay only for work performed, the City shall have the right to review construction loan draw requests and inspect the course of construction progress. So long as the City's Purchase Rights continue in effect, without the prior approval of the City, the Developer shall not request that the construction lender advance funds if, when added to funds advanced by others, including the Developer, all such advanced funds would in the aggregate exceed the budgeted amount for such items as identified under the project's development budget by more than five percent (5%), or for construction costs which exceed the percentage of completion of Construction as certified by the Project's inspecting architect for each construction loan draw.

e. If the City purchases the Property, then the Property shall continue to be bound by all the terms of the Purchase and Sale Agreement, and the City and any other subsequent owner of the Property or any Unsold Parcel shall comply with all terms of the Purchase and Sale Agreement, which shall be enforceable by the Master Developer.

2.5 Master Developer's Repurchase Right. If the City does not exercise its Purchase Rights under Section 2.4.4 of this Agreement within one hundred eighty (180) days after the Developer's Default, then the Master Developer may repurchase the Property under the terms of Section 2.4.4 above and the City will then have no further purchase Rights. Alternatively, if the City purchases the Property from the Developer pursuant to Section 2.4.4, but the City or its subsequent assignee developer thereafter does not substantially complete construction of 10 units in accordance with this Agreement within 18 months after purchase, then the Master Developer shall have the option to repurchase the Property from the City.

2.5.1 If the Master Developer purchases from the Developer, then the option price shall be the same as set forth in Section 2.4.4(c) and (d). If the Master Developer purchases from the City, then the option price shall be the amount paid by the City when it acquired the Property from the Developer under Section 2.4.4, plus any costs paid by the City after it acquired the Property that otherwise would be defined as Developer's Costs under Section 2.4.4(c). Closing shall occur thirty (30) days after the Master Developer's notice, and at any closing, the Developer or the City, as applicable, shall convey the Property by statutory warranty deed and the parties shall pay equally all closing costs.

2.5.2 Upon repurchase by the Master Developer from either the Developer or the City under this Section 2.5, the Master Developer shall have the option to build up to 10 zero energy homes consistent with this Agreement and the design benchmarks set forth in Exhibit F, in which case the City will assign any studies, plans, and permits for the zero energy homes to the Master Developer without charge. If the Master Developer does not commence construction

of the 10 zero energy homes within two (2) years after it acquires the Property (or sooner if the Master Developer notifies the City it elects not to build 10 zero energy homes), then the Property shall be used for 10 or more for sale affordable housing units affordable at the 80% of median income level, and if such affordable units are constructed by the Master Developer, then it may elect to either construct those units as a separate project or may combine those units with any affordable housing project on the adjoining parcel if affordable housing is then being constructed on the adjacent parcel; provided, that any such construction of affordable units shall be in accordance with Appendix C of the TOD Development Agreement governing affordability of housing.

2.6. No Assignment of Developer's Rights. Developer shall not convey the Property or its rights hereunder (except for the conveyance of units to homebuyers in accordance with this Agreement) without the City's prior written approval, which approval may be denied or conditioned in the City's reasonable discretion. In no event will the City approve an assignment which results in the payment of any fees of any nature to the Developer. Notwithstanding the foregoing, the City acknowledges and agrees that Developer intends and shall be allowed to assign all of its rights and obligations under this Agreement to a wholly owned affiliate of Developer.

### **ARTICLE 3. COMMUNITY GOVERNANCE DOCUMENTS**

3.1 Covenants, Conditions and Restrictions. Upon its purchase of the Property, Developer shall comply with all obligations applicable to the Property, including, if applicable, homeowners association and any related Covenants, Conditions, and Restrictions for the Issaquah Highlands Development.

### **ARTICLE 4. TERMINATION**

4.1 Term of Agreement. This Agreement shall be effective as of the date hereof and shall expire with respect to the Property at the earlier of (a) five (5) years from the issuance of the final Certificate of Occupancy and the recordation of covenants described in Section 2.2.1 of this Agreement have been recorded against the Property, or any legally conveyable portion thereof or (b) termination of this Agreement as provided in Section 2.4, subject to the survival of certain provisions as set forth in Section 5.16. Notwithstanding the foregoing, in the event that closing of the sale of the Property has not occurred on or before July 1, 2008, then either the Developer or the City may at any time prior to such closing, but only so long as it is not then in material default of any of its obligations hereunder, elect to terminate this Agreement by delivering written notice of such termination to the other party, in which case each party shall bear all of its own costs incurred in connection with the Project except that Developer shall remain liable to City for all City Project Costs pursuant to Section 1.12 incurred through the date of such notice of termination, and shall promptly reimburse the City for all such amounts invoiced by the City.

**ARTICLE 5.**  
**MISCELLANEOUS PROVISIONS**

5.1 No Third Party Beneficiaries. This Agreement is made for the benefit of the parties hereto and shall not create any rights in other persons.

5.2 Default and Attorneys' Fees. In the event of default by either party to this Agreement, the non-defaulting party shall have the right to bring an action for specific performance, damages, and any other remedies available to such party at law or in equity. In the event of any litigation hereunder, the Superior Court of King County, Washington, shall have the exclusive jurisdiction and venue. In the event either party brings an action to enforce this Agreement, the prevailing party of such action shall be entitled to recover from the other party all costs incurred in connection therewith, including reasonable attorneys' fees.

5.3 Time is of the Essence. Time is of the essence in the performance of this Agreement.

5.4 Notices. Any and all formal notices required or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given upon receipt when personally delivered or sent by overnight courier or three (3) days after deposit in the United States mail if by first class, certified or registered mail, return receipt requested. All notices shall be addressed to the parties at the addresses set forth below or at such other addresses as any parties may specify by notice to all other parties and given as provided herein:

If to Developer:        Noland LLC  
                                 3600 Fremont Avenue North  
                                 Seattle, WA 98103  
                                 Attn: Bart Mitchell  
                                 Tel (206) 634-3074  
                                 Fax (206) 547-0267

*With a copy to:*        D. Christian Addicott  
                                 Hillis Clark Martin & Peterson  
                                 1221 2<sup>nd</sup> Avenue, 5<sup>th</sup> Floor  
                                 Seattle, WA 98101  
                                 Tel (206) 623-1745  
                                 Fax (206) 623-7789

If to City:                City of Issaquah, MDRT  
                                 PO Box 1307  
                                 1775 12<sup>th</sup> Ave NW  
                                 Issaquah, WA 98027-1307  
                                 Attn: Brad Liljequist  
                                 Tel (425) 837-3448

ISSAQUAH ZERO ENERGY PROJECT DEVELOPMENT AGREEMENT

Fax (425) 837-3439

*With a copy to:* Wayne Tanaka  
Ogden Murphy Wallace  
2100 Westlake Center Tower  
1601 5th Ave  
Seattle, WA 98101  
Tel (206) 447-7000  
Fax (206) 447-0215

If to Master  
Developer: Grand Glacier LLC  
c/o Port Blakely Communities  
Attn: \_\_\_\_\_  
1011 N.E. High St., #200  
Issaquah, WA 98029  
Tel: (425) 391-4700  
Fax (425) 391-9028

*With a copy to:* Thomas A. Goeltz  
Davis Wright Tremaine  
1201 Third Avenue, #2200  
Seattle, WA 98101  
Tel: (206) 757-8050  
Fax: (206) 757-7050

5.5 Integration; Amendment. This writing constitutes the entire agreement of the parties with respect to the subject matter hereof and may not be modified or amended except by a written agreement specifically referring to this Agreement and signed by all parties hereto. The Mayor or her designee may execute the Exhibits to this Agreement, and any amendments to this Agreement and Exhibits that are intended to clarify the intent or further purpose of this Agreement and that do not substantially and materially alter the rights or obligations of the parties hereto.

5.6 Waiver. No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any prior or subsequent breach or default.

5.7 Binding Effect. Subject to Section 2.5 above, this Agreement shall be binding upon and inure to the benefit of each party hereto, its successors and assigns.

5.8 Captions. The captions of any articles, paragraphs or sections contained herein are for purposes of convenience only and are not intended to define or limit the contents of said articles, paragraphs, or sections.

5.9 Cooperation; Duty of Reasonableness and of Good Faith. To honor the intent and purpose of this Agreement, and of any of the documents referenced herein, the parties shall act reasonably and in good faith. If the consent of a party is required or contemplated hereunder, the party whose consent is required shall not unreasonably withhold consent, unless such consent is expressly subject to such party's sole discretion pursuant to the terms of this Agreement. The Mayor or her designee may consent on behalf of the City. The parties shall cooperate, shall take such further action, and shall execute and deliver further documents as may be reasonably requested by the other party in order to carry out the provisions and purposes of this Agreement.

5.10 Governing Law. This Agreement and all amendments thereof shall be governed by and construed in accordance with the laws of the State of Washington applicable to contracts made and to be performed therein, without giving effect to its conflicts of law provisions.

5.11 Negotiation and Construction. This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either party.

5.12 Indemnification. Developer shall indemnify and hold the City and the members of the TAC and the Master Developer and their respective agents, employees, and/or officers ("Indemnified Parties"), harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, loss, damages, or costs, of whatsoever kind or nature, brought against the Indemnified Parties arising out of, or in connection with, or incident to the negligence of Developer, its consultants, employees, agents and officers, or Developer's breach of this Agreement, except to the extent caused by the "Developer Parties" (as defined in the following Section); provided, that nothing herein shall require Developer to hold harmless or defend the Indemnified Parties for damages or loss caused by the Indemnified Parties' sole negligence; and provided further, that City and the Master Developer shall have no liability for and this indemnification provision shall protect the City and the Master Developer against any liability arising out of design defects. The Developer expressly agrees that the indemnification provided herein constitutes the Developer's waiver of immunity under Title 51 RCW, for the purposes of this Agreement; provided, however, that such waiver is applicable only as to this Agreement, only as to the other party to this Agreement, and only for the purpose of giving full force and effect to the indemnification obligations of each party as set forth in this section.

5.12.1 Indemnification by City. The City shall indemnify and hold the Developer, together with its members, agents, employees, and/or officers and each of their respective successors, heirs, and assigns (the "Developer Parties"), harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, loss, damages, or costs, of whatsoever kind or nature, brought against the Developer Parties arising from or related to any entry onto the Property or Project by any City Party, or by any third party as part of an educational tour or as a guest of the City, pursuant to the rights of entry granted such parties by this Agreement, including but not limited to the rights

granted under Sections 1.7, 1.9, and 1.11 hereof, except to the extent caused by the Developer Parties.

The provisions of this Section 5.12 have mutually negotiated by the parties and shall survive the expiration or termination of this Agreement.

5.13 Insurance. As of the date of execution of this Agreement, and prior to any entry by Developer onto the Property, the Developer shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to the Developer, its agents, representatives, employees, or volunteers. The Developer shall provide an insurance certificate, together with an endorsement naming the City, members of the TAC, the Master Developer, their respective officers, elected officials, agents, employees, representatives, engineers, consultants, guests and volunteers as additional insureds, to the City and the Master Developer for their inspection prior to the exercise of any rights granted pursuant to the terms of this Agreement, and such insurance certificate shall evidence:

5.13.1 Comprehensive general liability insurance, written on an occurrence basis, with limits no less than:

- a. \$2,000,000 for bodily injury or death to each person;
  - b. \$2,000,000 for property damage resulting from any one accident;
- and
- c. \$2,000,000 for all other types of liability.

5.13.2 Automobile liability for owned, non-owned, and hired vehicles with a limit of \$1,000,000 for each person and \$1,000,000 for each accident.

5.13.3 Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.

5.13.4 Comprehensive for premises-operations, explosions and collapse hazard, underground hazard and products completed with limits of not less than \$1,000,000.

5.13.5 Construction design and defect insurance with limits of not less than \$2,000,000.

The liability insurance policies required by this section shall be maintained by the Developer throughout the term of this Agreement. Any deductibles or self-insured retentions must be declared to and approved by the City and the Master Developer. Payments of deductibles and self-insured retentions shall be the sole responsibility of the Agency.

The Developer's insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of



the insurer's liability. The Developer's shall be primary insurance with respect to the City, the Master Developer and their officers, officials, employees, agents, consultants, and volunteers. Any insurance maintained by the City, the Master Developer and their officers, official employees, consultants, agents, and volunteers shall be in excess of the Developer's insurance and shall not contribute with it.

In addition to the coverage requirement set forth above, each such insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be reduced or canceled nor the intention not to renew be stated until forty-five (45) days after receipt by the City and the Master Developer, by registered mail, or a written notice addressed to the Planning Director of the City and the CEO of the Master Developer of intent to cancel or not to renew."

Within thirty (30) days after receipt by the City and the Master Developer of said notice, and in no event later than fifteen (15) days prior to said cancellation or intent not to renew, the Developer shall obtain and furnish to the City and the Master Developer replacement insurance policies meeting the requirements of this section.

5.14 Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed, either by the parties hereto or by any third party, to create the relationship of principal and agent or to create any partnership, joint venture, or other association between the parties.

5.15 Exhibits. The following Exhibits described herein and attached hereto are fully incorporated into this Agreement by this reference:

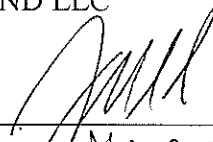
Exhibit A	Site Plan
Exhibit B	TOD Development Agreement
Exhibit C	Unit Sizes and Target Pricing
Exhibit D	Timeline
Exhibit E	Benchmarks
Exhibit F	City Education Materials
Exhibit G	Accounting

5.16 Survival. Sections 1.6.4, 1.6.5, 1.10.3, 1.10.4, 1.10.5, 1.11, 3.1 and 5.12 shall survive termination or expiration of this Agreement.

Executed effective as of the date and year of the last signature below.

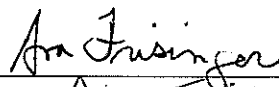
**DEVELOPER:**

NOLAND LLC

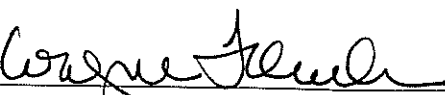
By:   
Title: MANAGER  
Date: 10/26/07

**CITY:**

CITY OF ISSAQUAH

By:   
Name: Ava Frisinger  
Title: Mayor  
Date: 11/6/07

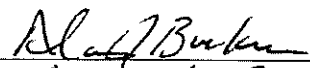
Approved as to Form

By:   
Issaquah City Attorney

**MASTER DEVELOPER:**

GRAND GLACIER LLC, a Washington limited liability company

By: Port Blakely Communities, Inc., its Manager

By:   
Name: Alana J. Bocker  
Its: President  
Date: 11-2-07

## EXHIBIT A

### Site Plan



# ZEP Site

BLOCK 9

**ZEP**

(0.4 Acres)

LITH PLACE NE

LITH PLACE NE

AB 5700  
Exhibit A  
Page A-28



## EXHIBIT B

**TOD Development Agreement**  
(see Agenda Bill 5698 for document)

## EXHIBIT C

### Unit Sizes and Target Pricing

#### Sizing

10 units shall be provided in the project. Units shall be provided in the following size ranges:

<u>Size range (gsf)</u>	<u>Number of Units</u>
500 to 750 sf	2 to 4
750 to 1250 sf	2 to 4
1250 to 1750 sf	2 to 4

#### Pricing and Quality Level of Homes

One of the goals of the project is to demonstrate that extremely green housing is available at reasonable cost to the market mainstream. Therefore, the homes will have target sales prices which are at most 25% greater than the average sales prices for new homes of similar size and quality within King County. For purposes of target sales pricing and open book accounting, since the land is being provided to the Builder at a cost of one dollar, a typical land price based on Countywide averages for similar sized and configured units will be assumed. For example, the average townhouse price in King County in 2006 was \$354,900 – therefore, the target sales price for project townhouses would be \$443,600 (this amount would be adjusted to reflect the anticipated sales prices in 2009). The level of quality of project units shall be consistent with the level of quality found in similar new units within the Issaquah marketplace, though modified to maximize project sustainability.

Actual sales prices, however, will not be artificially capped at the target sales price, but rather allowed to achieve whatever amount the market will bear, to fully demonstrate actual market interest in zero energy housing.



## EXHIBIT D

### Timeline

THE FOLLOWING ARE KEY TIMELINE BENCHMARKS FOR THE PROJECT. DATES IN PARENTHESES ARE ACCEPTABLE FALL BACK DATES WHICH DO NOT REQUIRE A FORCE MAJEURE CAUSATION.

<b>SELECT ARCHITECT</b>	<b>NOVEMBER 1 (DECEMBER 1) 2007</b>
Submit Preliminary Plat to City	January 1 (February 1) 2008
Submit Building Permits to City	June 1 (July 1) 2008
Commence Site construction	May 1 (June 1) 2008
Commence Building construction	September 1 (October 1) 2008
Complete all construction, site ready for open houses	September 1 2009

## EXHIBIT E

### Benchmarks

Zero net energy usage benchmark  
Zero net carbon emission benchmark

#### ***Detailed Description of Benchmarks***

The Zero Energy Project buildings will be designed so that occupants will need to purchase no more "standard purchased energy" (defined below) than the project will generate, and introduce onto the public electric grid via surplus "project renewable electrical sources" (defined below) over the course of one year. This will be achieved via the following:

1. Significant reduction in typical energy demand through substantial upgrades to the building envelope, HVAC systems, appliances, lighting, and plug load controls;
2. On site heating and electrical generation serving the project, such as passive solar heating, solar hot water heating, and renewable on site electrical generation; and
3. Surplus electrical generation from project owned sources placed on the public electric grid.

Similarly, all project "standard purchased energy" will be converted to their respective CO2 emission factor(s), and balanced on an annual basis by an equal amount of avoided CO2 emissions, in the form of surplus electricity generated by the project and reintroduced to the grid. The amount of CO2 offset will be based on total surplus energy, converted to a CO2 emissions offset. For all energy comparisons, all units of energy will be converted to the common unit of measure, Million British Thermal Units, using the conversion factors in Table 1. Similarly, CO2 emissions for each energy type will be based on conversion factors in Table 1.

Because of highly variable occupant behavior and household sizes, accomplishment of these benchmarks will be based on an energy/carbon model which assumes typical household behaviors for anticipated green-oriented occupants. The Builder shall hire a qualified energy modeler to perform models, which will then be reviewed by the WSU Energy Office on behalf of the City of Issaquah. All models are subject to City approval. Modeling methodology will be jointly determined by the City and Builder. The process of modeling and construction verification for the project is outlined in Table 2. All relevant building systems described in the Final Design analysis will be detailed on the building permit documents.

All project units shall include a prominently located, digital energy use monitor, which provides occupant information about current and total energy use/generation for the unit. The long term demonstration unit shall include an energy monitoring system which provides energy use information for all outlets and energy using/generating components in the home. An energy monitor for the whole project will be provided as well, located prominently in a project common area.

The carbon emissions of the entire construction process shall be evaluated and off-set by an equal amount of carbon absorption provided by planted seedlings within the Issaquah City limits. At the time of drafting this contract, initial calculations anticipate this to be approximately 1,000 seedlings.

### Definitions

#### Standard Purchased Energy

Purchased energy includes utility electricity, utility gas, propane, fuel oil, or other non renewable energy sources, for the purpose of serving project buildings. No credit will be given for renewable sources that are part of these purchased energy portfolios.

#### Project renewable electrical sources

On site electrical generation includes electrical production from wind, solar, geothermal, small hydro-electric and renewable biomass. On site generation is preferred, but if, as determined by the Project Managers, sustainability reasons make locating renewable electrical generation off-site more appropriate (for example, inadequate roof area for photovoltaics due to project density or desired green roofs, or better wind is available off-site), the electrical generation may be off-site, so long as the equipment is project owned, within a mile of the site, within the City of Issaquah, and accessible for public demonstration purposes. Any off-site power generation shall be designed into the project energy use/generation monitoring system to provide seamless, real-time information about energy use/generation to individual project units.

**Table 1 Conversion Factors**

	Unit	MMBtu/unit	lb CO2/MMBtu
Electricity	kWh	0.003413	322
Natural Gas	Therm	0.100000	117.080
Propane	Gallon	0.091000	139.178
Distillate Oil	Gallon	0.139000	161.386

**Table 2 Modeling/Verification Process**

Preliminary Schematic	Loads analysis only <i>Refine building size, shape, as well as component and systems performance criteria.</i>
Final Schematic	Detailed performance analysis of loads and project energy generation resources. <i>Demonstrate successful zero energy concept.</i>
Final Design	Detailed loads analysis based final design documents. Detailed energy generation calculations <i>Demonstrate successful zero energy project design.</i>
During Construction	Any variations in specifications from the final design require approval by the City Project Manager. Additional energy analysis may be required to evaluate the impact of the modifications to the design.
Post – Construction	A post construction analysis shall be performed documenting the project as built, including field test results. <i>Document results</i>

### Commissioning

*Commissioning* is a systematic process of verification and documentation which ensures that the selected building systems have been designed, installed, and function properly, efficiently, and can be maintained in accordance with the contract documents in order to satisfy the building owner's design intent and operational needs.

#### Commissioning Plan:

The Builder will develop a plan for inspection and/or testing of all systems that will impact the building energy use. The Builder will identify the professional responsible for preparation of the commissioning reports. The Commissioning Plan will be subject to approval by the City Project Manager prior to construction.

Example Outline of the Commissioning Plan:

**Project Background**

*A brief history of the project including the owners' intended use.*

**Commissioning Objectives**

*A brief discussion of what was expected of the commissioning effort (primary goals), typically including:*

- Net Zero Energy Use
- Occupant comfort
- Assured systems performance
- Less maintenance issues
- Less warranty issues
- Less call-backs

**Commissioning Approach**

*A list of the steps (phases) used in the commissioning effort, which may include a timeline showing the duration of commissioning.*

**Results and Conclusions**

*A summary of the results from each step (phase) of commissioning and any conclusions drawn from the process.*

**Recommendations**

*A list of recommended follow-up procedures, from the commissioning agent to the owner, for maintaining the building's optimum performance.*

Example Outline of Inspection and Functional Testing included in the Commissioning Plan:

1. Building Envelope:
  - a. Insulation
    - i. Visual inspection
  - b. Window Installation
    - i. Verification of U-factor and Solar Heat Gain
    - ii. Verification that the windows have been installed in accordance with the IRC and manufacturers instructions
  - c. Building Air leakage control
    - i. Visual Inspection
    - ii. Blower Door Testing During Construction
    - iii. Blower Door Testing at Final
2. List of Photographs
  - a. Typical installations
    - i. Foundation
    - ii. Framing
    - iii. Insulation
    - iv. Air Sealing
    - v. Drywall
    - vi. Windows
3. HVAC Equipment
  - a. System Descriptions
    - i. Equipment
    - ii. Distribution Systems
    - iii. Automated Controls
    - iv. Operating controls and sequences
4. Functions to be tested
  - a. Conditions under which the tests will be performed
  - b. Measurable criteria for acceptable performance based on modeling assumptions
5. Other
  - a. Appliances
  - b. Lighting

- c. Plug Loads
- d. Shading
- e. For all Other
- 6. Measurable criteria for acceptable performance based on modeling assumptions
- 7. Verification through visual inspection
- 8. Functions to be tested
- 9. Conditions under which the tests will be performed

**Preliminary Commissioning Report:**

The Builder shall implement the commissioning plan and document implementation of all energy systems included in the commissioning plan as well as any changes to the approved design.

Based on the results of the preliminary commissioning report, prepare a list of corrections or modifications needed to meet the intent of the project as documented in the original commissioning plan.

**Final Commissioning Report**

The final commissioning report shall resolve all deficiencies found in the Preliminary Commissioning Report.

The final commissioning report shall include all relevant documentation in support of building and equipment warranties, operating instructions, and a recommended maintenance schedules.

**WATER CONSERVATION BENCHMARK**

The project shall achieve a 60% reduction in water use compared to average annual residential use within the City, or 33.4 gallons per capita per day. Verification of performance shall be based on a water use model approved by the City Project Manager.

Specific requirements include the following:

- 1. Toilets shall be 1.1 gpf and utilize stormwater for flushing.
- 2. 1.5 gpm showerheads.
- 3. 1.0 gpm bathroom aerators and sensor faucets.
- 4. 2.0 gpm kitchen aerators.
- 5. Water heating should be located proximate to primary points of hot water use. Where longer runs of hot water plumbing must occur, methods to minimize water loss will be provided.
- 6. Dishwashers using a maximum of 4.5 gallons per load.
- 7. Clotheswashers with a water factor of 4.5 or less.
- 8. A rainwater catchment system shall be provided which provides for toilet flushing.
- 9. No permanent irrigation (except for vegetable gardens), temporary irrigation for landscaping establishment only. Irrigation to use detained rainwater or greywater. Irrigation to be designed, installed and audited by an Irrigation Association certified irrigation professional.
- 10. Landscape palate designed utilizing drought-tolerant and native plants, and designed to minimize ongoing maintenance and utilizing a pesticide-free landscape design.
- 11. All units to be individually metered or submetered. A digital monitor providing information about water use shall be provided in conjunction with unit energy meters.

**MATERIALS BENCHMARK**

General

The project shall be designed to minimize materials use wherever possible. For example, in many cases interior walls are unnecessary, and their avoided use saves materials. Alternatively, using structural elements as the finish surface without additional casing can reduce overall materials used.

#### Recycled materials

The project shall include a minimum of 15 separate components that include recycled materials.

#### Local materials

Five of the following eight materials shall be manufactured from within 500 miles of the project, and of those at least four must be extracted/harvested from within 500 miles of the project (must include at least 80% of a material by cost to qualify):

1. Sheathing
2. Framing
3. Roofing
4. Sheetrock
5. Concrete
6. Siding
7. Cabinets
8. Flooring

#### Wood

A minimum of 25% of all wood materials (by cost) shall be FSC certified. 75% of all wood materials (by cost) shall be either:

1. FSC certified
2. Reclaimed/salvaged (as defined in Built Green item 5-33), or
3. Contain recycled materials (minimum recycled content of 75%)

#### Sheetrock

Sheetrock shall contain a minimum of 50% recycled content.

#### Concrete

If locally available at reasonably cost competitive rates, 25% of all cementitious material shall be flyash or blast furnace slag (Built Green credit 5-53), not including any insulated concrete forms or concrete/styrofoam material.

#### Siding

Use 50 year warranted siding product (Built Green credit 5-77) containing 50% recycled material.

#### Cabinets and casework

Cabinets and casework shall be built of materials which at a minimum are one of the following:

1. FSC certified
2. Contain 50% recycled content, and/or
3. Are rapidly renewable, with a maximum harvest cycle of 10 years

#### Flooring and counters

Flooring and counters shall be either:

1. FSC certified
2. Contain 50% recycled content
3. Rapidly renewable, with a maximum harvest cycle of 10 years, or
4. Concrete with 25% flyash.

#### Roofing

Roofing with a 40 year warranty shall be provided (Built Green credit 5-96).

Roofing shall contain a minimum of 25% recycled material (Built Green credit 5-94).

#### Framing

On site framing cut waste shall not exceed 10% of total framing material by board foot.

#### Vinyl

No vinyl to be used in homes except for electrical/communications wiring and incidental items such as weatherstripping, cabinet bushings, etc.

#### Deconstruction

The building shall be designed to facilitate deconstruction. See King County GreenTools Design for Disassembly Guide.

### **CONSTRUCTION WASTE RECYCLING BENCHMARK**

Builder will ensure a minimum 90% diversion by weight of all construction related debris through reuse and recycling.

#### Definitions

**Source-separated recycling** is the process of separating recyclable materials in separate containers as they are generated on the job-site. The separated materials are hauled directly to a recycling facility or transfer station that accepts the specific separated materials.

**Co-mingled recycling** is the process of collecting mixed recyclable materials in one container on-site. The container is taken to a material recovery facility where materials are separated for recycling.

#### Recycling Methods - requirements

At a minimum, builder will source-separate the following materials for recycling:

- ❖ Clean wood
- ❖ Metal
- ❖ Clean drywall scraps
- ❖ Cardboard
- ❖ Rock and soil
- ❖ Concrete
- ❖ Plastic film
- ❖ Field office waste (paper, aluminum cans, plastics, glass and cardboard)

Remaining construction materials cannot be separated and instead co-mingled for recycling must be taken to a material recovery facility with at least a 75% diversion/recycling rate. An updated list of facilities and their diversion/recycling rates is located at:

[www.metrokc.gov/dnrp/swd/greenbuilding/construction-recycling/rates.asp](http://www.metrokc.gov/dnrp/swd/greenbuilding/construction-recycling/rates.asp)

All non-recyclable waste must be placed in a separate disposal container on-site to eliminate contamination of recycling containers.

Local recycling of materials should be emphasized, for example, local reuse of soil or concrete, or cardboard recycling with local recyclers.

#### Submittal Requirements

Prior to construction commencement, builder will submit for approval a waste management plan achieving the 90% diversion benchmark by identifying expected diversion/recycling and waste streams (quantified by weight), recycling and waste haulers to be used, and facilities where materials will be taken for both recycling and disposal.

Builder will submit monthly updates on construction waste diversion and recycling performance and provide a final analysis demonstrating that the 90% diversion rate has been met upon project completion. Final report shall include:

- ❖ A record of the type and quantity, by weight, of each material salvaged, reused, recycled or disposed. This shall include all source separated materials as well as commingled recycling.
- ❖ Total quantity of waste diverted/recycled as a percentage of total waste.
- ❖ Disposal and recycling receipts issued by facilities accepting the materials.
- ❖ Salvaged materials documentation including types and quantities, by weight, for materials salvaged for reuse on site, sold or donated

#### Quality Assurance

Conduct construction waste management activities in accordance with State of Washington RCW 70.95.240 and all other applicable laws and ordinances.

Recycling and diversion requirements shall be included in all subcontracts. Conduct a pre-construction conference with subcontractors to review methods and procedures related to waste management and recycling. Identify a construction waste coordinator responsible for tracking performance and communicating to all subcontractors expectations for recycling and waste prevention.

All on-site recycling and disposal containers must be clearly labeled with signs showing graphically what is to be placed in the container. Assistance in sign development is available through King County GreenTools.

Include a King County GreenTools Construction Recycling Specialist in pre-construction meetings. Contact Kinley Deller at 206-296-4434 or [Kinley.deller@metrokc.gov](mailto:Kinley.deller@metrokc.gov)

Sample Construction Waste Recycling Specification, management plan, and progress report available at:

[www.metrokc.gov/dnrp/swd/greenbuilding/documents/Sec01505\\_const\\_waste-mgmt.pdf](http://www.metrokc.gov/dnrp/swd/greenbuilding/documents/Sec01505_const_waste-mgmt.pdf)

#### INDOOR ENVIRONMENTAL QUALITY BENCHMARK

The project shall incorporate materials of extreme low toxicity, provide for a healthy interior environment, and be properly ventilated, including the following:

1. Achieve all Built Green 5 star IAQ prerequisites (attached), including all four 4 star IAQ options.
2. No wall to wall carpet is allowed (removable carpet only is permitted).
3. Any garages shall either be detached from the homes, or if attached, semi-open to the outside (allowing passive ventilation) and sealed from the homes.
4. A community sealed storage unit which is designed to maintain an adequate minimum temperature to prevent materials freezing, but sealed from dwelling spaces, shall be provided for materials such as paint, cleaners, etc.
5. Plant-based or Greenseal certified adhesives, floor finishes, caulks, and sealants (Built Green credit 4-24 a-g).
6. Greenseal certified paints (Built Green credit 4-32).
7. No urea formaldehyde products may be used in the interior spaces.
8. Provide actively ventilated home via an air to air heat exchange type system. Ventilation rate shall be based on State code.
9. Any duct openings shall be covered during construction. Thorough cleaning of any ducting shall occur prior to occupancy. Ventilate house continuously for a period of one week after final finishes are applied and prior to occupancy.



10. Recognizing potential positioning of windows based on passive solar benefit, and glazing limitations for energy reasons, attention shall also be paid to window positioning to maximize daylighting/view opportunities.
11. Careful metal flashing/waterproofing details to ensure water intrusion is minimized. Use appropriate vapor barriers, and design the wall system to minimize water intrusion and dry out if necessary.
12. All wood products stored on site are to be protected from rainfall by providing covered storage or by being covered by tarps.
13. During construction, measures will be taken to assure there is no significant standing water on wood products.
14. Prior to the installation of insulation or interior coverings, all wood products shall be inspected for mold or fungus. If mold or fungus is identified it shall be removed using a wet vacuum in the affected area, wiping or scrubbing the mold with detergent and water and, after drying, vacuuming with a high-efficiency particulate air (HEPA) vacuum.
15. Prior to the installation of insulation or interior coverings, a moisture meter shall be used to determine the moisture content of the wood products. Based on a representative sampling of wood moisture content measurement, insulation or interior coverings shall not be installed until the wood moisture content is less than 17% by weight.
16. No wood burning fireplaces are allowed.
17. Air intakes shall be located a minimum of 15' from exhaust locations and away from automobile parking.
18. Capillary breaks shall be provided at any building junctions with concrete.

## EXHIBIT F

### City Education Materials

For the purposes of the open house period and long-term demonstration period, the City and TAC will be responsible for all educational materials/displays, including but not limited to the following:

- Signage
  - On-site educational & directional
  - Off-site directional and advertising
- Video displays
- Handouts
- Audio guides
- Free standing displays

The developer will be responsible for all construction to facilitate tours/education process, per Section 1.6.6 of the ZEP Development Agreement.

## EXHIBIT G

### Accounting

The Developer shall provide general project cost information, including the following:

#### Soft Costs

- Architecture
- Other Design
- Permitting

#### Hard Costs

- Labor
- Materials

#### Developer Cost

- Staffing
- Overhead

#### Developer Profit

The cost differential, if any, for all individual green components between a typical base cost and the green components will be provided, broken out by labor and material. Similarly, to the extent feasible, any additional costs required for green related design will be provided.

Aggregate costs/revenues will also be provided as follows:

- Total cost per square foot
- Green cost per square foot
- Target sales price for each unit (i.e., price at which each unit can be sold and provide Developer with normal profit)
- Actual sales price for each unit

