

RESOLUTION NO. 14-15

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COVINGTON, KING COUNTY, WASHINGTON, APPROVING THE CITY MANAGER TO EXECUTE A DEVELOPMENT AGREEMENT WITH GEMSTAR PROPERTIES, LLC FOR THE POLARIS AND AFFINITY AT COVINGTON DEVELOPMENTS, KNOWN AS THE COVINGTON MIXED-USE DEVELOPMENT, CITY FILE NO. LU14-0006/0010.

WHEREAS, the Washington State legislature authorizes development agreements through RCW 36.70B.170 through 36.70B.210; and

WHEREAS, Ordinance No. 06-13 as codified at Chapter 18.114 of the Covington Municipal Code (CMC), authorizes the use of development agreements; and

WHEREAS, CMC 18.31.045 allows deviations to the development standards within the downtown zoning, town center (TC) through the development agreement process; and

WHEREAS, the city council reviewed this matter at a study session on February 11, 2013; and

WHEREAS, a development agreement application was formally submitted on April 24, 2014 by Gemstar Properties, LLC; and

WHEREAS, the city issued a Mitigated Determination of Non-Significance on June 20, 2014 for the Covington Mixed Use development pursuant to the State Environmental Policy Act (SEPA); and

WHEREAS, the city council held a public hearing and took testimony July 22, 2014; and

WHEREAS, the Covington city council has considered all testimony provided at the public hearing and recommendation of city staff has determined that the development agreement is in compliance with State law and city codes.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Covington, King County, Washington, as follows:

Section 1. The city council does hereby authorize the interim city manager to execute a development agreement with Gemstar Properties, LLC for both the Affinity and Polaris at Covington developments, substantially in the form of the proposed agreement as set for in Exhibit A attached hereto.

PASSED in open and regular session on this 12th day of August, 2014.


MARGARET HARTO, MAYOR

ATTESTED:


Sharon Scott, City Clerk

APPROVED AS TO FORM:


Sara Springer, City Attorney

**RESOLUTION NO. 14-15
EXHIBIT A**

**DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF COVINGTON AND GEMSTAR PROPERTIES, LLC
FOR THE
AFFINITY AT COVINGTON & POLARIS AT COVINGTON DEVELOPMENT**

THIS DEVELOPMENT AGREEMENT (“Agreement”) is effective the ____ day of August, 2014 (“Effective Date”), by and between the City of Covington, a Washington municipal corporation (the “City”), and Gemstar Properties, LLC, a Washington limited liability company and/or its assigns (“Gemstar” or the “Developer”).

RECITALS

WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction (RCW 36.70B.170(1)); and

WHEREAS, pursuant to a Purchase and Sale Agreement dated December 3, 2013, Gemstar has contracted with Covington Towne Center, LLC to purchase approximately 7.03 acres of vacant land in the City of Covington’s town center district (the “Subject Property” as defined below); and

WHEREAS, Gemstar intends to acquire the Subject Property and develop a 200-unit affordable family apartment community and a 156-unit senior apartment community , as conceptually depicted on the site plan attached hereto as Exhibit “B”; and

WHEREAS, Gemstar has submitted a commercial site development application, File No. LU14-0006/0010; and

WHEREAS, the Subject Property lies within the Covington downtown zone, town center district, the development and design standards for which are set forth in the Chapter 18.31 of the Covington Municipal Code (CMC);

WHEREAS, the City has adopted a process, set forth in CMC 18.31.045, for allowing deviations to the development standards within the downtown zone, town center district, through a development agreement. So long as a development agreement is consistent with the applicable policies and goals of the City’s Comprehensive Plan, deviations from development regulations may be granted to provide flexibility to achieve public benefits, to respond to changing community needs, or to encourage deviations that provide the functional equivalent or adequately achieve the purposes of otherwise applicable City standards; and

WHEREAS, in exchange for certain deviations to the applicable development standards for the Project, Gemstar has offered certain mitigations that exceed those required under the City’s standard development regulations; and

WHEREAS, the City deems that the mitigations offered by Gemstar provide a level of public benefit proportionate to the deviations to the development standards requested for the Project and that the deviations are supported by the goals and policies in the City’s Comprehensive Plan; and

WHEREAS, pursuant to CMC 18.114.040, a public hearing for this Agreement was held on July 22, 2014, and the City Council approved this Development Agreement by Ordinance No. ___-14 on August 12, 2014;

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises of the parties herein contained, the parties hereto agree as follows:

AGREEMENT

1. PROJECT DESCRIPTION

- 1.1. Subject Property.** The Subject Property of the proposed development herein is located at 172nd Avenue SE and Future 274th Street in the City's Town Center District, bearing parcel #3622059187 (the "Subject Property"), as described as a portion of Parcel A, City of Covington Lot Line Adjustment number LU10-0005 (Covington Town Center) King County Recording Number 0100811900003. The property lies within NW ¼, Section 36, Township 22N, and Range 5E WM, King County Washington. As used in this Agreement, the term "Subject Property" shall mean the parcel of land described hereto as well as any parcels subsequently created by a division therefrom as part of a Binding Site Plan proposed by the Developer.
- 1.2. The Project.** The mixed-use development to be sited on the Subject Property in accordance with the terms and conditions of this Agreement as well as all other applicable development regulations is commonly referred to as the "Affinity at Covington" and the "Polaris at Covington" developments (collectively the "Project"), as more particularly described in Exhibit "B" hereto and incorporated herein by this reference.

2. TERM

This Agreement shall commence upon the effective date of the Adopting Ordinance approving this Agreement and shall continue in full force and effect for a period of twenty (20) years unless extended or terminated as provided herein. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject, however, to post-termination obligations of the Developer or Landowner, if any.

3. VESTED RIGHTS OF DEVELOPER

- 3.1.** Except as may be provided otherwise in this Agreement, for the Term of this Agreement, development of the Project shall be vested to and governed by City development regulations in effect as of the Effective Date of this Agreement. Except as expressly stated otherwise herein, any amendments or additions made during the Term of this Agreement to City development regulations shall not apply to or affect the conditions of development of the Project.
- 3.2.** As used in this Agreement, "development regulations" shall be deemed to include regulations, policies and procedures, and guidelines addressing zoning, environmental review, building and site design, utilities, stormwater, impact fees, transportation concurrency, and other laws, ordinances, policies, and administrative regulations and guidelines of the City governing land development.
- 3.3.** Nothing herein relieves the Developer of any obligations it may have during the Term to comply

with state or federal laws or regulations of any kind. The proposed Project shall not be vested against the application of development standards that are imposed by virtue of state or federal pre-emption of the City's regulatory authority. As provided by RCW 36.70B.170(4), the proposed Project shall not vest against new development regulations to the extent the new regulations are required by a serious threat to public health and safety.

- 3.4. The International Building Code, International Fire Code, and other construction codes in effect in the State of Washington as of the date of the filing of a complete application for a building permit for the Subject Property shall apply to all new development and the redevelopment or modification of existing development on the Subject Property.
- 3.5. Permit, plan review, and inspection fees are exempt from vesting under this Agreement.
- 3.6. The vesting described herein shall apply for the Term of this Agreement. For those development standards not specifically enumerated in this section, land use, development, or building permit approvals shall be governed by the City codes and standards in effect upon the date of complete application.
- 3.7. During the Term of this Agreement, the Developer may at its option develop the Subject Property or portions thereof in accordance with new code provisions or generally applicable standards for that subject adopted after the date of execution of this Agreement, without the obligation to bring other portions of the Subject Property into conformance with newly-adopted codes or regulations.

4. GROUND FLOOR COMMERCIAL USE DEVIATION

- 4.1. **Background.** CMC 18.31.080(4)(26) requires that that sixty percent (60%) or more of the ground floor of a mixed-use building abutting a street or other public space shall be occupied by retail, restaurant, or personal services uses ("Commercial Use"). Pursuant to the development agreement deviation process under CMC 18.31.045(4), the required Commercial Use shall not be reduced to less than thirty percent (30 %) along each street front.

The Commercial Use standard is related to the amount of linear feet of building frontage that is provided for each structure along each public street. Based on this calculation, Building A- Polaris at Covington is designed to occupy 429 linear feet of building frontage along 171st Ave SE, thus requiring 257 linear feet of Commercial Use to meet the 60% standard. The Polaris at Covington project provides 223 linear feet of Commercial Use along 171st Ave SE, which equates to 52% of street frontage (a shortage of 8%, or 29 linear feet).

Building B- Polaris at Covington project is designed to occupy 254 linear feet, and a portion of Building A that wraps around the corner of 171st Ave SE and SE 276th St is designed to occupy 130 linear feet of SE 276th St for a total frontage of 384 linear feet. To meet the 60% standard, 230 linear feet of Commercial Use is required along SE 276th St. Building B and a portion of Building A is designed to provide 171 linear feet of Commercial Use along SE 276th St., which equates to 44% of street frontage (a shortage of 16%, or 58 linear feet).

The Polaris at Covington (Buildings A & B) will provide a total of 12,793 square feet of Commercial Use space. A majority of the Commercial Use space along SE 276th St, approximately 8,806 sq. ft., will be occupied by offices and amenities associated with the

Polaris at Covington development. Possible amenities will include media and game rooms, fitness center, and spaces to use for tutoring or working on site, as well as other ancillary uses. The commercial space along 171st Ave SE, approximately 3,987 sq. ft. will be available for rent for future Commercial Use.

The requirement to provide ground floor Commercial Use space is only applicable to the Polaris at Covington (Buildings A & B). The senior housing, Affinity at Covington (Building C) is a single use structure and is not required to provide ground floor Commercial Use.

- 4.2. Authorized Deviation.** The City authorizes the Polaris at Covington project to deviate from the sixty-percent (60%) Ground Floor Commercial Use Standard for Multi-family Developments in the Town Center zone requirement of CMC 18.31.080(4)(26) pursuant to the following conditions:
- 4.2.1.** Fifty-two percent (52%) of the ground level building frontage abutting 171st Avenue SE shall be occupied by, or designated for future Commercial Use;
 - 4.2.2.** Forty-four percent (44%) of the ground level building frontage abutting SE 276th Street shall be occupied by, or designated for future use as, Commercial Use;
 - 4.2.3.** The Developer shall be responsible for consistently advertising the above identified Commercial Use frontage and actively securing tenants to occupy said Commercial Use space throughout the duration of the life the building; and
 - 4.2.4.** The Developer may use the above identified Commercial Use space for ancillary uses to the Polaris at Covington project (such as additional parking) upon the following conditions:
 - 4.2.4.1.** Ancillary uses in said Commercial Use space shall be designed and constructed to look like a commercial storefront from the street, as conditioned in the Director's Decision for the Commercial Site Development Permit and as required in the City's Downtown Design Guidelines and Standards, until such time tenants are secured and the space is converted; and
 - 4.2.4.2.** Ancillary uses of said Commercial Use spaces shall only be permitted for a period of ten (10) years from the Effective Date of this Agreement, unless otherwise extended by the City.

5. GROUND FLOOR SCHOOL USE DEVIATION

- 5.1. Background.** CMC 18.31.080(4)(13) requires that schools, including compulsory, vocational, and higher education, be permitted pursuant to a conditional use permit, on the upper floors of a mixed-use building that includes ground floor retail. There are no specific conditions in the City's development Agreement process associated with a deviation from this requirement.

This is a staff proposed deviation based on the City's long term vision to provide for educational opportunities in the Town Center. Polaris at Covington is the first large development project in the Town Center that will be constructing ground floor Commercial Space with the possibility

for occupancy within the next year (2015). The City, in agreement with the Developer, would like the option to occupy the required Commercial Use space, per Section 4 herein, with school uses until a better location is constructed for school use and/or the market grows to fulfill the Commercial Use space at the Polaris at Covington project.

- 5.2. Authorized Deviation.** The City authorizes the Polaris at Covington project to deviate from the requirement that schools shall be located on the upper floors of mixed use structures in the Town Center zone as required in CMC 18.31.080(4)(13) provided:
- 5.2.1.** The Developer and a school are able to agree upon a mutually satisfactory agreement for the use of the first floor Commercial Space;
 - 5.2.2.** Any tenant improvements included as part of said agreement, or any other improvements to a first floor space to accommodate a school use, shall maintain and include facade requirements as required in the City's Downtown Design Guidelines and Standards; and
 - 5.2.3.** The City's conditional use permit requirement for the location of schools pursuant to CMC 18.31.080(4)(13) is hereby waived for the purposes of locating school uses pursuant to the terms of this Agreement.

6. MITIGATION

In consideration of the City's authorized permitted use deviations as provided for in Section 4 herein, the Developer agrees to the following mitigation measures.

- 6.1. Public Benefit Spaces.** The Developer agrees to devote a combined 4,314 sq. ft. of public benefit space on the Subject Property to the City pursuant to the following.
- 6.1.1. Public Benefit Spaces Locations.** The locations of the below public benefit spaces are based on the City's 2009 Downtown Plan and Zoning Study that identifies 171st Ave SE as a prominent "Main Street" and the vision for future development to the west, north, and south of the Polaris and Affinity developments. Based on the City's vision for a walkable downtown, it is necessary to provide public spaces at the intersections that will function as mini plazas that will be invite pedestrians, provide greenery along the street, and be used as spaces where people can gather. These mini plazas will also function cohesively with the streetscape and other plazas that will be constructed as part of surrounding developments, particularly the plazas along SE 276th St. These plazas will create a connection to the future city park/plaza identified on the property to the south of the Subject Property.
 - 6.1.1.1.** Public Space No. 1 shall be located at the northwest corner of the Subject Property (adjacent to the future intersection of 171st Ave SE and SE 274th St) and shall be approximately 1,266 sq. ft.;
 - 6.1.1.2.** Public Space No. 2 shall be located at the southwest corner of the Subject Property (adjacent to the intersection of 171st Ave SE and SE 276th St) and shall be approximately 895 sq. ft.; and

- 6.1.1.3.** Public Spaces No. 3 & 4 shall be located mid-block along the frontage of SE 276th St. between Buildings A and B, pursuant to the commercial site development plans, and shall be approximately 2,180 sq. ft (combined total).
- 6.1.2. Construction of Public Benefit Spaces.** The Developer agrees to plan, design, and construct the above public benefit spaces as part of the Commercial Site Development Permit approval and according to the following requirements:
- 6.1.2.1. Design of the spaces shall include hardscaping, textured concrete surfaces, benches/seating areas, and a bike rack. Landscaped raised planters shall be used to differentiate the location of the public benefit space and required spaces associated with the Polaris at Covington development.
- 6.1.2.2. The Developer shall be responsible for all initial capital costs to construct the public benefit spaces pursuant to final approved construction plans by the City.
- 6.1.2.3. The Developer shall be required to post a separate financial guarantee for the construction of the public benefit spaces prior the issuance of any construction permits for the Subject Property.
- 6.1.2.4. The Developer shall be responsible for completing construction of the public benefit spaces prior to final acceptance of Subject Property site improvements by the City. The City reserves the right to withhold the issuance of permits for the Subject Property and/or the release of any financial guarantees for the Subject Property until said public benefit spaces are constructed, unless otherwise approved by the City.
- 6.1.3. Maintenance of Public Benefit Spaces.** Upon construction of the public benefit spaces, the Developer shall be responsible for the ongoing maintenance of the public benefit spaces. The Developer shall bear the costs of the ordinary day-to-day maintenance of the public benefit spaces (such as cleaning), however, the City shall be responsible for the cost of any major or non-ordinary maintenance of the public benefit spaces that becomes necessary over time (such as sidewalk/concrete repairs, accessory/fixture replacements, vehicular damage, graffiti, etc.). The Developer and City will enter into a separate maintenance agreement and/or easement agreement setting forth these responsibilities and the City's reimbursement obligation for major and/or non-ordinary maintenance costs.
- 6.1.4. Public Space Easement.** Upon completion of the construction of the public benefit spaces, the Developer shall execute an easement with the city benefiting the city for the public benefit spaces in perpetuity upon the terms pursuant to Section 6.1.
- 6.2. Street and Utility Infrastructure.** In addition to the devotion of the public benefit spaces in Section 5.1, the City shall recognize the level of street and utility infrastructure necessary for the Subject Property to develop as additional mitigation measure provided by the Developer. 171st Ave SE and SE 276th St are identified in the City's 6-year Transportation Improvement Projects 2015-2020 list as developer driven projects. Although the Developer is responsible for

the cost and construction of the infrastructure necessary for their development, the installation of the improvements will provide a catalyst for adjacent developments because a majority of the required utilities (sewer, water, power, lights, etc.) will be more readily available for direct connections.

7. DISPUTE RESOLUTION

The parties shall use their best efforts to resolve disputes arising out of or related to this Agreement using good faith negotiations by engaging in the following dispute escalation process should any such disputes arise:

- 7.1.** Level One – The Developer’s project manager and a City staff member appropriate to the nature of the dispute shall meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fourteen (14) calendar days after referral of that dispute to Level One, either party may refer the dispute to Level Two.
- 7.2.** Level Two – The Developer’s principal and the City’s Community Development Director or authorized designee shall meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fourteen (14) business days after referral of that dispute to Level Two, either party may refer the dispute to Level Three.
- 7.3.** Level Three – The Developer’s principal (or designee) and the City Manager (or designee) shall meet to discuss and attempt to resolve the dispute in a timely manner. Counsel for the parties shall be permitted to attend Level Three meetings.
- 7.4.** Except as otherwise specified in this Agreement, in the event the dispute is not resolved at Level Three within fourteen (14) calendar days after referral of that dispute to Level Three, either party may commence legal proceedings.
- 7.5.** At all times prior to resolution of the dispute, the parties shall continue to perform under this Agreement in the same manner and under the same terms as existed prior to the dispute.
- 7.6.** Nothing in this Section 7 shall preclude either party from seeking injunctive or equitable relief prior to the initiation or completion of this dispute resolution process.

8. DEFAULT

- 8.1.** Subject to extensions of time by mutual consent in writing, failure or delay by either party to perform any term or provision of this Agreement shall constitute a default. In the event of an alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party not less than thirty (30) days notice in writing, specifying the nature of the alleged default and the manner in which said default may be cured. During this thirty (30) day period, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings.
- 8.2.** After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement.

9. TERMINATION

9.1. This Agreement shall automatically terminate and be of no further force and effect upon any of the following occurrences:

9.1.1. If the development contemplated in this Agreement and all of the permits and/or approvals issued by the City for such development are not substantially underway prior to expiration of such permits and/or approvals. Nothing in this Agreement shall extend the expiration date of any permit or approval issued by the City for any development;

9.1.2. If the Developer does not construct the Project as contemplated by the permits and approvals identified in this Agreement and submits applications for development of the Property that are inconsistent with such permits and approvals; or

9.1.3. Upon the expiration of the term identified in Section 2 herein or when the Subject Property has been fully developed, which ever first occurs, and all of the Developer's obligations in connection therewith are satisfied as determined by the City.

Upon the termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City Attorney that the Agreement has been terminated.

9.2. Effect of Termination.

9.2.1. Termination of this Agreement shall not affect any of the Developer's obligations to comply with the City Comprehensive Plan and the terms and conditions or any applicable zoning code(s) or subdivision map or other land use entitlements approved with respect to the Subject Property, any other conditions of any other development specified in the Agreement to continue after the termination of this Agreement or obligations to pay assessments, liens, fees, or taxes.

9.2.2. Upon any termination of this Agreement, the terms and conditions of this Agreement shall no longer be vested with respect to the Subject Property (provided that vesting of ulterior terms and conditions may then be established for the Subject Property pursuant to then existing planning and zoning laws).

10. GENERAL PROVISIONS

10.1. **Contingencies.** This Agreement and the obligations hereunder shall be contingent upon Gemstar, or entities under common control with Gemstar, acquiring fee title to the Subject Property.

10.2. **No Third Party Beneficiaries.** The City shall not be obligated or liable under the terms of this Agreement to any person or entity not a party hereto. Further, the City shall not be bound by any contracts or conditions that the Developer may negotiate with third parties related to the Subject Property or Project, other than customary rights required by a lender.

10.3. **Entire Agreement.** This Agreement embodies the whole agreement of the parties concerning its subject matter; there are no promises, terms, conditions, or obligations other than those contained herein that exist with respect to its subject matter; and this Agreement shall

supersede all provisions, communications, representations, or agreement, either verbal or written, between the parties with respect to its subject matter.

- 10.4. No Joint Venture.** Notwithstanding any language in this Agreement, the City shall not be deemed to be a member, partner, or joint venture partner of the Developer and the City shall not be responsible for any debt or liability of the Developer. Gemstar shall not be responsible for any debt or liability of the City.
- 10.5. Covenants Running with the Land.** The conditions and covenants set forth in this Agreement shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties. The Owner and every purchaser, assignee, or transferee of an interest in the Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Property, or such portion thereof, sold, assigned, or transferred to it. Any such purchaser, assignee, or transferee shall observe and fully perform all of the duties and obligations of the Owner contained in this Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned, or transferred to it.
- 10.6. Amendment.** This Agreement may be amended by mutual written consent of the parties. Amendments to this Agreement that materially modify the intent and policy of the Agreement must be approved by the City Council. Other amendments may be approved by the City Manager.
- 10.7. Assignment.** The Developer shall not assign any part of this Agreement without the prior written approval of the City, which approval shall not be unreasonably withheld, except that the Developer may assign this Agreement to any entity under control of Gemstar without prior written approval of the City.
- 10.8. Hold Harmless and indemnification.** In the event any legal action or special proceeding is commenced by any person or entity as a result of any negligent act or omission of the Developer (and specifically excluding any challenge to this Agreement or any provision herein), the City may elect to tender the defense of such lawsuit or individual claims in the lawsuit to the Developer. In such event, the Developer shall hold the City harmless from and defend the City from all costs and expenses incurred in the defense of such lawsuit or individual claims in the lawsuit including, but not limited to, attorneys' fees and expenses of litigation and damages awarded to the prevailing party or parties in such litigation. The Developer shall not settle any such lawsuit without the consent of the City. The City shall act in good faith and shall not unreasonably withhold consent to settle.
- 10.9. No Waiver.** Failure or delay of the City to declare any breach or default immediately upon occurrence shall not waive such breach or default. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.
- 10.10. Specific Performance.** The parties specifically agree that damages are not an adequate remedy for breach of this Agreement and that the parties are entitled to compel specific performance of all material terms of this Agreement by any party in default hereof.
- 10.11. Severability.** Each and every provision of this Agreement shall be deemed to be severable. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the

other provisions hereof, and the Agreement shall be construed in all respects as if such invalid or unenforceable provision were not a part of this Agreement.

- 10.12. Notices.** All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered or mailed, by first class, certified mail or overnight courier, with postage prepaid to the address included in the signature block below, or to such other person or place as one party shall furnish to the other in writing. Notices and payments shall be deemed given upon personal delivery or, if mailed, upon the earlier of actual receipt or three (3) business days after the date of mailing.
- 10.13. Governing Law / Venue.** This Agreement shall be interpreted in accordance with the laws of the State of Washington. The venue for any cause of action arising out of this Agreement shall be King County, Washington.
- 10.14. Attorney's Fees.** If any party initiates legal proceedings related to the validity, construction, enforcement, interpretation or breach of this Agreement, the substantially prevailing party shall be entitled to all costs of such proceedings including reasonable attorney's fees. The term "legal proceedings" as used in this paragraph shall include all litigation, arbitration, administrative, bankruptcy, and judicial proceedings, including appeals therefrom.
- 10.15. Headings.** The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the interpretation of this Agreement.
- 10.16. Recording.** This Agreement shall be recorded against the Subject Property as a covenant running with the land and shall be binding on the Developer, its heirs, successors, and assigns until this Agreement expires on its own terms pursuant to Section 2.
- 10.17. Full Understanding.** The parties each acknowledge, represent, and agree that they have read this Agreement; that they fully understand the terms thereof, that they have had the opportunity to be fully advised by their legal counsel and any other advisors with respect thereto; and that they are executing this Agreement after sufficient review and understanding of its content.
- 10.18. Authority.** Each individual executing this Agreement on behalf of the City and the Developer represents and warrants that such individuals are duly authorized to execute and deliver this Agreement on behalf of the City or Developer, respectively.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF COVINGTON

By _____
Name: _____
Its: _____
City of Covington
16720 SE 271st Street, Suite 100
Covington, WA 98042

Attest:

By _____
City Clerk

Approved as to form:
By _____
City Attorney

OWNER

By _____

Name: _____

Its: _____

Gemstar Properties, LLC
1620 North Mamer Road, Bldg B
Spokane Valley, WA 99216

STATE OF WASHINGTON)

) ss.

KING COUNTY)

On this _____ day of _____, 2014, before me, the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be an authorized representative of _____, who executed the foregoing instrument and acknowledged to me that the said instrument was signed as his/her free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS my hand and official seal this _____ day of _____, 2014.

(Print Name) _____
Notary Public, Residing at _____
My appointment expires: _____