



# Contract Coversheet

Contract: C2301065  
Amendment: N/A

<b>Supplier</b> Old Town Village LLC	<b>Department</b> Plan and Com Dev	<b>Originator</b> Fiona Starr	
<b>Classification</b> Recordable Instruments	<b>Project Name</b> Development Agreement - Old Town	<b>Project Manager</b> Tara Sundin	
<b>Original Amount</b> \$0.00	<b>Maximum Amount</b>	<b>Total Amendment Change</b>	<b>Current Amendment Amount</b>
<b>Type</b> NF - Non-Financial	<b>Structure</b> ST - Standard	<b>Agreement Type</b> NONFIN - Non-Financial Contract	
<b>Termination Date</b>	<b>Amended Termination Date</b>	<b>Compliance Type</b> Insurance not required	
<b>Retainage %</b>	<b>Retainage Comments</b>		
<b>Renewal Date</b>	<b>Renewal Notes</b>		

## Additional Contract Notes:

Please return to F. Starr or H. Aven in Planning once signatures obtained.

## Contacts:

Tara Sundin - tsundin@cob.org



When Recorded, Return to:

City of Bellingham  
Amy Kraham  
Office of the City Attorney  
210 Lottie Street  
Bellingham, WA 98225

## DEVELOPMENT AGREEMENT BETWEEN OLD TOWN VILLAGE, LLC, CAPRON, LLC AND THE CITY OF BELLINGHAM

Grantor:	OLD TOWN VILLAGE, LLC and CAPRON, LLC		
Grantee:	City of Bellingham		
Legal Description (abbreviated):	LOTS 1-8, INCLUSIVE, BLOCK 12, PLAT OF THE TOWN OF NEW WHATCOM SUPPLEMENTAL AS THE SAME IS SHOWN AT PAGE 42, BOOK 1 OF PLATS, OFFICIAL RECORDS OF WHATCOM COUNTY AUDITOR  Additional legal description for this parcel and full legal descriptions for additional parcels in Exhibit 1 attached hereto		
Assessor's Tax Parcel ID #:	380225 553359 0000  additional Tax Parcel ID numbers in Exhibit 1 attached hereto		
Reference Nos. of Documents Released or Assigned:			

This DEVELOPMENT AGREEMENT ("Agreement") between OLD TOWN VILLAGE, LLC., a Washington business entity, CAPRON, LLC (collectively, "Developers") and the CITY OF BELLINGHAM (the "City"), a municipal corporation, is entered into as of the last date of signature below, and effective upon the date of execution by the City of Bellingham (the "Agreement").

### RECITALS

A. Developers have purchased or have contracts to purchase several parcels of real property within an area of Bellingham designated as the "Old Town Subarea" by the Bellingham Comprehensive Plan. Property within the Old Town Subarea owned by Developers is referenced herein as the "Developers' Property," and more particularly described in **Exhibit 1** attached and incorporated herein by this reference and illustrated in **Exhibit 2** attached. Developers purchased blocks 1, 3, 4, 7 and 8 from the Parberry family entities between January 2023 and April 1, 2023, and have block 5 is under contract and Developers are negotiating to purchase block 2 and 6. Should purchases occur by Developers, they shall also benefit from this Agreement.

B. Historically, the Developers' Property was zoned for commercial and some industrial uses, and was principally utilized as a recycling facility, including recycling operations, warehousing, outdoor storage, and administrative offices owned and operated by several entities comprised of the Parberry family.

C. The City adopted an amendment (Ordinance No. 2008-03-022) to its Comprehensive Plan for the Old Town Subarea Plan (also known as the Old Town Plan") and an attendant amendment to its Land Use Development Code codified at BMC Chapter 20.35 (the "Old Town Overlay District"). The Old Town Subarea is now designated and zoned as Commercial. The Old Town Subarea is envisioned by the City to be an urban village with mixed residential and commercial uses.

D. Redevelopment of the Developers' Property into a mixed-use urban village is appropriate and consistent with the Old Town Plan. Future development in the Old Town Subarea must comply with the Old Town Subarea Plan and other applicable City regulations.

E. The elimination of the impacts to the neighborhood of the light industrial non-conforming use by the closure of operations of Northwest Recycling at its current site is critical to the creation of an urban village in the Old Town Subarea.

F. The City supports a healthy mix of housing in the Old Town Subarea that is affordable to a wide range of incomes levels. Developers and the City will give strong consideration to public/private partnerships which encourage qualified below-market rate development projects. Further, the City will give strong consideration to such qualified projects by utilizing the Bellingham Home Fund and/or other resources to support those projects.

G. This Agreement implements part of the Old Town Plan by kick starting development in a significant portion of the Old Town Subarea.

H. The redevelopment of the Old Town Subarea poses increased risk to developers and investors due to: (1) its location in a historically contaminated landfill area known as the Holly Street Landfill Site, which restricts property use and construction methods; (2) the adjacency of a 300-bed homeless shelter currently under construction; (3) the scale of the envisioned development, which necessitates a long time horizon with attendant unknown future risks; (4) the proximity of passive railroad crossings and the attendant loud noise from train horns; (5) the location of a portion of the property on former tidelands and landfill material which adds to development costs; (6) the complete transformation of an industrial use area to a commercial and residential one; and (7) the high cost of financing due to increasing interest rates.

I. In addition to this Agreement, Developers are the successor in interest to that certain Amended and Restated Development Agreement entered into by and among Northwest Recycling Limited Partnership, Parberry's Inc. and Parberry Family Limited Partnership) City contract number C2000929 Whatcom County Recording Number 2021-0102090 (the "Parberry Development Agreement"). Neither the City nor Developers intend to alter the obligations of the Parberry Development Agreement. The terms herein are in addition to the those contained in the Parberry Development Agreement.

J. This Agreement is a development agreement under RCW 36.70B.170 through 36.70B.210 and contains vesting, use and mitigation provisions in keeping with the statute. Pursuant to RCW 36.70B.200, a public hearing was held on June 26, 2023 and a resolution approving the Agreement was adopted on July 10, 2023.

## **AGREEMENT**

### **1. Developers Obligations to Meet Milestones**

Developers hereby agrees to attain the following Milestones, which may be extended by six months with written mutual consent of the Project Managers, so long as the term of this Agreement is not extended:

- Milestone 1** Developers shall submit a Vision Plan for properties purchased or planned to be purchased at a future date, no later than December 31, 2023.
- Milestone 2** Developers shall purchase a sixth Parberry-owned property, no later than December 31, 2023.
- Milestone 3** Developers shall satisfy Milestone #6 of the Parberry Development Agreement, which is to submit a complete building permit for the renovation of 701 W. Holly St., or block 8, as depicted on Exhibit 3, no later than February 21, 2024 (“Project #1).
- Milestone 4** Developers shall submit a complete building permit application before the end of December 31, 2024 for a new multi-family development that shall be fifty (50) units or more (“Project #2).
- Milestone 5** Developers shall submit a complete building permit application before December 31, 2026 for a development valued at a minimum of Ten Million Dollars (\$10,000,000) (“Project #3).

The Milestones set forth herein are based on Developers’ and the City’s best estimate of a redevelopment schedule for the Developers Property based on current market conditions. If any delay is anticipated by Developers, such anticipated delay shall be communicated to the City Project Manager in writing when known by Developers along with a request for an extension of the applicable Milestone which extension shall not be unreasonably denied so long as diligent progress has been made in achieving the applicable Milestone. The City’s Project Manager, after consultation with Developers’ Project Manager, may, in her sole discretion, extend the requirements of Section 1. An extension shall not unreasonably be denied by the City’s Project Manager so long as diligent progress has been made in achieving the applicable Milestone. The City represents and Developers acknowledge that timely redevelopment is a significant element Development Agreement – 07.10.23

Boat sales; as defined in BMC 20.35.065(B)(1), and

Boat repair and storage; complete minor boat and engine repair pursuant to BMC 20.35.065(B)(2); however, hull work is prohibited. Boats must be operational or being actively repaired as defined in BMC 20.35.065(B).

**6. Transfer of Floor Area Tracking Method**

The BMC has been amended, concurrently with the adoption of this Agreement, to allow for an alternative process for transferring floor area between sites as long as the process is memorialized in a Development Agreement. The submittal of designs for both the sending and receiving sites, as required by BMC 20.35.070(D)(3), shall not be required for the Developers' Property provided the transfer shall be commemorated in the form of a restrictive covenant on the sending site and recorded with Whatcom County Auditor's Office. The restrictive covenant on the sending site shall include the floor area square footage being sent and the site to which it is transferred. The Developers shall not be entitled to the transfer of floor area to the receiving site unless proof of the recorded document is provided.

**7. Permitting**

Given the risk associated with development in the Old Town Subarea, the City shall prioritize Developers' development permit applications, including but not limited to, land-use permits/design review, building permits and public facility permits. The City shall designate a development project manager to serve as the City's permitting representative ("Permitting Representative"). This representative will ensure Developers' permits are prioritized in the Planning and Community Development, Public Works, Fire and Parks departments. The Permitting Representative will report any delays in review to the City's Planning and Community Development Director for immediate attention.

**8. Vesting**

Developers shall vest to the following BMC provisions for the duration of this Agreement:

- a. 20.35.010 through 20.35.085, as amended concurrently with the adoption of this Agreement; and
- b. BMC 20.25; and
- c. BMC 17.82.

**9. Quiet Railroad Crossings**

The Old Town Subarea is included in the proposed Waterfront Quiet Zone that extends from the Pine/Wharf Street at-grade crossing to the F Street at-grade crossing. As of the date of

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of the City's agreement to enter into this Agreement. Reasonable extensions due to the City's failure to provide timely the public infrastructure improvements identified in Section C of this Agreement shall be granted. Failure by Developers to complete the above Milestones, as may be extended from time-to-time, shall be considered a breach of this Agreement, and, if Developers fails to cure such breach within thirty days (30) of written notice from the City, the City shall be relieved of its obligation herein and this Agreement shall terminate. However, the City's right to exercise its option to purchase the Affordable Housing Parcel, defined in Section 12 hereof, survives for one year from the date of notice of breach.

## **2. Utility Capacity/Maintenance**

For clarification purposes, the 2020 Parberry Development Agreement states that the City shall be responsible for providing City-owned sewer, water, and storm systems capable of supporting maximum development permitted in the Old Town Subarea. The City has determined that the existing water and sewer systems are capable of supporting the maximum development as allowed by BMC 20.35(Article II) and that it will maintain those systems. In addition, the City has determined that the existing stormwater conveyance system can accept treated storm water. Further, it is standard business for the City to maintain all public utility main lines (water/sewer/storm) in the right-of-way. The City maintains all water lines from the mainline to the meter. All existing water, sewer and storm systems owned by the City will continue to be maintained by the City as public infrastructure.

## **3. Infrastructure**

- a.** In cooperation with Developers, the City will pursue applying for a Whatcom County Economic Development Investment ("EDI") grant leveraging the City's estimated \$2,800,000 investment in infrastructure commitments memorialized the Parberry Development Agreement in order to add curb-to-curb infrastructure to all street improvements listed on **Exhibit 3**.
- b.** The City shall commission a study to assess the feasibility of undergrounding utilities to enhance the tone and quality of the redevelopment.

## **4. Old Village Trail**

The City shall include the Old Village Trail in the next update to the City's Capital Facilities Plan (2023) so that improvements to that trail are eligible to receive park impact fee credit. Developers may elect to construct the improvements themselves and receive park impact fee credit in lieu of paying park impact fees.

## **5. Interim Uses**

Considering the short supply of industrial space in Bellingham and that it will take a number of years to redevelop Old Town, the following interim uses shall be allowed on Developers' properties for the Term of this Agreement:

this Agreement, the Laurel Street and C Street crossings have been improved to quiet zone standards and F Street is scheduled for construction to meet quiet zone standards in 2023. Central Avenue, Cornwall Avenue and Pine/Wharf Street crossings will need to be upgraded s before the quiet zone can be established. The City is committed to the establishment of the Waterfront Quiet Zone and funds the necessary improvements through the budget process as well as annually through the 6-year Transportation Improvement Program. Other than traffic impact fees collected from Developers as individual projects progress, the City shall not require any financial contribution from Developers for the design or construction of the future crossings.

#### **10. Lighthouse Mission Ministries (“LMM”) Shelter and Shelter Protection Zone**

LMM is constructing a facility in the Old Town Subarea in order to relocate the Low-Barrier Shelter currently located at 1530 Cornwall Avenue (“Base Camp”). The City Council created a Shelter Protection Zone for the Old Town Subarea, which covers all the properties Developers anticipate purchasing. Further, the Hearing Examiner issued a Conditional Use Permit – USE2021-0035, which includes, among other provisions, a focus on the enforcement of a Shelter Protection Zone. For the term of the this Agreement, the City agrees to the following measures to mitigate the impacts of a 300-bed shelter:

- a. The City agrees to keep the Shelter Protection Zone in place unless required to remove it pursuant to local, state or federal law;
- b. The City shall provide LMM \$50,000 per year for neighborhood cleanup. If LMM does not continue its neighborhood cleanup program and the City is unable to find another operator, the City shall contract with Developers for cleanup of publicly-owned properties (rights-of-way and parks) for no more than five thousand dollars (\$5,000) per month; and
- c. Unless the City discontinues its contract for private security in the downtown area, the existing contract shall be modified to include patrols around LMM’s shelter facilities, once relocated, supporting the enforcement of the Shelter Protection Zone.

#### **11. Maritime Heritage Park Parking Lot**

The City shall work with Developers to further refine the concept of leasing/selling the air-rights above the parking lot at the end of C Street adjacent to the Perry Center to Developers for purposes of constructing structured shared parking and/or residential use. Bellingham Technical College holds a land lease on the parking lot and the adjacent hatchery facility. It is contemplated that shared parking means the ground level be retained for City use and any parking created is for Developers. The City received a capital grant from the National Park Service through the State Recreation and Conservation Office (RCO) to construct Maritime Heritage Park. The City needs to determine whether it can sell or lease air rights over the parking lot and still be in compliance with that grant. The City agrees to explore the viability of obtaining the air rights if Developers wish to pursue this activity. If viable, the Parties agree to execute an

option agreement with a first right of refusal in favor of Developers for purchase/lease of air rights.

## **12. Affordable Housing Parcel**

Developers agree to develop or sell a 20,000 square foot parcel, as described in **Exhibit 4**, to a developer of its choice that builds housing consistent with BMC 20.35.070(D)(4)(c)(ii) ("Affordable Housing"). Developers further agree to record a restrictive covenant substantially in the form of Exhibit 5 on such parcel within thirty days of the execution of this Agreement. Such covenant shall allow Developers to use the parcel for construction staging associated with any development project or Interim Use (pursuant to Section 5) within the Old Town Subarea during the term of this Agreement. The purchase price shall be the price for which the Developers purchased the property, plus holding costs, not to exceed four percent (4%) per year, so long as the total price is at or less than Fair Market Value at the time of purchase. Holding costs shall not accrue for any periods of time that the property is being used for any of the allowed uses stated above. It is the responsibility of the Developers to track and provide back-up documentation related to holding costs. If construction has not commenced on the property for purposes of Affordable Housing within the first nine (9) years of the Development Agreement term, or, if this Agreement has been terminated due to the Developers' uncured breach of its obligations herein, the City, at its sole discretion, upon ninety (90) days written notice, may elect to purchase the property from the Developers for a future Affordable Housing development utilizing the same purchase price formula as outlined above. In the event of termination due to an uncured breach of this Agreement, the City's right to exercise its option to purchase the Affordable Housing Parcel survives for one (1) year from the date of notice of breach. Nothing in this Agreement prohibits Developers from selling the property at less than Fair Market Value.

## **13. Alternative Floor Area Bonus for Land Area Dedicated for Affordable Housing**

The BMC has been amended concurrently with the adoption of this Agreement to allow for an alternative process for establishing a floor area bonus for Affordable Housing. For each square foot of Developers' Property land area certified by the director of Planning and Community Development as set aside by the Developers for permanently affordable housing pursuant to Section 12 herein, four (4) square feet of bonus floor area is earned which can be transferred to other properties that are subject to this Agreement. This is an additive bonus, the transfer of which does not diminish the base 3.5 floor area ratio (FAR) allowed on the affordable housing site, and development on the affordable housing site may use FAR bonus options as detailed in BMC 20.35.070(D). This additive bonus shall not be granted until a covenant, consistent with the provisions outlined in BMC 20.35.070(D)(4)(c)(ii), is recorded on the Developers' Property and construction of an Affordable Housing development has been completed. Completion shall be defined as receiving final occupancy approval and be a minimum of 40 residential units. The Planning and Community Development Director shall provide the Developers with a letter including the total square footage available for transfer. The Developers may use that square footage provided building permits are submitted and deemed complete for the receiving Developers' Property site(s) within the term of this Agreement.

#### **14. Term**

This Agreement commenced on the date of the Adoption of the Development Agreement Resolution, July 10, 2023 and shall remain in effect until ten years from this date (the "Term"). Any action permitted or required under this Agreement such as permit submittal, road construction, or project development must commence during the term of this Agreement even though additional time may be needed for completion of such actions.

The Term of this Agreement shall be automatically extended by one year, for up to an additional five (5) years if construction of the City/Burlington Northern improvements have not been completed as required to commence the Waterfront Quiet Zone, which extends from Wharf Street to the corner of F Street and Roeder Avenue.

#### **15. Assignment**

All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors and assigns, and all other persons acquiring the Developers Property, or any portion thereof, or any interest therein.

#### **16. Project Managers**

For the City: Tara Sundin, Community and Economic Development Manager, 210 Lottie Street, Bellingham, WA 98225, (360) 778-8392.

For Developers: Curt O'Connor

#### **17. General Provisions**

**a. Legal Fees.** In the event any legal action is taken by either Party against the other Party to enforce any of the terms and conditions of this Agreement, it is agreed that the unsuccessful Party to such action shall pay to the prevailing Party therein all court costs, reasonable attorneys' fees and expenses incurred by the prevailing Party.

**b. Relationship of the Parties.** The execution of this Agreement shall not create any agency, partnership, joint venture, association or any other relationship between the Parties other than as independent contracting parties. Neither Party shall act as an agent for the other party or shall have the authority to bind or make commitments on behalf of the other Party. This Agreement has been entered into solely for the benefit of the Parties hereto and does not create any interest in any third party.

**c. Entire Waiver; Amendment.** This Agreement constitutes the entire agreement among the Parties concerning the subject matter hereof and supersedes all previous correspondence, communications, agreements and understandings, whether oral or written among the Parties. This Agreement may not be modified, in whole or in part, except upon unanimous approval of the Parties and by a writing signed by all the Parties.

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**d. Advice of Counsel.** This Agreement was negotiated at arms-length with each Party receiving advice from independent legal counsel. It is the intent of the Parties that no part of this Agreement be construed against either of the Parties because of the identity of the drafter.

**e. Headings.** The headings used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the intent of any provision thereof.

**f. Construction.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provision in this Agreement and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

**g. Governing Law.** This Agreement, and all amendments or supplements thereto, shall be governed by and construed in accordance with the laws of the State of Washington.

Exhibit List:

Exhibit 1 – Legal Description of the Developers Property

Exhibit 2 – Illustration of the Developers Property

Exhibit 3 – Infrastructure

Exhibit 4 - Affordable Housing Parcel

Exhibit 5 – Restrictive Covenant

Executed this 17<sup>th</sup> day of August, 2023.

**CITY OF BELLINGHAM**

Mayor

Department Head

Attest:

Approved as to Form

Finance Director

Office of the City Attorney

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF WHATCOM )

On this day personally appeared before me SETH FLEETWOOD, to me known to be the Mayor of the City of Bellingham, the municipal corporation that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such corporation, for the uses and purposes therein mentioned, and on oath stated that she was duly authorized to execute such instrument.

Given Under My Hand and Official Seal this 17<sup>th</sup> day of August, 2023.

Dated:

8/17/23

Signed Name:

Tracy Lewis

Printed Name:

Tracy Lewis

NOTARY PUBLIC in and for the State of  
Washington, residing at


Bellingham

My commission expires:

10/20/26



OLD TOWN VILLAGE, LLC

By:   
Name: Pete Dawson  
Title: Member / Manager

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF WHATCOM )

On this day personally appeared before me Peter C. Dawson, to me known to be the Member / Manager of OLD TOWN VILLAGE, LLC., the business entity that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such business entity, for the uses and purposes therein mentioned, and on oath stated that [he/she] was duly authorized to execute such instrument.

Given Under My Hand and Official Seal this 9 day of August, 2023.

Dated: August 9, 2023

Signed Name: Kristen Murdock  
Printed Name: Kristen Murdock  
NOTARY PUBLIC in and for the State of  
Washington, residing at Bellingham, WA  
My commission expires: July 20, 2027



CAPRON, LLC

By: [Signature]  
Name: Curtis O'Connor  
Title: Manager / Member

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF WHATCOM )

On this day personally appeared before me Curtis O'Connor, to me known to be the Manager / Member of CAPRON, LLC., the business entity that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such business entity, for the uses and purposes therein mentioned, and on oath stated that [he/she] was duly authorized to execute such instrument.

Given Under My Hand and Official Seal this 9 day of August, 2023.

Dated: August 9, 2023

Signed Name: [Signature]  
Printed Name: Kristen Murdock  
NOTARY PUBLIC in and for the State of  
Washington, residing at Bellingham, WA  
My commission expires: July 20, 2027



EXHIBIT 1  
LEGAL DESCRIPTION OF DEVELOPERS' PROPERTY

**1401, 1411, AND 1413 E STREET – BLOCK 1**

**PARCEL A:** 380330 012381 0000 (1413 E STREET)

LOT 1, BLOCK 11, SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

**PARCEL B:** 380330 009377 0000 (1411 E STREET)

LOT 2, BLOCK 11, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

**PARCEL C:** 380330 005373 0000 (1401 E STREET)

LOTS 3 AND 4, BLOCK 11, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

**900 W HOLLY – BLOCK 4** 380225 553359 0000

LOTS 1 THROUGH 8, INCLUSIVE, BLOCK 12, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

**801 W HOLLY – BLOCK 7**

**PARCEL A:** 380225 548333 0000

LOTS 13 THROUGH 16, INCLUSIVE, BLOCK 32, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON; TOGETHER WITH THE SOUTHEASTERLY 20 FEET OF E STREET ABUTTING SAID LOTS VACATED BY CITY OF BELLINGHAM ORDINANCE NO. 8900.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

**PARCEL B:** 380225 552329 0000

THE NORTHWESTERLY HALF OF LOTS 1 THROUGH 4, INCLUSIVE, BLOCK 32, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

**PARCEL C:** 380225 551320 0000

THE SOUTHEASTERLY HALF OF LOTS 1 THROUGH 4, INCLUSIVE, BLOCK 32, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

**701/703/705 W HOLLY; 1280 D STREET – BLOCK 8**

380330 011308 0000

LOTS 1 THROUGH 4, INCLUSIVE, AND LOTS 13 THROUGH 16, INCLUSIVE, ALL IN BLOCK 31, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

**1419 C STREET – BLOCK 3**

**PARCEL A:** 380330 040351 0000

ALL OF LOTS 1, 2, 3, 5 AND 6, AND LOTS 13 THROUGH 20, INCLUSIVE, AND THE NORTHWESTERLY TWO-THIRDS OF LOTS 11 AND 12, ALL IN BLOCK 3, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON; TOGETHER WITH THAT PORTION OF DIVISION STREET AS VACATED BY CITY OF WHATCOM (NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM) ORDINANCE NO. 9083 WHICH HAS ATTACHED TO SAID PREMISES BY OPERATION OF LAW, IF ANY.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

**PARCEL B:** 380330 046343 0000

LOT 4, BLOCK 3, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON; TOGETHER WITH THAT PORTION OF DIVISION STREET AS VACATED BY CITY OF WHATCOM (NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM) ORDINANCE NO. 9083 WHICH HAS ATTACHED TO SAID PREMISES BY OPERATION OF LAW, IF ANY.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

**PARCEL C:** 380330 040337 0000

LOTS 7 THROUGH 10, INCLUSIVE, BLOCK 3, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON; TOGETHER WITH THAT PORTION OF DIVISION STREET AS VACATED BY CITY OF WHATCOM (NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM) ORDINANCE NO. 33, AND CITY OF BELLINGHAM ORDINANCE NO. 9083 WHICH HAS ATTACHED TO SAID PREMISES BY OPERATION OF LAW.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

**PARCEL D:** 380330 037339 0000

THE NORTHWESTERLY 8 FEET OF THE SOUTHEASTERLY HALF OF DIVISION STREET ABUTTING LOTS 7 THROUGH 10, INCLUSIVE, BLOCK 3, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON, AS VACATED BY CITY OF BELLINGHAM ORDINANCE NO. 9083.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

**1419 C STREET – BLOCK 3 (CONTINUED)**

**PARCEL E:** 380330 034339 0000

THE SOUTHEASTERLY ONE-THIRD OF LOTS 11 AND 12, BLOCK 3, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON; TOGETHER WITH THAT PORTION OF DIVISION STREET AS VACATED BY CITY OF WHATCOM (NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM) ORDINANCE NO. 33, AND CITY OF BELLINGHAM ORDINANCE NO. 9083 WHICH HAS ATTACHED TO SAID PREMISES BY OPERATION OF LAW.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

**1315 D STREET; 800 W HOLLY – BLOCK 5**

**PARCEL A:** 380330 011348 0000

LOTS 1 THROUGH 4, INCLUSIVE, AND LOTS 13 THROUGH 16, INCLUSIVE, ALL IN BLOCK 5, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON; TOGETHER WITH THAT PORTION OF CENTER STREET AS VACATED BY CITY OF BELLINGHAM ORDINANCE NO. 7280 WHICH HAS ATTACHED TO SAID PREMISES BY OPERATION OF LAW, IF ANY.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

**PARCEL B:** 380330 006336 0000

LOTS 5 THROUGH 8, INCLUSIVE, BLOCK 5, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON; TOGETHER WITH THAT PORTION OF CENTER STREET AS VACATED BY CITY OF BELLINGHAM ORDINANCE NO. 7280 WHICH HAS ATTACHED TO SAID PREMISES BY OPERATION OF LAW, IF ANY.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

EXHIBIT 2  
DEVELOPERS' PROPERTY



EXHIBIT 3  
INFRASTRUCTURE

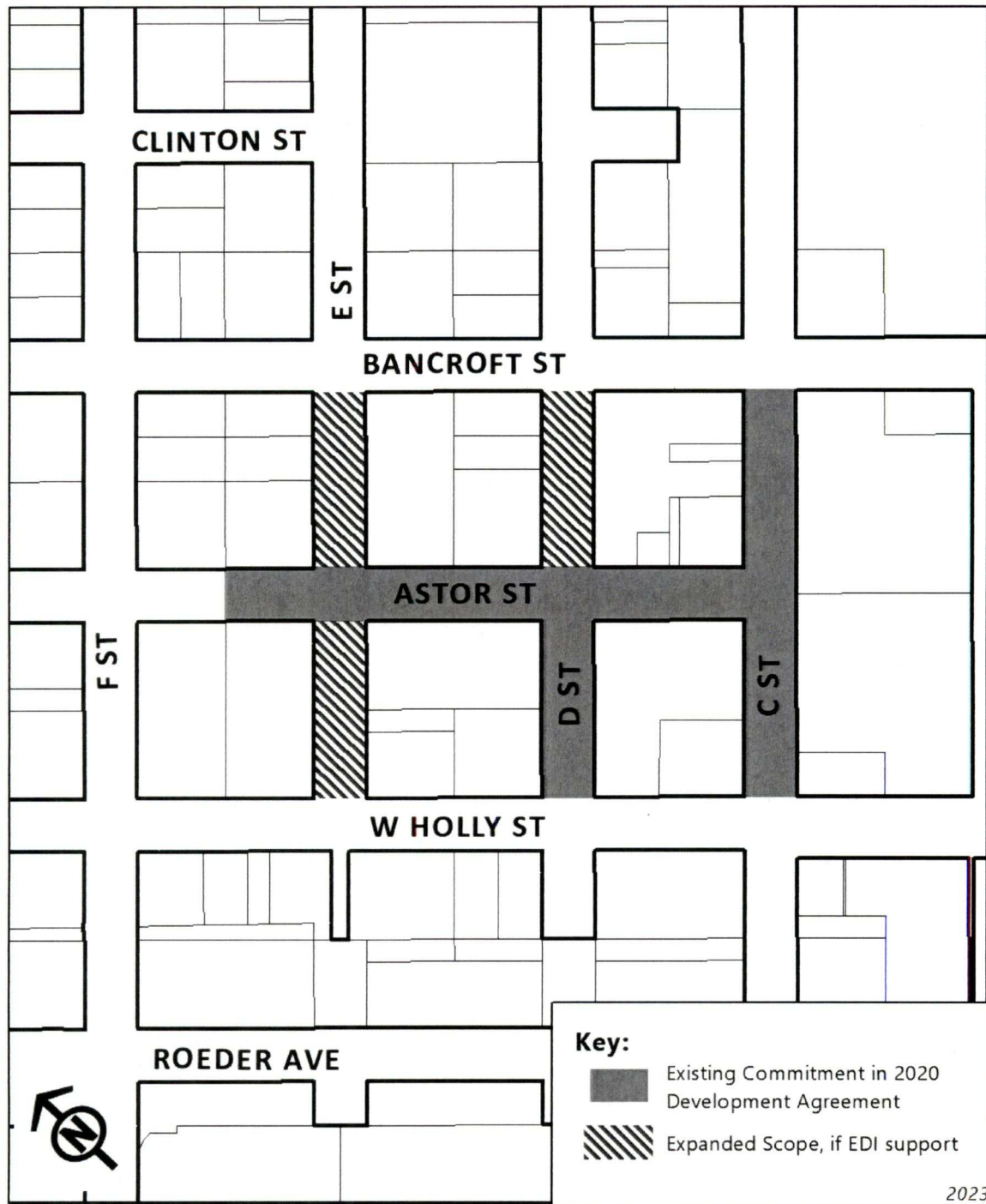


EXHIBIT 4  
AFFORDABLE HOUSING PARCEL

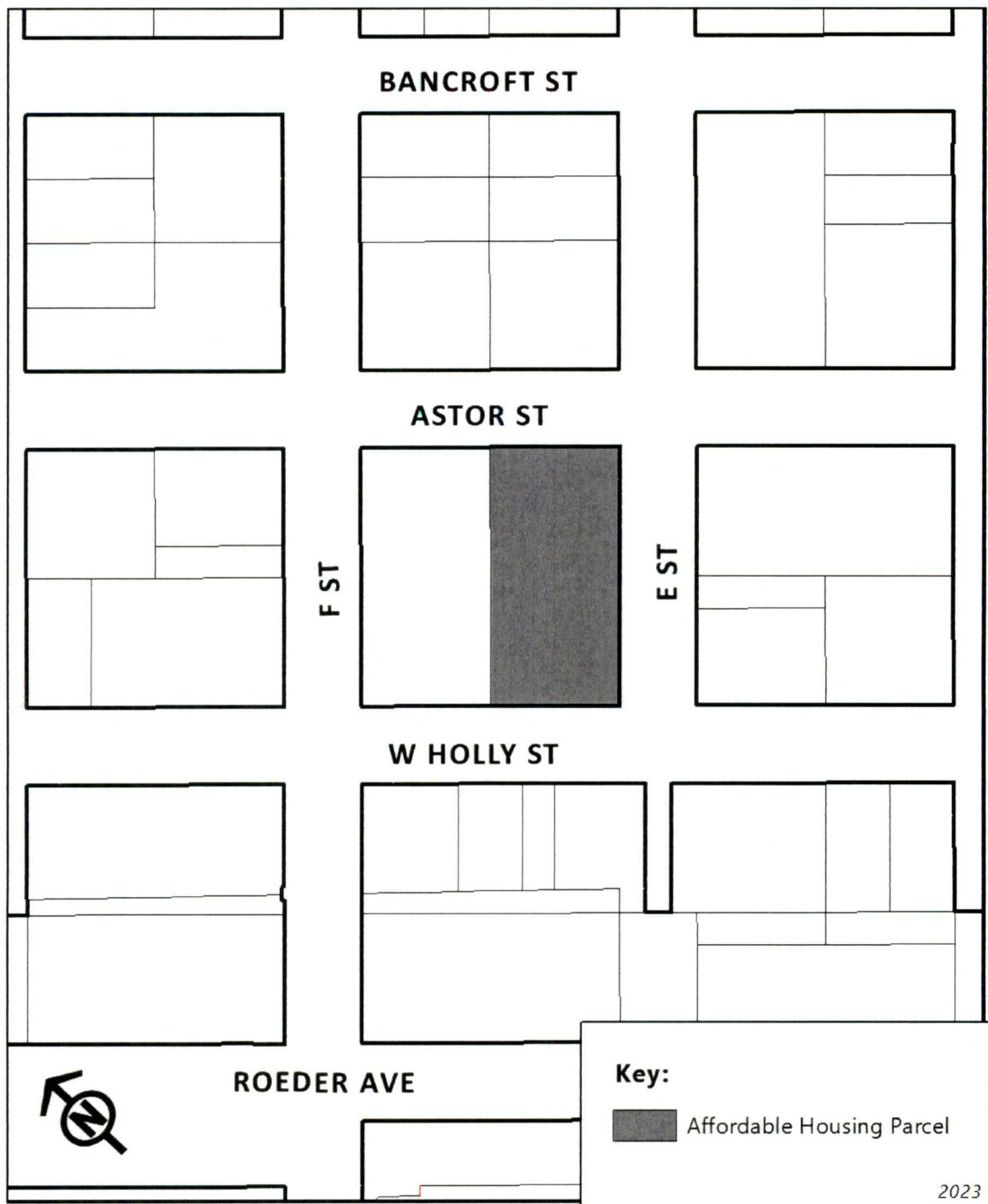


EXHIBIT 5

RESTRICTIVE COVENANT

**When Recorded Return to:**

City of Bellingham – Planning & Community Development  
210 Lottie Street  
Bellingham, WA 98225

Attention: Samya Lutz

↑ Reserved for Recording Purposes Only ↑

**AFFORDABLE HOUSING COVENANT**

Grantor(s): Old Town Village, LLC and Capron, LLC  
Grantee(s): Beneficiary-City of Bellingham; Trustee-Whatcom Land Title Insurance  
Company  
Abbreviated Legal: LOTS 1 THROUGH 8, INCLUSIVE, BLOCK 12  
Assessor's Tax Parcel Number(s): 3802255533590000

This Affordable Housing Covenant ("Covenant") is made by Old Town Village, LLC and Capron, LLC, Washington corporations ("Grantors") and is part of the consideration for the promises made and obligations undertaken by the City of Bellingham ("City") in favor of Grantor pursuant to a Development Agreement of even date herewith (the "Development Agreement") for the development of real property in the Old Town Subarea, including the property legally described as follows:

LOTS 1 THROUGH 8, INCLUSIVE, BLOCK 12, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

(the "Property").

This Covenant will be filed and recorded in the official public land records of Whatcom County, Washington and shall constitute a restriction upon the use of the property described herein, subject to and in accordance with the terms of this Covenant.

The covenants contained herein are to be taken and construed as covenants running with the land and shall pass to and be binding upon the Grantor, its successors and assigns, heirs, grantees, or lessees of the Property. Each and every contract, deed or other instrument covering or conveying

the Property, or any portion thereof, shall be conclusively held to have been executed, delivered and accepted subject to such covenants, regardless of whether such covenants are set forth in such contract, deed, or other instruments.

NOW, THEREFORE, it is hereby covenanted:

1. Affordable Housing. Grantor covenants as follows: The Property shall be used exclusively for affordable housing consistent with BMC 20.35.070(D)(4)(c)(ii) ("Affordable Housing"), which states: All purchasers or tenants shall be from a household whose annual income, at the household's initial occupancy of the single-family residence, is 80 percent or less of the median income (determined by Housing and Urban Development) as adjusted by family size of the Bellingham Standard Metropolitan Statistical Area (SMSA), specifically defined as Whatcom County; The monthly expenditure by a purchaser, as described in subsection (D)(4)(c)(ii)(A) of this section, for housing including rent or mortgage repayment, insurance, taxes and utilities (water and sewer) shall not exceed 38 percent of the gross household income at the time of purchase and the amount for rent or mortgage repayment shall not exceed 30 percent of gross household income. All other variable living expenses associated with the resident's occupancy shall not be a factor in the calculation of affordability.
2. Construction Staging. Notwithstanding Section 1 above, Grantor may use the Property construction staging associated with any development project or Interim Use (pursuant to Section 5 of the Development Agreement) on property covered by the Development Agreement during the term of the Development Agreement.
3. Records. The Grantor will keep any records and make any reports relating to compliance with this covenant that Grantee may reasonably require.
4. Default: In the event that Grantor, or Grantor's successor-in-interest, violates Section 1 above, such failure shall constitute an Event of Default hereunder and under the terms of the Development Agreement. In the event legal action is required to enforce the foregoing condition, the prevailing party shall be entitled to an award of reasonable attorney's fees and all the cost of any legal action and title searches.
5. Term: This Covenant terminates on July 31, 2033.

This covenant touches and concerns the Property and shall run with the land and is for the benefit of the general public and shall be binding upon the Grantor's heirs, devisees, executors, administrators, successors and assigns. It may not be revoked without the prior written consent of Grantee.

*[Signature pages follow]*

IN WITNESS HEREOF, Old Town Village, LLC and Capron, LLC, Washington corporations, have executed this Covenant on the 9th day of August, 2023.

**GRANTOR**

**Old Town Village, LLC**

By: [Signature]

Print Name: Pete Dawson

Its: Member / Manager

**STATE OF WASHINGTON )**

**) ss.**

**COUNTY OF WHATCOM )**

I certify that I know or have satisfactory evidence that Peter C. Dawson is the person who appeared before me, and said person acknowledged s/he signed this instrument on oath stated s/he was authorized to execute the instrument and acknowledged it as the Member / Manager of Old Town Village, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

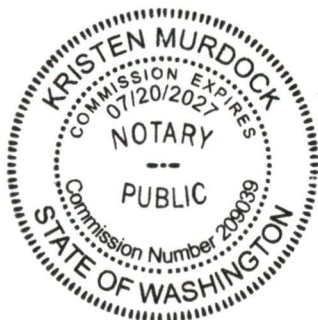
Dated: August 9, 2023

Signed Name: Kristen Murdock

Printed Name: Kristen Murdock

NOTARY PUBLIC in and for the State of Washington, residing at Bellingham, WA

My commission expires: July 20, 2027



**GRANTOR**

**Capron, LLC**

By: Curtis O'Connor

Print Name: Curtis O'Connor

Its: Manager / Member

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF WHATCOM )

I certify that I know or have satisfactory evidence that Curtis O'Connor is the person who appeared before me, and said person acknowledged s/he signed this instrument on oath stated s/he was authorized to execute the instrument and acknowledged it as the Manager / Member of Capron, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: August 9, 2023

Signed Name: Kristen Murdock  
Printed Name: Kristen Murdock  
NOTARY PUBLIC in and for the State of  
Washington, residing at Bellingham, WA  
My commission expires: July 20, 2027

