

**FILED FOR AND RECORDED AT REQUEST OF AND RETURN ORIGINAL TO:**

**STARZENBURG-KROONTJE**

**Attorney at Law, P.S.**

**PO Box 231**

**Lynden, WA 98264**

**(360) 354-7822**

REFERENCED DOCUMENT: AF# 941227078

TITLE OF THIS DOCUMENT: Parkview West Apartments Amendment to RB Development and Heritage Park Development Contract

GRANTOR(S):

1. Aaron Drive Properties LLC

GRANTEE(S):

1. The General Public

LEGAL DESCRIPTION: Full legal description found on Exhibit A, page 13.

Abbreviated:

1. Lot 4, RB Development, Div. No. 1

ASSESSOR'S PARCEL NUMBER(S):

1. 400316 049520 0000

**Parkview West Apartments Amendment to RB Development and Heritage Park Development Contract**

This Amendment to RB Development and Heritage Park Development Contract, PRD Amendment #19-01, ("Amendment") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by AARON DRIVE PROPERTIES LLC, a Washington limited liability company (hereinafter called "Owner" or "Developer").

This Amendment shall modify the original Development Contract (PRD #94-1), dated December 22, 1994 and recorded under Whatcom County Auditor File No. 941227078, as amended, as it relates to the development of Parkview West Apartments which shall be located on the real property legally described on Exhibit A attached hereto and incorporated herein by this reference (the "Property"). The original Development Contract and all amendments thereto shall continue in full force and effect to the extent they do not conflict with this Amendment. This Amendment shall be submitted to the City of Lynden (hereinafter called "Lynden" or "City") for approval.

**1. PRD #94-1 History**

The RB Development PRD was originally approved in 1994. It encompassed 29.1 acres of property located between Badger Road and Aaron Drive and stretched from Bender Road to Vinup Road.

The development was planned to accommodate apartments, an assisted care facility (Lynden Manor), town home units, and 4-plex condominiums for a total of up to 437 units. Since its original approval in 1994 the PRD was amended a number of times. Amendments addressed a variety of issues including the inclusion of the Christian Healthcare Center rather than apartments, fencing, street construction, setback revisions, height limit revisions, and changes to the Conditions Covenants and Restrictions (CC&R's).

A summary of the past amendments to the original PRD Contract is as follows:

- a. **Amendment A1, PRD Contract 94-1. Split Rail Fencing.** Amendment A1 called for a construction change from six-foot chain link fencing along the east side of Fishtrap Creek Riparian Zone on the property to split rail fencing for aesthetic purposes.
- b. **Amendment A2, PRD Contract 94-1. Rolled Curb Construction.** Amendment A2 requested rolled-curbs in place of standard curb construction on the James Circle cul-de-sac to avoid numerous curb cuts, as many driveways were proposed for the area. The amendment was approved with the following conditions:
  - 1. That Aaron Drive be constructed with a three-foot grass planter strip.
  - 2. That no roll-type curbs be allowed on Aaron Drive.
  - 3. The roll-type curbs be permitted only on the outside perimeter of the James Circle cul-de-sac.
- c. **Amendment B1, PRD Contract 94-1. Reduced Apartment Setbacks.** Amendment B1 asked for reduced setback requirements for the apartment complex area. The request called for a reduction in the open space requirement for the apartment area to a minimum of 30%, reflecting the need for more impervious surface space as the height of the apartment complex was reduced to two stories. This request entailed reducing setbacks between apartment lots from 45' to 25', reducing interior setbacks for rear yards to 25', and side yards to 10'.

Amendment B1 was approved on the condition that the building be no more than 30 units and not more than two stories, and subject to the following recommendations of the Technical Review Committee:

- 1. The perimeter setbacks between Lots 3, 2, 'A', and 'B' would be reduced to 25 feet on Lots 3 and 'A', and the open space requirement on Lots 3 and 'A' be reduced to 35% on the condition that the individual buildings on those lots did not exceed two stories or 30 units.
  - 2. The interior setbacks on the same lot would be reduced for Lots 3, 4, 'A', and 'B', as followed: Rear yard = 25 feet, Side yard = 10 feet, on the condition that the individual buildings on those lots did not exceed two stores or thirty units. (TRC Report, 9/3/96)
- d. **Amendment B2, PRD Contract 94-1. Construction of Gazebo.** RB Development's request to amend PRD Contract #94-01 to allow the construction of a gazebo in the front yard setback area for Lot C.

**e. Amendment C1, PRD Contract 94-1. *Reduced Creek Setbacks.*** Amendment C1 amended the Shoreline Permit and Contract for a reduction in the required setback to Fishtrap Creek for one eight-unit townhouse building from 100 feet to 75 feet. The reduction was approved in order to keep the design of the building the same as the other structures within the complex, which would not be possible with the 100-foot setback. For the remaining 47 units, the setbacks were to remain the same.

**f. Amendment C2, PRD Contract 94-1. *CC&R Amendments.*** Amendment C2 revised the Conditions Covenants and Restrictions (CC&Rs) for the area west of Fishtrap Creek. It altered the definition of “common area” to include private streets. The definition of “development period” was changed so that RB would relinquish control over the Association at such time they have less than an 20% interest in the property. A definition of “exclusive open space” was added to distinguish this area from common areas, open space, and private open space. The CC&R amendments were made to be consistent with the existing PRD Contract language.

**g. Letter of Understanding.** RB Development and Lynden Public Works Department, January 30, 1995. The RB Development Group and the City of Lynden Public Works Department agreed to amend the PRD Contract to reduce the apartment rear yard setbacks from 45 feet to 30 feet and side yards from 45 feet to 10 feet, perimeter setbacks remaining at 45 feet. This applied to Lots 1, 2, 3, and 4 of Area B of the original RB Development PRD.

**h. Amendment 3, PRD Contract 94-1. *Construction of a 142-Bed Skilled Nursing Facility.*** RB Development’s request to amend PRD Contract #94-01 to allow the construction of a 142-bed skilled nursing facility was granted, subject to the recommendations of the Technical Review Committee Report dated June 29, 1999, one condition of which is outlined below:

1. Approval of the request as submitted would include the following:
  - a) Approval to consolidate Lots A and B for building purposes.
  - b) Setbacks to be as follows:
    - i) Side yard: 25 feet as allowed under previous amendment for perimeter setbacks
    - ii) Rear yard: 100 feet to the centerline of East Badger Road as required in contract
    - iii) Front yard: 45 feet as required in contract
  - c) Open space requirement of 40%. The previous amendment allowed 35% open space on Lot A.
  - d) Height: 45 feet as currently permitted in contract
  - e) Parking: 1 space per 4 beds, plus 1 per employee on largest shift.

**2. Identification of Properties.**

The original PRD Contract affects the following properties currently:

<u>LOT</u>	<u>OWNER NAME</u>	<u>Whatcom County Assessor Parcel No.</u>
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Bender Plaza Short Plat Lot B	Canoe Street, LLC	4003160185300000
Bender Plaza Short Plat Lot C	Bender Plaza, L.L.C.	4003160075090000
Bender Plaza Short Plat Lot D	Perched Valley Property Management LLC	4003160255090000
Lot 3	Christian Health Care Center	400316049550000 0
Lot 4	Aaron Drive Properties LLC	4003160495200000
Lot 5 (Lot A of RB Development Div No 1)	Christian Health Care Center	4003160825500000
Lot 6 (Lot B of RB Development Div No 1)	Christian Health Care Center	4003160825200000

**3. Identification of Authority.**

The Owner submitted an Amended PRD Application to the City of Lynden on July 8, 2019. A Planning Commission hearing for the Amended PRD was held on October 10, 2019. On December 2, 2019 the City Council approved an Order of Remand which returned the application to the Planning Commission for review of a proposal that had been modified, by the applicant, from its original form. The revised application returned to a public hearing before the Planning Commission on February 27, 2020. A majority of the Planning Commission voted to recommend approval of the revised application. On March 16, 2020 the City Council voted to approve the amendment. The signature of the Mayor of the City on the associated Findings of Fact attached as Exhibit C will attest to the approval of the Amended PRD and are subsequently reflected in this Development Contract with the City of Lynden.

**4. Identification of Documents.**

The following documents are referred to in this plan and are incorporated in this plan as though fully set forth.

- a. Updated Covenants, Conditions, and Restrictions
- b. Updated PRD Development Map, referred to herein as Exhibit B
- c. All documents of record from all public hearings.

**5. Current Development Description.**

RB Development and Heritage Park is a 29.1-acre planned residential community in Lynden. A 6.7-acre parcel was dedicated to the City of Lynden when the Development was formed in 1994. The site lies between Bender Road on the west, Vinup Road on the east and East Badger Road to the north. The development plan calls for PRD applications necessary to permit the preservation of open space area along with a development mix of multi-family and condominium type housing, together with an assisted care facility and townhouse units.

The current development divides the land uses as follows:

Lot	Development	Land Use	Unit Count	Acreage
2	Bender Plaza	Commercial	0	2.76
4	Parkview West Apartments	Multi-Family Units	45	2.82
3, A & B	Christian Health Care Center	Skilled Nursing Facility	85 (148 Beds)	6.38
C	Lynden Manor	Assisted Care Facility	109	3.37
D	Lynden Manor Townhomes	Condominiums	40	3.96
Heritage Park Estates Lots 1-20	Heritage Park Estates	Condominiums	64	9.81

The Total PRD area is 29.1 acres. There are 341 total dwelling units currently in the PRD. This is less than the 437 units contemplated by the original PRD. The Parkview West Senior Housing Expansion project will add 41 units to the existing 341, resulting in a total of 382 units.

The Christian Health Care center provides skilled nursing care for memory and dementia patients, inpatient therapy care, and long-term care and rehabilitation. Consistent with Lynden Municipal Code Section 17.01.030, the residents of the Christian Health Care Center Skilled Nursing Facility were counted at a per suite basis. The Center is a 148-bed facility which is accommodated in 85 suites (57 semi-private suites and 28 private suites).

**6. Parkview West Apartments**

The Parkview West Apartments are a multi-family residential community located in Lot 4 of the RB Development Division No. 1 (AF #950412119) subject to the below setback requirements:

**Table 1. Original Parkview West PRD Requirements**

HOUSING TYPE	FRONT	SIDE	REAR	HEIGHT	PARKING
<del>Parkview West Apartments RB Development Apartments</del>	30 ft	10 ft	25 ft	2 stories 30 units maximum per building	2/unit ≤ 25 units 1.5/unit > 25 units

**Commented [HG1]:** Error identified during Planning Commission review.

The open space requirement is 30% for Lot 4 of the PRD, which is the Parkview West Apartments.

The apartment units must be provided with a minimum of 32 square feet of storage space per unit. This storage may be located either within the building or within a building elsewhere on the site.

The amended revisions to the PRD for the Parkview West Apartments are listed in Table 2.

**Table 2. Amended Parkview West PRD Requirements**

	FRONT	SIDE	REAR	HEIGHT	PARKING
<del>RB Development Apts Parkview West Apartments</del>	<u>20 ft</u>	10 ft	25 ft	<u>41 ft</u>	<b>Existing Multifamily:</b> 2/unit ≤ 25 units 1.5/unit > 25 units <b>Proposed Retirement Housing:</b> <u>1 per unit</u>

**Commented [HG2]:** Error identified during Planning Commission review.

This PRD Amendment revised the *front yard setback from 30 feet to 20 feet*, the *height limit of 2 stories increased to 41 feet consistent with the City's PRD code when the underlying zoning is multifamily*, the *maximum 30 unit per building stipulation was removed*, and the *parking requirement was updated to meet current COL code*. The *open space requirement was also reduced to 25% for Lot 4 of the PRD*, which is the Parkview West Apartments.

The proposed project is an age-restricted senior housing facility. There is a need for a senior housing facility within the RB Development PRD due to a housing shortage. This proposal will fit the existing function of the RB Development, which includes two Assisted Care Facilities. One service this age-restricted senior housing facility can provide is housing for spouses of the nearby tenants of the Assisted Care Facilities. Other one-bedroom apartments options in Lynden are limited, often with long wait lists, and this location is far more desirable for these spouses.

An elevator is a necessity for a senior housing facility. Based on RB Development's analysis, an elevator must service at least 41 units to be economically viable. To accommodate the 41 units, the proposed structure must be 41 feet tall and situated ~~15-20~~ feet from the property line. The unit sizes are 1 bedroom and studios between 325-420 sf, which is smaller than average. It is not feasible to decrease the size of these units. The geometry associated with fitting these units between the existing buildings with an access stairway places the front of the existing building ~~15-20~~ feet from the property line.

**Commented [HG3]:** Errors identified during Planning Commission review.

The additional units will increase the density of the PRD closer to the density originally proposed for this development. To accommodate the City of Lynden parking requirements, the Open Space must be

reduced to 25% to provide the necessary parking spaces. Bender Fields and a community garden are across the street, which compose nearly 40 acres of open space, so the impact of reducing the Open Space is anticipated to be minimal.

**7. Christian Health Care Center**

The Christian Health Care Center is a skilled nursing medical facility located on Lots 3, A & B of the 2<sup>nd</sup> Amendment of the R.B. Development Division No. 1 (AF #960523070) subject to the below setback requirements. These were not modified by PRD Amendment 19-01:

**Table 3. Original Christian Health Care Center PRD Requirements**

HOUSING TYPE	FRONT	SIDE	REAR	HEIGHT	PARKING
Assisted Care Facility	90	25	180	45	1 per 4 units + one per employee

There are no changes to the above proposed requirements as part of this PRD Revision.

**8. Lynden Manor**

The Lynden Manor is an assisted living facility located on Lot C of the 2<sup>nd</sup> Amendment of the R.B. Development Division No. 1 (AF #960523070) subject to the below setback requirements. These were not modified by PRD Amendment 19-01:

**Table 4. Original Lynden Manor PRD Requirements**

HOUSING TYPE	FRONT	SIDE	REAR	HEIGHT	PARKING
Assisted Care Facility	90	25	180	45	1 per 4 units + one per employee

The facility will be permitted to be built with the parking as described on the 9/9/94 site plan, with the understanding that the “Garden Pea Patch” could be converted to parking if deemed necessary by the Public works Department. No other changes to the above proposed requirements are part of this PRD Revision.

**9. Lynden Manor Townhomes**

The Lynden Manor Townhomes are condominiums located on Lot D of the 2<sup>nd</sup> Amendment of the R.B. Development Division No. 1 (AF #960523070) are subject to the below setback requirements. These were not modified by PRD Amendment 19-01:

**Table 5. Original Lynden Manor Townhomes PRD Requirements**

HOUSING TYPE	FRONT	SIDE	REAR	HEIGHT	PARKING
Townhouse Units	20	10	20	35	2 per unit

0’ lot lines for interior lot lines will be allowed in the townhouse portion of the development. No other changes to the above proposed requirements are part of this PRD Revision.

**10. Heritage Park Estates Condominium**

The Heritage Park Estates are condominiums located on 20 lots of the Plat of Heritage Park (AF# 960711180) subject to the below setback requirements. These were not modified by PRD Amendment 19-01:

**Table 6. Original Heritage Park Estates Condominiums PRD Requirements**

HOUSING TYPE	FRONT	SIDE	REAR	HEIGHT	PARKING
Heritage Park Condos	20	10 <sup>1</sup>	15	30/35 <sup>2</sup>	2 per unit

1. Side setbacks are for each side from the eaves of the living area to property line. Side setbacks from garage eaves to property line may be five feet, and both sides may be five feet if both sides of the unit are garages.
2. Height limit for condominium structures 1-8 is 30 feet. All other four-plex condominium units have a 35-foot height limit.

A community clubhouse was constructed and shall be open to all residents of the Heritage Park portion of the PRD. No other changes to the above proposed requirements are part of this PRD Revision.

**12. Common Development Requirements**

The following section discusses the common development and redevelopment requirements of the PRD. Most of the developable area of the PRD has been built out, but it is possible for additional infill projects and redevelopment to continue in the future.

**a. Water and Sewer.**

1. All improvements to sewer and water are subject to the City's Water and Sewer Comprehensive Plans.
2. If additional water and sewer mains are installed within the PRD and off-site, and accepted by the City, the City will receive ownership of the improvements, together with appropriate easements where such lines are located on private property.
3. The City will grant the necessary easements, to permit access for the purpose of maintaining and servicing City utility lines. In the event a water or sewer main, that crosses a private street, open space, or green belt, must be serviced, repaired, or replaced, the City will complete the repairs or replacement and back fill the area with the appropriate materials, and will attempt to restore the affected area to its original condition, provided however, that the City will not be responsible for removing or replacing any structures or trees placed in such an area.
4. The PRD is subject to the same utility fees and charges as those charged to all residents and developers within the City of Lynden in effect at the time of building permit application.
5. All utility plans must be submitted to and approved by the City of Lynden Public Works and Fire Departments. Plans for each parcel must be submitted and approved prior to construction or to the issuance of a building permit. The Parkview West Apartment site discharges sewer to Pump Station 13. The additional units associated with the senior housing component were not originally anticipated in the design of the Parkview system. The City will require that the Owner coordinate with the City to confirm pump station capacity prior to connection.



6. No occupancy permits will be issued until all the utilities for the buildings to be occupied are installed as per approved plans, and after all utilities and as-built drawings have been accepted by the City.
7. The proposed elevation of the building related to the Parkview West senior housing component may require that the Owner utilize booster systems for fire protection.

**b. Storm Water Drainage.**

The City of Lynden has adopted, by ordinance, the *Stormwater Management Manual for Western Washington amended in 2014*. The City has also adopted a Stormwater Management Plan that includes this area. The drainage and erosion control plan for this project will be required to meet or exceed all specifications and requirements of these documents. This plan would identify and address specific stormwater conveyance and/or flooding issues, as well as the related water quality issues.

The Parkview West site utilizes a drainage swale / vault. Other parcels in the RB Development PRD also utilize this system. As a result, at the time of design the Owner will be required to address the shared use when updating the capacity of the system. The Owner will be responsible to update the associated drainage easements as needed.

**c. Transportation**

When necessary, the developer will install street, curb, gutter, sidewalks, and street lighting, as per City standards outlined in the City's Project Manual for Engineering Design and Development Standards. All private streets within the development must meet the following requirements:

1. All private streets must be a minimum of 33' between curbs.
2. Sidewalks are to be installed on one side of the street. Sidewalks must meet the minimum requirements of the Project Manual for Engineering Design and Development Standards.
3. Street cleaning, maintenance, snow removal, equipment and personnel will be responsibility of the Homeowner's Association. At no time will this responsibility be transferred to the City of Lynden. These terms should be addressed in the development's covenants, and reviewed by the City.
4. Lynden Police and Fire Departments, Emergency Services, Public Works and Building Officials must be allowed full access to all private streets, and retain their enforcing powers where applicable.
5. All pavement markings and pedestrian crossings must be to Washington State Department of Transportation standards and maintained adequately and at all times by the Homeowner's Association to ensure safety.
6. The City will be granted a perpetual ingress/egress easement to all private streets, for the maintenance and service of city owned utilities.
7. Maintenance of all dead-end, private streets will be subject to the Uniform Fire and Building Codes, to ensure the proper access for emergency vehicles and equipment.

8. Rolled-curbs may be used in place of standard curb construction on the James Circle cul-de-sac to avoid numerous curb cuts, as many driveways were proposed for the area under the following conditions:
  - a. That Aaron Drive be constructed with a three-foot grass planter strip.
  - b. That no roll-type curbs be allowed on Aaron Drive.
  - c. The roll-type curbs be permitted only on the outside perimeter of the James Circle cul-de-sac.
9. The creation of a curbed bump-out immediately west of the eastern entrance to the Parkview West Apartments complex is required in order to assist in providing visibility for vehicles pulling out onto Aaron Drive from both the Parkview complex as well as the west driveway of the Christian Healthcare Center. This improvement must be completed prior to issuance of the final occupancy of the senior housing addition.
10. The creation of an enhanced pedestrian crossing is required in association with the construction of the Parkview West Apartments senior housing addition. These improvements must be completed prior to issuance of the final occupancy of the senior housing addition. The crossing must include:
  - a. Curbed bump-outs on the north and south side of Aaron Drive in a location approved by the Public Works Department with handicap ramps leading to the crosswalk per City specification.
  - b. Painted cross walk marking to City specification.
  - c. Pedestrian controlled flashing warning lights per City specification.

**d. Street Lighting**

Proper and adequate street lighting will be required throughout the development. All lighting shall be in accordance with the WSDOT Traffic Manual M51-02 and the City's Draft Project Manual for Engineering Design and Development Standards.

**e. Signs**

Signs within the development will be as per the signage plan to be submitted by the Developers and subject to the approval of the Director of Public Works. All street signing will be in accordance with the current edition of the Manual of Uniform Traffic Control Devices. Street signs will be installed at the Developers' expense.

**f. Open Space**

1. The covenants of the PRD will clearly indicate the Homeowners Association's perpetual responsibility for the maintenance and upkeep of all private open space areas.
2. A permanent private open space easement shall be granted over the private open space shown and approved on Exhibit B to all residents of the PRD, to ensure preservation and maintenance of the open space, and to guarantee the area remain perpetually in recreational use.

3. Private open space shall be maintained at or above 40 percent of the site. This figure will be calculated on the basis of gross acreage minus the park dedication. This amount is equal to 11.5 acres (40% of 29.1 acres). Parking areas do not count as open space.

**g. Covenants, Conditions, and Restrictions.**

The covenants, conditions, and restrictions will be submitted to the city, and after city review and approval, will be recorded, and placed in force upon the property covered by this plan and will not be altered or amended without consent of the City, through the PRD hearing process as set out in Section 19.29.050 of the Lynden Municipal Code.

**h. Building and Land Use**

1. All existing building setbacks were measured from the building extreme to the property line. Construction associated with this development contract is subject to existing development standards. Building setbacks on new construction will be measured from the building foundation to the property line. Overhanging or cantilevered architectural elements may encroach into the building setback by up to 24 inches. In the case of development on private streets, setbacks will be measured from the back of curb or sidewalk, whichever is more restrictive. All structures must be a minimum of 100 feet from the centerline of the East Badger Road.
2. No building variances will be allowed.
3. The apartment units in Area B as designated on Exhibit B must be provided with a minimum of 32 square feet of storage space per unit. This storage may be located either within the building or within a building elsewhere on the site.

**i. Landscaping.**

1. Maintenance and provision of all landscaping, open space and green space must be by the Homeowner's Association and set forth in development covenants and restrictions. At no time will this responsibility revert to the City of Lynden.
2. Landscape designs must be submitted to the Public Works Department for approval, prior to the commencement of each phase. Landscaping must be completed and established for each phase before approval of the next phase. Adequate berms and split rail fencing, must be included in the landscaping plan, including, but not limited to the northern boundary along the East Badger Road.
3. A landscape berm on Vinup Road must be approved by the Public Works Department and installed, at the Developers' expense, prior to the completion of Phase 1.
4. The current landscaping theme of Homestead Northwest on Bender Road must be extended. This includes berms, and the installation of trees and other vegetation.

**j. Impact Fees.**

1. This development will be subject to all impact fees adopted by the Lynden City Council, including both portions of Park and Fire impact fees.

**k. Parking**

1. Off street parking must be provided consistent with the standards described in the Lynden Municipal Code 19.51. The current development has more than sufficient parking for each existing apartment unit and each proposed senior living unit. Extra spaces shall be labeled as guest parking and shall be used only by guests visiting residents of the apartment or senior living buildings.
2. Prior to issuance of final occupancy on the senior housing addition, the Owner of Parkview West Apartments is required to establish parking assignments for residents which includes the labeling of guest spaces and the numbering of parking stalls in both the existing apartment complex and the proposed senior apartment addition.  
This requirement must be noted on the permit plan set.

**Commented [HG4]:** Addition recommended by the Planning Commission.

**Miscellaneous Items.**

1. Parcel sizes may not be altered more than 5% from the preliminary plan.
2. Single family use may not change to multi-family use. However, multi-family use may be changed to single family use. No change of use will be permitted without holding a public hearing as specified in Lynden Municipal Code Chapter 19.29.050.
3. This development, and all buildings therein, are subject to all building and fire codes. All building permit applications and final site plan approval will be subject to review for compliance with these codes. Any building and development issues are subject to all building and fire codes and existing city ordinances, unless specified otherwise in this contract.
4. In the event the Developer fails to comply with the commitments set forth herein, within one hundred twenty (120) days of written notice of such failure from the City, in addition to any other remedies which the City may have available to it, the City shall have the right, without prejudice to any other rights or remedies, to cure such default or enjoin such violation and otherwise enforce the requirements contained in this Contract, and to collect the direct costs associated with such action, including reasonable attorney's fees and costs, from the Developer.

In the event the City fails to comply with the commitments set forth herein, within one hundred twenty (120) days of written notice of such failure from the Developer, in addition to any other remedies which the Developer may have available to it, the

Developer shall have the right, without prejudice to any other rights or remedies, to cure such default or enjoin such violation and otherwise enforce the requirements contained in this Contract, and to collect the direct costs associated with such action, including reasonable attorney's fees and costs, from the of the City.

5. In the event that a judicial dispute arises regarding the enforcement or breach of this Contract, then the prevailing party in such dispute shall be entitled to recover its attorney's fees and costs reasonably incurred, including fees and costs incurred on appeal.
6. This Contract, and the rights of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Washington and the parties agree that in any such action venue shall lie exclusively in Whatcom County, Washington.
7. Nonwaiver of Breach. Failure of either party to require performance of any provision of this Contract shall not limit such party's right to enforce such provision, nor shall a waiver of any breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.
8. Any notice which a party may desire to give to another party must be in writing and may be given by personal delivery, by mailing the same by registered or certified mail, return receipt requested postage prepaid, or by Federal Express or other reputable overnight delivery service, to the party to whom the notice is directed at the address of such party set forth below:

City of Lynden: Heidi Gudde, Planning Director  
300 4th Street, Lynden, WA 98264

Owner: Aaron Drive Properties LLC  
119 N Commercial Street, STE 165  
Bellingham WA 98225

and

Starkenburger-Kroontje Attorney at Law P.S.  
PO Box 231  
Lynden, WA 98264

or such other addresses and to such other persons as the parties may hereafter designate in writing to the other parties. Any such notice shall be deemed given upon delivery if by personal delivery, upon deposit in the United States mail, if sent by mail pursuant to the foregoing.

9. No Impairment of City Regulatory Discretion. Nothing in this Agreement shall limit the City's exercise of its lawful regulatory discretion in approving pending or new applications in accordance with applicable ordinances, so long as such discretion is exercised consistent with the terms of this Agreement.

10. Reservation of Authority. The City reserves authority to impose new or different regulations on the Property to the extent required by a serious threat to public health and safety. This reservation is intended to comply with RCW 36.70B.170 (4). If such authority is exercised, the remaining provisions of this Agreement shall remain in full force and effect to the extent the new regulations are not inconsistent therewith and do not undermine achievement of the fundamental purposes of this Agreement.

11. Severability. If any section, subsection, sentence, clause, or phrase in this Agreement is for any reason held to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby. Each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

12. After its execution, this Amendment shall be recorded in the office of the Whatcom County Auditor. Each commitment and restriction on the development subject to this Amendment, shall be a burden on the Property, shall be appurtenant to and for the benefit of the Property, and shall run with the land. This Amendment shall be binding on the City and the Developer, and their respective heirs, administrators, executors, agents, legal representatives, successors and assigns. Upon any sale or conveyance of the Property by the Developer or a subsequent owner, such owner shall be released from the obligations of this Amendment and the obligations stated herein shall be enforceable solely against the successor owner of the Property.

**IN WITNESS WHEREOF**, the parties have hereunto caused this Agreement to be executed and shall be effective on the date of its recording with the Whatcom County Auditor.

SUBMITTED THIS \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Aaron Drive Properties LLC

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**CITY OF LYNDEN:**

By: \_\_\_\_\_

Scott Korthuis, Mayor  
Administrator

City of Lynden

**ATTEST:**

By: \_\_\_\_\_

~~Mike Martin~~ John Williams,

City of Lynden

STATE OF WASHINGTON

}

ss.

COUNTY OF WHATCOM

I certify that I know or have satisfactory evidence that \_\_\_\_\_ the \_\_\_\_\_ of **Aaron Drive Properties LLC**, a Washington limited liability company, is the person who appeared before me, and acknowledged that he signed this instrument on behalf of said company, on oath stated that he was authorized to execute the instrument on behalf of said company, and acknowledged this instrument to be the free and voluntary act and deed of said company for the uses and purposes herein mentioned.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

Printed Name: \_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington  
My Commission  
Expires \_\_\_\_\_

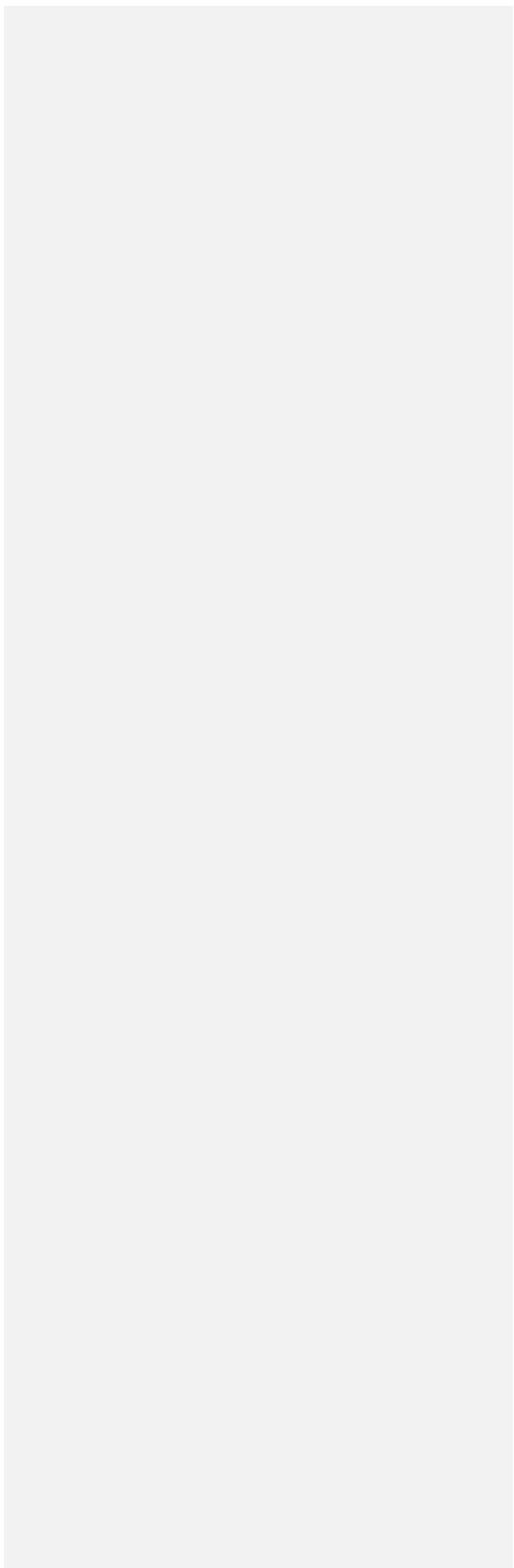


Exhibit A

Legal Description of the Property

400316 049520 0000

Lot 4, RB Development, Div. No. 1, a planned residential development, according to the map thereof, recorded in Volume 19 of Plats, page 21, records of Whatcom County, Washington.

Situate in Whatcom County, Washington.



Exhibit B

Updated PRD Development Map

Exhibit C

Findings of Fact Approving PRD Amendment 20-01