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KING COUNTY, WA

## DEVELOPMENT AGREEMENT

GRANTOR: ANDERSON SCHOOL PROPERTIES LLC

GRANTEE: CITY OF BOTHELL

Legal Description:

Abbreviated form: Lots 1-3, City of Bothell BLA No. 2010-00006, Rec. No.  
20101230900001

Additional legal on Exhibit A

Assessor's Property Tax Parcel Account Number(s): 062605-9369-05; 062605-9370-02;  
062605-09052-07

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## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is dated as of the 20<sup>th</sup> day of July, 2012, between the CITY OF BOTHELL, a Washington municipal corporation ("City"), and ANDERSON SCHOOL PROPERTIES LLC, a Washington limited liability company ("Anderson" or "Developer").

### RECITALS

A. Pursuant to that certain Purchase and Sale Agreement between City, as seller, and Anderson, as buyer, dated June 24, 2010, as amended (collectively, as amended, the "Sale Agreement"), concurrently herewith Anderson has acquired that certain real property legally described in Exhibit A-1 and Exhibit A-2 attached hereto (the "Property"). The parcel described on Exhibit A-1 (the "Anderson Parcel") is improved with the historic W.A. Anderson School Building (the "Anderson Building") and its related campus. The parcel described on Exhibit A-2 (the "Pool Parcel") is improved with the Northshore Costie/Ruiz Pool (the "Pool") and related building (the "Pool Building").

B. Concurrently herewith, Anderson has leased the Property to McMenamins's Brew Pubs, Inc., a Washington corporation ("Brew Pubs") pursuant to a long term lease (the "Lease"). Brew Pubs is wholly owned by McMenamins, Inc., an Oregon corporation, which has common beneficial ownership with Anderson. The Lease requires that Anderson develop and Brew Pubs operate the Property as required by and subject to the terms and conditions of this Agreement and the Public Benefits Agreement.

[remainder of page left intentionally blank]

C. In August 2009, City solicited Requests for Concepts for redevelopment of the Property. Developer was the only respondent to provide a detailed concept for redevelopment of the Property in McMenamins Response to the City of Bothell's Request for Concepts, September 16, 2009 (the "RFC Response"), which concept was consistent with City's goals for the Property and the City.

D. As described in the Sale Agreement, City desires to foster the redevelopment of the Property, which is located in a key part of downtown Bothell, in a way that will contribute to the economic, cultural, and recreational revitalization of the City. Developer intends to submit plans for City's approval that provide for the redevelopment of the Property into a full service "McMenamins Complex" that includes a spa (soaking pool, spa and massage treatments), pub/bars, live music venue, movie theater, event meeting space, an approximately 70-room hotel and gardens and to redevelop the Pool and Pool Building, to be used by the public and in connection with such facility (the "Project").

E. Developer has granted to City a Historic Preservation Easement to preserve, protect and maintain the historic façade and other features of the Anderson Building as more particularly described therein (the "Historic Easement"), which easement is being recorded contemporaneously herewith.

F. As part of the consideration for the purchase of the Property, as described in the Sale Agreement, Developer has agreed to provide certain public benefits (the "Public Benefits"), as more particularly described in that certain Public Benefits Agreement between the parties (the "Public Benefits Agreement"), which agreement is being recorded contemporaneously herewith.

G. The Project is a private undertaking to be contracted, constructed and operated by Developer with Developer's resources and will provide a significant redevelopment of the Property with accompanying public benefits. The parties intend by this Agreement to set forth their mutual agreement and undertakings with regard to the Project.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual undertaking and promises contained herein, and the benefits to be realized by each party and in future consideration of the benefit to the general public by the creation and operation of the Project upon the Property, and as a direct benefit to City and other valuable consideration, the adequacy of which is hereby acknowledged, the parties agree as follows:

Section 1. Definitions. In addition to the terms defined in the Recitals above, the following terms shall have the meanings set forth below:

“Business Days” means any day on which banks in Bothell, Washington are required to be open for business, excluding Saturdays and Sundays. If any deadline hereunder falls on a day that is not a Business Day, then the deadline will be deemed extended to the next following Business Day.

“Certificate of Performance” means a certificate issued by City to Developer pursuant to Section 9 of this Agreement.

“Closing” means the close of the sale of the Property pursuant to the Sale Agreement.

“Community Garden” means the garden located on the Anderson Parcel open to use by the community as more particularly described in the Public Benefits Agreement.

“Concept Design Documents” means an architectural or artist’s rendering that illustrates the scope of the Project, its location within the Property, and the relationship of the Project to its surroundings, consistent with the Design Guidelines and the scope of development. The intent of the Concept Design Documents is to provide, visually and in text, an idea as to the nature and density of the Project and its proposed mix of uses.

“Construction Documents” means, collectively, all construction documentation that Developer is required to submit to City as part of the process to obtain building permits for the Project and upon which Developer and Developer’s contractors will rely in building the Project. These documents are based on the Design Development Documents.

“Construction Schedule” means the schedule for construction of the Improvements approved as part of the Construction Documents.

“Construction Start Date” means July 1, 2013, subject to extension for Force Majeure.

“Design Development Documents” means plans and specifications for the Project based on the Concept Design Documents and Schematic Design Documents. The Design Development Documents illustrate and describe the refinement of the design of the Project, establishing the scope, relationship, forms, size and appearance of the Project by means of plans, sections and elevations, typical construction details, and equipment layouts. The Design Development Documents shall include specifications that identify major material and systems and establish in general their quality levels.

“Design Guidelines” means, collectively, the City of Bothell’s Comprehensive Plan, the City of Bothell Municipal Code, the City of Bothell Design and Construction Standards and Specifications, and other Legal Requirements that affect the Project and the Property.

“Effective Date” means the date set forth in the first paragraph of this Agreement.

“Event(s) of Default” has the meaning given in Section 15 herein.

“Financing Obligations” means the debt service obligations of Developer related to the financing of the Property and the Project.

“Financing Plan” has the meaning given in Section 3 herein.

“Force Majeure” has the meaning given in Section 18.17 herein.

“Frontage Agreement” means that certain Development Agreement re: Frontage Improvements between City and Developer recorded contemporaneously herewith providing for the construction of or payment for certain boulevard frontage improvements along Bothell Way N.E.

“Governmental Authorities” means any board, bureau, commission, department or body of any local, municipal, county, state or federal governmental or quasi-governmental unit, or any subdivision thereof, or any utility provider serving the Property, having, asserting, or acquiring jurisdiction over or providing utility service to the Project, the Property and/or the management, operation, use, environmental cleanup or improvement thereof.

“Historic Easement” has the meaning given in Recital E.

“Historic Features” has the meaning given in the Historic Easement.

“Improvements” means all buildings, structures, improvements and fixtures now or hereafter placed or constructed in, under or upon the Property, including the to-be-renovated Anderson Building, other buildings to be built or renovated on the Anderson Parcel, and the Pool and Pool Building, together with all additions to or replacements thereof made from time to time, and all accessways, pedestrian areas, public amenities, parking areas, utility distribution facilities, lighting, signage and other infrastructure improvements to be built and/or renovated by Developer on the Property.

“Institutional Lender” means any international, national or state bank, commercial or savings bank, savings and loan association or trust company, insurance company, pension fund, real estate investment trust, or real estate operating company, in each case having assets in an amount in excess of \$50,000,000.

“Legal Requirements” means all local, county, state and federal laws, ordinances and regulations and other rules, orders, requirements and determinations of any Governmental Authorities now or hereafter in effect, whether or not presently contemplated, applicable to the Property, the Project or its ownership, operation or possession, including (without limitation) all those relating to parking restrictions, building codes, zoning or other land use matters, The Americans With Disabilities Act of 1990, as amended (as interpreted and applied by the public agencies with jurisdiction over the

Property), life safety requirements and environmental laws with respect to the handling, treatment, storage, disposal, discharge, use and transportation of hazardous substances.

“Mortgagee” means the holder of a first mortgage or deed of trust (“Mortgage”) encumbering Developer’s interest in any portion of the Property, the proceeds of which are used to finance or refinance the construction of Improvements.

“Opening Date” means August 1, 2014, subject to extension for Force Majeure.

“Plans” means, collectively, the Concept Design Documents, the Schematic Design Documents, the Design Development Documents and the Construction Documents, which documents have been approved by City pursuant to Section 5.

“Plans and Permits Schedule” means the schedule for submission of applications for the permits needed to construct the Project set forth on Exhibit D attached hereto.

“Pool” has the meaning given in Recital A.

“Project” means the redevelopment of the Property to construct and/or renovate the Improvements and features described in Recital D pursuant to the Plans.

“Project Documents” means this Agreement, the Sale Agreement, the Public Benefits Agreement, the Frontage Agreement and the Historic Easement.

“Propertyscape” shall mean the landscaping of all above-ground or outdoor public or private improvements on the Property, including, without limitation, lighting, public restrooms, furniture and artwork.

“Public Benefits” has the meaning given in the Public Benefits Agreement.

“Public Benefits Agreement” has the meaning given in Recital F.

“Repurchase Option” shall have the meaning given in Section 5.7.

“Sale Agreement” has the meaning given in Recital A.

“Schematic Design Documents” means:

Site plans showing the Improvements in relation to the Property, with all proposed connections to existing or proposed roads, utilities and services, together with a Propertyscape plan;

Plans, elevations, typical cross-sections and typical wall sections of all building areas;



Elevations of each building to determine the site lines and the specific configuration and relationship of design elements of the building exterior in relationship to streets;

Plans, elevations, and typical cross sections of the interior space of different types of building areas;

A preliminary selection of major building systems and construction materials;

A preliminary exterior finish schedule;

Proposed layouts for exterior signage and graphics;

Outline of the exterior lighting concept;

A description of servicing requirements, trash areas, loading docks, etc.;

Calculation of gross building area and open space.

“Substantial completion” or “substantially complete” means the date on which all of the following have occurred: (i) the Improvements required to be developed by this Agreement are complete according to approved Plans, except for punchlist items that do not substantially prevent the use of such Improvements for their intended purposes; and (ii) the City has issued a temporary or final certificate of occupancy for all of the building portions of such Improvements.

## Section 2. Intent and Relations.

2.1 Generally. Pursuant to this Agreement, Developer will construct the Project pursuant to the Plans as provided in this Agreement and open the Project to the public for full service operation not later than the Opening Date. Development on the Property will include public spaces and Improvements sufficient to provide the Public Benefits and will in all respects preserve the Historic Features in accordance with the Historic Easement. This Agreement is intended by the parties to establish the design, development and performance criteria for the Project. The parties agree that Developer has sole responsibility for construction, obtaining all necessary permits and approvals and complying with all Legal Requirements as they relate to ownership, construction and operation of the Project. Developer shall at its own cost furnish all plans, engineering, supervision, labor, material, supplies and equipment necessary for completion of the Project. City has entered into this Agreement relying on Developer’s agreement that it will timely design and construct the Project.

2.2 Standards. Developer shall perform the terms of this Agreement according to the following standards:

2.2.1 All construction hereunder shall comply with, and be performed in accordance with, the Design Guidelines, the Plans, this Agreement and all Legal Requirements, free and clear of all liens (other than in connection with Approved Financing Plan and those contemplated by this Agreement).

2.2.2 Developer agrees to diligently design, construct and complete the Improvements pursuant to the Plans, in accordance with the requirements of City's process for permitting the Project and in a good and workmanlike manner and of good quality.

2.2.3 Developer shall cause a copy of this Agreement to be delivered to its architects and general contractor(s).

Section 3. Financing Plan. Not later than sixty (60) days before the Construction Start Date, Developer shall submit for approval by City Developer's plan for construction and permanent financing of the construction including the equity component (the "Financing Plan"). Notwithstanding transfers of equity interests pursuant to the Financing Plan, some or all of the principals, officers and key employees of McMenamins, Inc. existing as of the date hereof shall continue to be in control of Developer and the day-to-day construction of the Project. Approval by City under this Section 3 shall not be unreasonably withheld. City shall respond to Developer's submittal of the Financing Plan within ten (10) days of its receipt thereof. The Financing Plan for construction of the Project shall require that Developer, at its sole cost, obtain financing and/or equity for 100% of all design, construction, development and ownership costs (whether "hard" or "soft") for the completion of the construction of Project, unless such costs have already been paid in full. The Financing Plan may include historic tax credit financing and mezzanine financing. The financing (not including equity components) shall be provided by one or more "Institutional Lenders." For purposes of City's approval of the Financing Plan, Developer will make financial information concerning the Project reasonably requested by City available for City's review. Not later than thirty (30) days before the Construction Start Date, Developer shall provide City with evidence of a loan commitment (and not merely a term sheet or application) from one or more Institutional Lenders on commercially reasonable terms to finance the construction of the Improvements pursuant to the Plans and any other financing or equity commitments required by the construction lender. If, in City's reasonable judgment, the Financing Plan indicates that the contemplated financing (i) conforms to the provisions of this Agreement, (ii) will reasonably be available when needed, and (iii) will provide sufficient funds to undertake and complete the Project, then City shall approve the Financing Plan. Any material modification of the approved Financing Plan shall be submitted for prior written approval of the City, and if not so approved, the previously approved Financing Plan shall continue to control.

Section 4. General Terms of Conveyance. Conveyance and ownership of the Property shall remain subject to the provisions of this Agreement during the term hereof.

This Agreement shall be recorded prior to any Mortgage on the Property and all subsequent owners and lessees of all or any portion of the Property shall take subject to this Agreement during its term.

Section 5. Development.

5.1 Generally. Developer shall hereafter prepare the Plans for the development of the Project and submit them to City for its review and approval. Any approval by City of the Plans hereunder is in its capacity as the approving party under this Agreement and shall not constitute any of the regulatory approvals required under the applicable Legal Requirements to obtain the permits necessary to construct the Project. Developer shall submit the Plans in accordance with the Plans and Permits Schedule attached hereto as Exhibit D. Developer shall construct and complete Improvements on the Property as specifically described and depicted in the Plans. The parties agree that no construction will commence prior to satisfaction of the conditions set forth in Section 5.2 below. The parties further agree that such construction shall commence not later than the Construction Start Date and occur and be substantially completed in accordance with the Construction Schedule (including substantial completion by the Opening Date), subject only to Force Majeure or as extended by written agreement of City. Such construction shall be completed substantially in accordance with the approved Construction Documents (subject to Section 5.4 below). Developer agrees that once construction has begun, Developer will proceed diligently (subject only to delays for Force Majeure) with construction until the Project has been completed.

5.2 Conditions Precedent to Commencement of Construction. The following conditions shall have been satisfied before commencing construction on the Property:

5.2.1 Compliance with Agreement. Developer shall be in material compliance with this Agreement, including, without limitation, all contracting requirements and receipt of all necessary permits for construction.

5.2.2 Approval. Developer shall have obtained City approval of all of the Plans and Financing Plan, in accordance with the approval processes set forth in this Agreement.

5.2.3 Conveyance. Fee title to the Property shall have transferred to Developer.

5.2.4 Permits. Developer shall have obtained all permits and other regulatory approvals for the construction of the Project from City and any other applicable Governmental Authority, including without limitation the building permit(s) for the Project.

### 5.3 Improvements and Development Fees.

#### 5.3.1 Improvements.

(i) Permitting will be Developer's responsibility. Developer shall submit the permit applications to the appropriate Governmental Authorities in accordance with the Plans and Permits Schedule.

(ii) Developer is responsible for all excavation and disposal of soils and other materials it removes from the Property.

(iii) Developer will conduct its construction activities in compliance with the Historic Easement.

(iv) Developer will construct, redevelop and rehabilitate the Anderson Building, the Community Garden, the Pool and Pool Building and other Improvements in a manner that will provide the Public Benefits as provided in the Public Benefits Agreement.

(v) Except as provided in the Twentieth Amendment to the Sale Agreement, construction design shall not collect and convey ground water off-site.

(vi) Intentionally deleted.

(vii) No permanent buildings shall be constructed in the Parking Parcel (which is Parcel B on Exhibit A-1) during the Public Benefits Period.

(viii) As part of the Project, Developer shall remove the covered walkway (including removal of all related debris) that is on the eastern portion of the Anderson Parcel and straddles the southern boundary of the Anderson Parcel. City owns the southerly adjoining property. Developer shall have a license to enter onto the southerly adjoining property for the purpose of removing the walkway.

5.3.2 Development and Other Fees. Developer is responsible for payment of all development, utility, hookup, capacity, permit, plan check, SEPA and other fees, charges and surcharges required by City in its regulatory capacity. At the times required by the City in its regulatory capacity, Developer shall pay all fees and development charges required in connection with the issuance of the Project permits. These include: (i) a pre-application fee, required to be paid before the initial coordination meeting between City and Developer's architect and engineering representatives; (ii) plan check, fire plan check and traffic concurrency surcharge, at the time of application for the applicable item; (iii) other fees, at the time of permit issuance; (iv) traffic impact fees at time of building permit issuance; and (v) fees for certain boulevard frontage improvements,

as provided in the Frontage Agreement. These fees will not be in excess of the estimated amounts shown on Exhibit E attached hereto, provided that the assumptions on which such estimates were based remain accurate in all respects.

5.4 Approval Process. Developer shall submit for approval to City the items described in Sections 5.4.1 through 5.4.4 below in accordance with the Plans and Permits Schedule. These items shall be submitted to the City Manager or his designee for review for conformance with the Construction Schedule, RFC Response, Design Guidelines, Project description and Project Documents (including the provision of the Public Benefits). This review and approval is in addition to, and separate from, the normal City regulatory review and permitting process. Approvals by City under this Section 5.4 shall not be considered approvals required under City's regulatory and permitting process. The City shall undertake its review and response expeditiously, and Developer shall likewise respond expeditiously to comments and requests for changes and further information. The parties shall cooperate in such process in view of the Plans and Permits Schedule.

Developer's request for approvals hereunder shall be in writing and shall include sufficient information and such other information as may be reasonably required to permit the City to make an informed decision with respect thereto. Approvals by City under this Section 5.4 shall not be unreasonably withheld or delayed. Such process of submittal, review, comment and re-submittal by Developer shall continue until such time as the submitted material has been approved by City.

Approval shall not be required for any modification, replacement, alteration or addition (but excluding any relocation) to any previously approved submission, unless there is a material change from the previously approved submission. For any material modifications thereto proposed by Developer, the procedure shall be as described in this section. As used in this Agreement, a "material modification" shall be one that would (i) conflict with any Design Guidelines or Project Documents; (ii) in any way alter the Historic Features or endanger their preservation as required by the Historic Easement; (iii) alter the exterior physical appearance of the Project (other than the Historic Features) in a readily apparent way; (iv) materially alter the exterior structure of any Improvements (other than the Historic Features) to be constructed or rehabilitated on the Property; (v) cost more than \$1,000,000 in hard construction costs; or (vi) result in a reduction in hard construction costs associated with the exterior portions of the Project of more than \$300,000.

5.4.1 Concept Design Plan. Developer and City will use best efforts to agree on a "Concept Design Plan" for the redevelopment of the Property in sufficient time for Developer to timely submit the permit applications described in the Plans and Permits Schedule. In designing the Project, Buyer shall design its interior pedestrian and vehicular circulation plan to coordinate with Seller's plans for the adjacent rights of way and properties. Any material modification of the Concept Design Plan shall

be submitted to City for prior written approval, and if not so approved, the previously approved Concept Design Plan shall continue to control.

The Concept Design Plan to be submitted by Developer for approval shall be consistent with the RFC Response and the following: Developer shall develop the Project, all in accordance with the Design Guidelines, to be as described in this Development Agreement and to provide the Public Benefits. Developer shall ensure that the Property has parking for the Project with a sufficient number of parking spaces to satisfy the Design Guidelines.

5.4.2 Schematic Design Plan. Developer and City will use best efforts to agree on a “Schematic Design Plan” for the Improvements in sufficient time for Developer to submit the permit applications in accordance with the Plans and Permits Schedule. City shall review the Schematic Design Plans for consistency with the RFC Response, the Design Guidelines and consistency with the provision of the Public Benefits. Any material modification of an approved Schematic Design Plan shall be submitted to City for prior written approval, and if not so approved, the previously approved Schematic Design Plan shall continue to control.

5.4.3 Design Development Plan. Developer and City will use best efforts to agree on a “Design Development Plan” for the Improvements in sufficient time for Developer to submit the permit applications in accordance with the Plans and Permits Schedule. City shall review the Design Development Plan with regard to matters relating to site planning, size, form and exterior finish of the Improvements, landscaping, lighting and design of open space areas, general design aesthetics, and consistency with the RFC Response, the Design Guidelines and consistency with the provision of the Public Benefits. Any material modification to an approved Design Development Plan shall be submitted for prior written approval by City, and if not so approved, the previously approved Design Development Plan shall continue to control.

5.4.4 Construction Plans. Developer and City will use best efforts to agree on “Construction Plans” for the Improvements in sufficient time for Developer to apply for the building permit in accordance with the Plans and Permit Application Schedule. The Construction Plans shall be based upon the approved Concept Design Plan, the Schematic Design Plan, the Design Development Plan and the Design Guidelines for such Improvements. The Construction Plans will include a construction schedule (which shall include the Construction Start Date and Opening Date) (the “Construction Schedule”).

Any modification to the approved Construction Documents or Construction Schedule shall be submitted for prior written approval by City, and if not so approved, the previously approved Construction Documents shall continue to control. City shall have the right to disapprove any modifications that (a) do not meet the requirements of this Agreement or any Project Documents (including the provision of the Public Benefits);

(b) do not comply with all applicable Legal Requirements; (c) would violate the terms of any permits, licenses, permissions, consents or approvals required to be obtained from governmental agencies; (d) do not comply with approved Design Guidelines; (e) cause the Construction Schedule approved by City to be materially adversely affected or cause substantial completion not to occur by the Opening Date; or (f) involve proposed changes in work or materials that would be a material modification under Section 5.4 above.

5.5 Non-Discrimination. In the implementation of this Agreement, including construction of all Improvements pursuant to the Plans and any leasing of the Project, Developer shall not discriminate against any person or entity by reason of race, color, creed, national origin, age, handicap, marital status, sex or religion. In the event of a breach of this nondiscrimination covenant, subject to the cure provisions of Section 15 hereof, City shall have the right to exercise all of its remedies for default hereunder.

5.6 Governmental Approvals. Developer shall apply, at its sole cost, to the appropriate Governmental Authorities or third parties for, and shall diligently pursue and obtain, all permits, licenses, permissions, consents or approvals required in connection with the construction of the Improvements.

5.7 Purchase Option if Failure to Start Construction or Event of Default Before Commencing Construction. If Developer fails to commence construction of the Project by July 1, 2013, then City shall have the option to repurchase the Property (the "Repurchase Option") for the cash portion of the purchase price paid by Developer for the Property under the Sale Agreement. Such Repurchase Option shall be City's sole remedy for such failure hereunder. To exercise the Repurchase Option, City shall give written notice to Developer within ninety (90) days after July 1, 2013. If Developer fails to commence construction by July 1, 2013 and City has not exercised the Repurchase Option in writing (or provided written notice to Developer that City elects to not exercise its Repurchase Option) by the 90<sup>th</sup> day after July 1, 2013, then City shall be deemed to have exercised the Repurchase Option as of such 90<sup>th</sup> day.

The closing of the repurchase shall be not later than one (1) year following City's exercise (including its deemed exercise) of the Repurchase Option on a business day selected by City on not less than fifteen (15) days written notice to Developer. If Developer has financing secured by a deed of trust on the Property, then City must pay the repurchase price at the time of the closing of the repurchase. If there is no such financing, then City may close such reacquisition any time during such one (1) year period but have the full one (1) year period to pay the repurchase price. In such event, City shall execute a note, secured by a deed of trust on the Property, payable to Anderson for the repurchase price with no interest payable in full on the one-year anniversary of the exercise of City's Repurchase Option. The form of note and deed of trust shall be reasonably agreed by the parties during the time between City's exercise of the Repurchase Option and closing of the repurchase.

Developer shall pay all transfer and excise taxes in connection with such transfer. The deed will be in the same form as used to convey the Property to Developer. In addition, Developer shall assign to City, without representation or warranty, all permits, contracts and Plans associated with the Project. Upon such reconveyance to City, no additional encumbrances shall exist on title than those that existed when title transferred to Developer, those consented to by City (except any Mortgage) and those that were recorded as part of the closing of the acquisition of the Property, including without limitation the lien of any Mortgage recorded against the Property in accordance with the Financing Plan. Developer shall be responsible for obtaining the reconveyance of any such Mortgage. If City exercises the Repurchase Option (or if City provides written notice to Developer that City elects to not exercise its Repurchase Option), Developer shall be released from further obligations under this Agreement, the Public Benefits Agreement, the Historic Easement and the Frontage Agreement. Notwithstanding the foregoing, nothing herein shall limit Developer's liability for development and other fees (except the boulevard frontage fees) described in Section 5.3.2 that are due and payable before City exercises its Repurchase Option. Notwithstanding the foregoing, if Developer commences construction of the Project prior to City's exercise of the Repurchase Option, the Repurchase Option shall terminate. At Developer's request, upon such commencement, City shall provide written confirmation to a Mortgagee that construction has commenced to satisfy a condition of a Mortgagee to advancing funds under a construction loan.

If City provides written notice to Developer that City elects to not exercise its Repurchase Option, then the parties shall cooperate to record a notice of termination of this Agreement at Developer's expense.

## Section 6. Disclaimer of Liability, Indemnity.

6.1 Preparation of Site; Utilities. City shall not be responsible for any demolition or site preparation in connection with the Project or any existing Improvements on the Property. City makes no representations as to the availability or capacity of utility connections or service to the Property. Developer shall make arrangements for utility services directly with utility service providers (including City). Any costs of installation, connection, relocating or upgrading utilities shall be paid by Developer.

6.2 AS IS. City makes no warranties or representations as to the suitability of the soil conditions or any other conditions of the Property or structures thereon for any Improvements to be constructed or rehabilitated by Developer, and Developer warrants that it has not relied on representations or warranties, if any, made by City as to the physical or environmental condition of the Property or the structures thereon for any Improvements to be constructed or rehabilitated by the Developer.

6.3 Approvals and Permits. Approval by City of any item in its capacity as seller pursuant to the Sale Agreement or pursuant to Section 5.4 of this



Agreement shall not constitute a representation or warranty by City that such item complies with Legal Requirements and City assumes no liability with respect thereto. Developer acknowledges that City has not made any representation or warranty with respect to Developer's ability to obtain any permit or approval, or to meet any other requirements for development of the Property or Project. Nothing in this Agreement is intended or shall be construed to require that City exercise its discretionary authority under its regulatory ordinances approve the required permits for the Project or grant regulatory approvals. City is under no obligation or duty to supervise the design or construction of the Improvements pursuant to this Agreement. City's approval of the Plans under this Agreement shall not constitute any representation or warranty, express or implied, as to the adequacy of the design or any obligation on City to insure that work or materials are in compliance with the Plans or any building requirements imposed by any governmental entity (including City in its regulatory capacity). City is under no obligation or duty, and disclaims any responsibility, to pay for the cost of construction of the Improvements, the cost of which shall at all times remain the sole liability of Developer.

6.4 Indemnity. Developer shall indemnify, defend and hold City, its employers, officers and council members harmless from and against all claim, liability, loss, damage, cost, or expense (including reasonable attorneys' fees, court costs, and amounts paid in settlements and judgment) incurred in connection with Developer's development of the Project, operation of the Property or the construction of the Project, including any act or omission of Developer or its members, agents, employees, representatives, contractors, subcontractors, successors or assigns on or with respect to the Property. City shall not be entitled to such indemnification to the extent that such claim, liability, loss, damage, cost or expense is caused by the gross negligence or willful misconduct of City as to its own conduct. This indemnification shall survive expiration of this Agreement.

Promptly following receipt of notice, an indemnitee hereunder shall give Developer written notice of any claim for which Developer has indemnified it hereunder, and Developer shall thereafter vigorously defend such claim, at its sole cost, on behalf of such indemnitee. Failure to give prompt notice to Developer shall not constitute a bar to the indemnification hereunder unless such delay has prejudiced Developer in the defense of such claim. If Developer is required to defend any action or proceeding pursuant to this section to which action or proceeding an indemnitee is made a party, such indemnitee shall be entitled to appear, defend or otherwise take part in the matter involved, at its election, by, counsel of its own choosing. To the extent an indemnitee is indemnified under this section, Developer shall bear the cost of the indemnitee's defense, including reasonable attorneys' fees and costs. No settlement of any non-monetary claim shall be made without City's written approval, not to be unreasonably withheld.

Section 7. Completion by Opening Date. The Construction Schedule requires substantial completion of the Project not later than the Opening Date. Developer shall

diligently pursue the Project in order to achieve substantial completion of the Project by the Opening Date.

Section 8. Guaranty of Completion. Contemporaneously with the execution of this Agreement, Developer shall furnish an irrevocable and unconditional guaranty of performance by McMenamins, Inc. (the parent of Brew Pubs and affiliate of Anderson), in the form of Exhibit C attached hereto, guaranteeing the full and faithful performance of Developer's obligations under this Agreement. This guaranty shall terminate upon issuance by City of the Certificate of Performance described in Section 9 or repurchase of the Property pursuant to Section 5.7 or Section 16.1. Neither the provisions of this Section nor any guaranty accepted by City pursuant hereto, shall be construed to excuse faithful performance by Developer or to limit liability of Developer under this Agreement.

Section 9. Certificate of Performance.

9.1 When Developer Entitled to Certificate of Performance.

Upon substantial completion of all of the Project in accordance with this Agreement and satisfaction of the other conditions of this Section 9, City will furnish Developer with a recordable Certificate of Performance, substantially in the form attached hereto as Exhibit B hereto. Notwithstanding the foregoing, City shall not be required to issue the Certificate of Performance if Developer is not then in material compliance with the terms of this Agreement. In addition, if punchlist items remain when Developer requests the Certificate of Performance, City may require as a condition to the issuance thereof that Developer post a bond or provide other financial assurance reasonably satisfactory to City to insure completion of the punchlist items, and Developer agrees to proceed with all reasonable diligence to complete the punchlist items.

9.2 Effect of Certificate of Performance; Termination of Agreement. Issuance by City of a Certificate of Performance shall terminate this Agreement and each of its provisions except for the provisions described in Section 16.4 below that expressly survive termination of this Agreement. No party acquiring or leasing any portion of the Property after issuance of the Certificate of Performance shall (because of such purchase or lease) have any obligation whatsoever under this Agreement.

Section 10. Construction Performance and Payment Bond. Developer shall, before commencing construction of the Project, to the extent required by its Mortgagee, provide or require its general contractor(s) to provide a performance and payment bond, in an amount equal to the estimated total construction cost of the Project or in such amount as may otherwise be required by the Mortgagee.

Section 11. Liens. Except in connection with any Mortgage approved pursuant to the Financing Plan, in no event shall Developer, prior to recording of the Certificate of Performance, cause or permit any lien to attach to the including but not limited to

mortgages, deeds of trust, mechanic's liens, attachment liens, judgment liens, execution liens, security interests or encumbrances. Developer shall promptly pay and discharge all liens not permitted hereunder. Nothing contained in this Agreement shall be construed as the consent or request of City, express or implied, for the performance of any labor or services or for the furnishing of any materials or equipment to the Project (or any part thereof). NOTICE IS HEREBY GIVEN THAT CITY WILL NOT BE LIABLE FOR ANY LABOR, SERVICES, MATERIALS OR EQUIPMENT FURNISHED OR TO BE FURNISHED TO DEVELOPER OR ANYONE HOLDING AN INTEREST IN THE PROPERTY (OR ANY PART THEREOF) THROUGH OR UNDER DEVELOPER.

Section 12. Insurance. The requirements of this Section 12 shall apply until the Certificate of Performance is recorded unless otherwise noted in this Section.

12.1 Insurance Requirements. Developer shall maintain and keep in force or cause Brew Pubs to maintain and keep in force insurance covering the Project, as provided below, and maintain such additional insurance as required by Developer's Mortgagee.

12.1.1 Builders Risk. Builders Risk insurance covering interests of City, Developer, its contractor, subcontractors, and sub-subcontractors in the Project work. Builders Risk insurance shall be on a all-risk policy form (and may be in a separate policy or included in the property insurance policy) and shall insure against the perils of fire and extended coverage and physical loss or damage including flood (if the buildings on the Property are located in a special flood hazard area and flood insurance is available), earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal. This Builders Risk insurance covering the work will have a deductible of not less than \$75,000 for each occurrence. Higher deductibles for flood (if applicable) and earthquake perils may be accepted by the City upon written request by the Developer and written acceptance by the City. Builders Risk insurance shall be written in the amount of the completed value of the Project with no coinsurance provisions. The Builders Risk insurance shall be maintained until City issues the Certificate of Performance.

12.1.2 Commercial General Liability. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence and a \$2,000,000 general aggregate limit. The Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 (or equivalent form) and shall cover liability arising from premises, operations, stop gap liability, independent contractors, personal injury and advertising injury, and liability assumed under an insured contract. Developer's Commercial General Liability insurance shall be endorsed to name City as an additional insured using ISO Additional Insured endorsement CG 20 26 07 04 – Additional Insured Designated Person or Organization or a substitute endorsement providing equivalent coverage.

12.1.3 Excess or Umbrella Liability. Developer shall provide or cause Brew Pubs to provide Excess or Umbrella Liability coverage at limits of not less than \$5,000,000 per occurrence and annual aggregate. This excess or umbrella coverage shall apply, at a minimum to both the Commercial General Liability insurance required herein and to any Automobile Liability coverage or any combination thereof.

12.1.4 Property Insurance. Until the Certificate of Performance is recorded, Developer shall carry or cause Brew Pubs to carry property insurance covering the Project including all Improvements. Such insurance shall contain coverage against loss or damage by perils no less broad than the current edition of the ISO Special Causes of Loss Form CP 10 30. Developer shall also purchase and maintain or cause Brew Pubs to purchase and maintain earthquake, flood (if the buildings on the Property are located in a special flood hazard area and flood insurance is available) and equipment breakdown insurance. The property, earthquake and flood insurance shall be written in an amount equal to at least one hundred percent (100%) of the replacement cost of all Improvements. Equipment breakdown insurance shall be written with at least a \$1,000,000 equipment breakdown limit. Developer shall be responsible for payment of any deductibles under said insurance policies and any costs of restoration resulting from any uninsured or underinsured losses.

12.2 Insurance Policies. Insurance policies required herein:

12.2.1 Shall be issued by companies authorized to do business in the State of Washington with the following qualifications:

12.2.1.1 The companies shall have an A.M. Best rating of at least A VII and be licensed in the State of Washington.

12.2.1.2 Developer's insurance coverage shall be primary insurance as respects City. Any insurance, self-insurance, or insurance pool coverage maintained by City shall be excess of the Developer's and Contractor's insurance and shall not contribute with it.

12.2.2 Each such policy or certificate of insurance mentioned and required in this Section 12 shall have attached thereto (1) an endorsement that such policy shall not be canceled without at least thirty (30) days prior written notice to Developer and City; (2) an endorsement to the effect that the insurance as to any one insured shall not be invalidated by any act or neglect of any other insured; (3) an endorsement pursuant to which the insurance carrier waives all rights of subrogation against the parties hereto; and (4) an endorsement pursuant to which this insurance is primary and noncontributory.

12.2.3 The certificates of insurance and insurance policies shall be furnished to Developer and City before commencement of construction

under this Agreement. The certificate(s) shall clearly indicate the insurance and the type, amount and classification, as required under this Section 12.

12.2.4 Cancellation of any insurance or non-payment by Developer of any premium for any insurance policies required by this Agreement shall constitute an immediate Event of Default under Section 15 of this Agreement, without cure or grace period. In addition to any other legal remedies, City at its sole option after written notice may obtain such insurance and pay such premiums for which, together with costs and attorneys' fees, Developer shall be liable to City.

Section 13. Destruction or Condemnation.

13.1 Total or Partial Destruction. If the Improvements are totally or partially destroyed at any time during the term of this Agreement, Developer shall reconstruct or repair the damage consistent with the terms of this Agreement and substantially complete the Project by the Opening Date, as extended by Force Majeure. In any event, Developer shall at its cost secure the Property, clear the debris and generally make the Property as safe and attractive as practical given the circumstances.

If for any reason the Improvements are not reconstructed as provided above, without limiting any other rights or remedies that City has, no further development of the Property can occur without the prior approval of City. This Agreement shall continue to restrict future development of the Property and Developer or any successor of Developer shall obtain City's approval of the redevelopment plan before the Property is redeveloped.

13.2 Condemnation. If during the term of this Agreement the whole or any substantial part of the Property is taken or condemned in the exercise of eminent domain powers (or by conveyance in lieu thereof), such that Developer can no longer materially meet its obligations under this Agreement, this Agreement shall terminate upon the date when possession of the Property or portion thereof so taken shall be acquired by the condemning authority. As used herein, "substantial" shall be defined as reasonably preventing the operation of the Project and conduct of Developer's activities as contemplated hereby. If a taking occurs that is not substantial, this Agreement shall continue in full force and effect as to the part of the Property not taken.

Section 14. Right to Assign or Otherwise Transfer. Developer represents that Anderson's purchase of the Property is intended for development and not for speculation. During the term of this Agreement, any transfers of the Property pursuant to the following sections shall be made expressly subject to the terms, covenants and conditions of this Agreement.

#### 14.1 Transfers Before Certificate of Performance.

14.1.1 During the term of this Agreement, Developer will not transfer the Property or any part thereof without the prior written consent of City, which consent shall be at the sole discretion of City. Notwithstanding the foregoing, transfers to a Mortgagee permitted by the Financing Plan shall be permitted.

“Transfer” as used herein includes any sale, conveyance, transfer, ground lease or assignment (excluding the lease to Brew Pubs), whether voluntary or involuntary, of any interest in the Property and includes transfer to a trustee in bankruptcy, receiver or assignee for the benefit of creditors, any merger, consolidation, liquidation or dissociation of Developer. In addition, “Transfer” includes any sale or any transfer of direct or indirect interests in Developer or any of its constituent entities, other than transfers of minority interest that do not individually or in the aggregate result in the change of control or management of Developer, the Property or the Project or transfers of equity interests approved pursuant to the Financing Plan.

14.1.2 If City approves of a transfer under Section 14.1, Developer shall deliver to City (a) a copy of the document evidencing such transfer, including a suitable estoppel agreement(s), and (b) an assumption of all obligations of Developer under this Agreement in form reasonably satisfactory to City.

14.1.3 The transferee (and all succeeding and successor transferees) shall succeed to and assume all rights and obligations of Developer under this Agreement, including any unperformed obligations of Developer as of the date of such transfer. No transfer by Developer, or any successor, shall release Developer, or such successor, from any such unperformed obligations without the express written consent and release by City.

14.1.4 If Developer transfers the Property during the term of this Agreement without the prior written consent of City (other than transfers that do not require the consent of City hereunder), then City or its designee shall have an option to purchase the Property for the same price as paid by such unpermitted transferee. Such option must be exercised within ninety (90) days after City receives written notice from Developer of the unpermitted transfer and close within thirty (30) days after exercise of the option. Such transferee shall be obliged to sell the Property to City (or its designee) on the same terms and conditions as those upon which the transferee purchased the Property.

14.2 Transfers After Certificate of Performance. After issuance of the Certificate of Performance by City pursuant to Section 9, this Agreement shall not restrict any transfers. Nevertheless, the transfer restrictions contained in the Public Benefits Agreement shall remain in full force and effect.

Section 15. Default. Developer's failure to keep, observe, or perform any of its duties or obligations under this Agreement shall be a default hereunder, including, without limitation, any of the following specific events:

15.1 The failure of Developer to substantially comply with the standards of performance for the Project as set forth in Section 2 of this Agreement, including without limitation submission of Plans and permit applications for approval as required herein, commencement of construction of the Project by the Construction Start Date and substantial completion of the Project by the Opening Date (subject to extension for Force Majeure as provided herein).

15.2 The failure of Developer to comply with the terms of any Financing Obligations, and such failure is not cured within any time permitted by the lender holding such obligations.

15.3 The failure of Developer to submit and obtain approval as to any modifications of the Plans as required in Section 5.

15.4 The failure of Developer to construct the Project substantially in accordance with the Plans, as the same may be modified pursuant to Section 5.4.

15.5 The failure of Developer to diligently prosecute construction of the Project in accordance with the Construction Schedule, including without limitation commencing construction of the Project by the Construction Start Date and substantially completing of the Project by the Opening Date, and the failure of Developer to open the Project for full service operation to the public by the Opening Date, in both cases subject to extension for Force Majeure as provided herein.

15.6 Conversion of any portion of the Property or the Improvements to any use other than the uses permitted in this Agreement or the Public Benefits Agreement.

15.7 The failure of Developer to comply with Section 11 or Section 12 of this Agreement.

15.8 The making by Developer of an assignment for the benefit of creditors, contrary to the terms of this Agreement, or filing a petition in bankruptcy or of reorganization under any bankruptcy or insolvency law or filing a petition to effect a composition or extension of time to pay its debts.

15.9 The appointment of a receiver or trustee of the property of Developer, which appointment is not vacated or stayed within sixty (60) days, or the filing of a petition in bankruptcy against Developer or for its reorganization under any

bankruptcy or insolvency law which not dismissed or stayed by the court within sixty (60) days after such filing.

15.10 Any sale, assignment or other transfer in violation of Section 14 of this Agreement.

15.11 The failure of Developer to provide and maintain any security required under this Agreement, including but not limited to, the construction performance and payment bonds.

15.12 Any default in the performance of any other obligations of Developer hereunder.

The happening of any of the above described events shall be an Event of Default hereunder. Notwithstanding the foregoing, except in the case of Section 15.8, 15.9, and 15.10 above as to which notice but no cure period shall apply, Developer shall have thirty (30) days following written notice from City to cure such default (or if such default cannot reasonably be cured within 30 days, if Developer fails to commence such cure within 30 days and thereafter diligently pursue such cure to completion within one hundred twenty (120) days).

#### Section 16. Remedies.

16.1 Default Prior to Commencement of Construction. If an Event of Default occurs prior to the time that Developer commences construction and such Event of Default is not cured within any applicable cure period for such Event of Default under Section 15 or under Section 16.4, City, as its sole remedy for such Event of Default, shall have the right to repurchase the Property for the cash portion of the purchase price paid by Developer for the Property under the Sale Agreement and on the other terms set forth in Section 5.7 of this Agreement as if City exercised the Repurchase Option under Section 5.7, except that the references in such section to July 1, 2013 shall instead be to “the Construction Start Date.” Notwithstanding the foregoing, if Developer cures such Event of Default prior to City notifying Developer that City will repurchase the Property under this Section 16.1 on account of such Event of Default, City will have no right to repurchase the Property on account of such Event of Default. Further, notwithstanding the foregoing, nothing herein shall limit Developer’s liability for development and other fees (except the boulevard frontage fees) described in Section 5.3.2 that are due and payable before City exercises its repurchase option under this section.

16.2 Default After Commencement of Construction. If an Event of Default occurs after the time that Developer commences construction of the Project, and such Event of Default is not cured within any applicable time period under Section 15



or under Section 16.4, City shall have all cumulative rights and remedies under law or in equity, including but not limited to the following:

16.2.1 Damages. Developer shall be liable for any and all damages incurred by City, except that Developer shall not be liable for consequential damages incurred by City.

16.2.2 Specific Performance. City shall be entitled to specific performance of each and every obligation of Developer under this Agreement without any requirement to prove or establish that City does not have an adequate remedy at law. Developer hereby waives the requirement of any such proof and acknowledges that City would not have an adequate remedy at law for Developer's commission of an Event of Default hereunder.

16.2.3 Injunction. City shall be entitled to restrain, by injunction, the actual or threatened commission or attempt of an Event of Default and to obtain a judgment or order specifically prohibiting a violation or breach of this Agreement without, in either case, being required to prove or establish that City does not have an adequate remedy at law. Developer hereby waives the requirement of any such proof and acknowledges that City would not have an adequate remedy at law for Developer's commission of an Event of Default hereunder.

16.2.4 Guaranty. City shall be entitled to draw upon or foreclose all or any part, commence an action for equitable or other relief, and/or proceed against Developer and any guarantor for all direct monetary damages, costs and expenses arising from the Event of Default and to recover all such damages, costs and expenses, including reasonable attorneys' fees.

16.3 Copy of Notice of Default to Mortgagee. Whenever City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in its obligations or covenants under this Agreement, City shall at the same time forward a copy of such notice or demand to each Mortgagee approved by City at the last address of such holder shown in the records of City.

16.4 Mortgagee's Option To Cure Defaults. After any default in or breach of this Agreement by Developer or its successor in interest, each Mortgagee shall (insofar as the rights of City are concerned) have the right, at its option, to cure or remedy such breach or default within thirty (30) days after the Developer's failure to cure said default or breach prior to the expiration of an applicable cure period, and if permitted by its loan documents, to add the cost thereof to the mortgage debt and the lien of its Mortgage. If the breach or default is with respect to construction of the Improvements, nothing contained in this Agreement shall be deemed to prohibit such Mortgagee, either before or after foreclosure or action in lieu thereof, from undertaking or continuing the construction or completion of the Improvements, provided that the Mortgagee notifies

City in writing of its intention to complete the Project according to the approved final Construction Documents. Any Mortgagee who shall properly complete the Project shall be entitled, upon written request made to City, to issuance of a Certificate of Performance in accordance with Section 9 above.

16.5 Provisions Surviving Termination. Upon termination of this Agreement, the Indemnification obligation set forth in Section 6.4 shall remain with the parties then obligated thereunder, and such obligation shall not be assumed or deemed assumed by any subsequent owner of all or any portion of the Property.

Section 17. Representations and Warranties. Each party hereby represents and warrants to the other that (a) it has full right, power and authority to enter into this Agreement and perform in accordance with its terms and provisions; (b) the individuals signing this Agreement on its behalf have the authority to bind and to enter into this transaction; and (c) it has taken all requisite action to legally authorize the execution, delivery, and performance of this Agreement.

Section 18. Miscellaneous.

18.1 Estoppel Certificates. City and Developer shall at any time and from time to time, within fifteen (15) days after written request by the other, execute, acknowledge and deliver, to the party requesting same or to any prospective Mortgagee, assignee or subtenant designated by Developer, a certificate stating that (i) this Agreement is in full force and effect and has not been modified, supplemented or amended in any way, or if there have been modifications, identifying such modifications; and if this Agreement is not in force and effect, the certificate shall so state; and (ii) to its knowledge, all conditions under the Agreement have been satisfied by City or Developer, as the case may be, and that no defenses or offsets exist against the enforcement of this Agreement by the other party, or, to the extent untrue, the certificate shall so state. The party to whom any such certificate shall be issued may rely on the matters therein set forth and thereafter the party issuing the same shall be estopped from denying the veracity or accuracy of the same.

18.2 Inspection. Until the Certificate of Performance is recorded, City shall have the right under this Agreement, at all reasonable times and upon at least twenty-four (24) hours previous notice, to inspect the books, records and all other documentation of Developer pertaining to its obligations under this Agreement. City shall have the further right at all reasonable times to inspect the Property, including any construction work thereon, to determine compliance with the provisions of this Agreement. Further, City shall have all rights in its regulatory capacity to inspect the Property and construction activity.

18.3 Entire Agreement. This Agreement, the Project Documents and any documents attached as exhibits thereto contain the entire agreement between the

parties as to the subject matter hereof and supersedes all prior discussions and understandings between them with reference to such subject matter.

18.4 Modification. This Agreement may not be amended or rescinded in any manner except by an instrument in writing signed by a duly authorized representative of each party hereto in the same manner as such party has authorized this Agreement.

18.5 Successors and Assigns; Joint and Several. This Agreement shall be binding upon and inure to the benefit of the successors in interest and assigns of each of the parties hereto except that there shall be no transfer of any interest by Developer except pursuant to the express terms of this Agreement. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor or assign of such party who has acquired its interest in compliance with the terms of this Agreement, or under law. The obligations of Anderson and Brew Pubs, and of any other party who succeeds to their interests hereunder or in the Property, shall be joint and several.

18.6 Notices. All notices which may be or are required to be given pursuant to this Agreement shall be in writing and delivered to the parties at the following addresses:

To City: City of Bothell  
18305 – 101<sup>st</sup> Avenue NE  
Bothell, Washington 98011  
Attn: Bob Stowe

With a copy to: K&L Gates LLP  
925 Fourth Avenue  
Suite 2900  
Seattle, WA 98104  
Attn: Shannon Skinner

To Developer: Anderson School Properties LLC  
c/o McMenamins  
430 N. Killingsworth  
Portland, OR 97217  
Attention: Larry Dortmund

Any such notices shall be either (a) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) days after deposit, postage prepaid in the U.S. mail, (b) sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered when actually delivered pursuant to the records of such courier, or (c) sent by facsimile transmission to the party and its counsel, receipt of which has been

confirmed by telephone, and by regular mail, in which case notice shall be deemed delivered on the next business day following confirmed receipt, or (d) hand delivered, in which case notice shall be deemed delivered when actually delivered. The above addresses and phone numbers may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

18.7 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement.

18.8 Waiver. No waiver by any party of any provision of this Agreement or any breach thereof shall be of any force or effect unless in writing by the party granting the waiver; and no such waiver shall be construed to be a continuing waiver. The waiver by one party of the performance of any covenant, condition, or promise shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition, or promise hereunder. The waiver by either or both parties of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time.

18.9 Rights and Remedies Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by either party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default by the other party.

18.10 Applicable Law; Jurisdiction. This Agreement shall be interpreted under and pursuant to the laws of the State of Washington. In the event any action is brought to enforce any of the provisions of this Agreement, the parties agree to be subject to the jurisdiction in the King County Superior Court for the State of Washington or in the United States District Court for the Western District of Washington.

18.11 No Joint Venture. Nothing contained in this Agreement shall create any partnership, joint venture or other arrangement between City and Developer. The parties intend that the rights, obligations, and covenants in this Agreement and the collateral instruments shall be exclusively enforceable by City and Developer, their successors and assigns. No term or provision of this Agreement shall be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder, except as may be otherwise expressly provided herein.

18.12 Consents. Whenever consent or approval by City is required under the terms of this Agreement, all such consents or approvals, if given, shall be given in writing from the City Manager of City.

18.13 Conflict of Interest. No member, official, or employee of City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his personal interests or the interest of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official, or employee of City shall be personally liable to Developer or any successor in interest upon the occurrence of any default or breach by City or for any amount which may become due to Developer or its successor or on any obligations under the terms of this Agreement.

18.14 Discrimination. Developer, for itself and its successors and assigns, agrees that during the construction of the Project, Developer will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, marital status, handicap or national origin.

18.15 Attorneys' Fees. In the event any proceeding is instituted to interpret or enforce any provision or resolve any dispute under this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys,' accountants,' and other experts' fees and all other fees, costs, and expenses, as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law. This provision shall cover costs and attorneys' fees related to or with respect to proceedings in federal bankruptcy courts.

18.16 Captions; Exhibits. The headings and captions of this Agreement and the Table of Contents preceding the body of this Agreement are for convenience of reference only and shall be disregarded in constructing or interpreting any part of the Agreement. All exhibits and appendices annexed hereto at the time of execution of this Agreement or in the future as contemplated herein, are hereby incorporated by reference as though fully set forth herein.

18.17 Force Majeure. In addition to specific provisions of this Agreement, Developer shall not be deemed to be in default with regard to performance of any provision of this Agreement (including construction of the Project in accordance with the Construction Schedule) where delays to performance are due to war, acts of terrorism, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation (including suits filed by third parties concerning or arising out of this Agreement), weather or soils conditions which necessitate delays, inability to secure necessary labor, materials or tools, delays of any

contractor, subcontractor or supplier, acts of the other party, acts or failure to act or delay in acting of any public or governmental entity, including to issue permits or approvals for the Project (provided that all submissions by Developer are timely and in accordance with applicable requirements) or any other causes beyond the control or without the fault of the party claiming an extension of time to perform; provided that the lack of funds or financing of Developer is not a cause beyond the control or without the fault of Developer ("Force Majeure"). For avoidance of doubt, "Force Majeure" shall not include the environmental condition of the Pool Parcel or the failure of the Washington Department of Ecology to provide or issue any particular report, memorandum or other assurance regarding the environmental condition of the Pool Parcel (such as a "no further action letter" or a "closeout memo"). For any Force Majeure delay that will cause substantial completion of the Project to be delayed more than fifteen (15) days, Developer will keep City informed about the cause and nature of such delay and the progress in achieving such substantial completion. Times of performance under this Agreement may also be extended in writing by City and Developer.

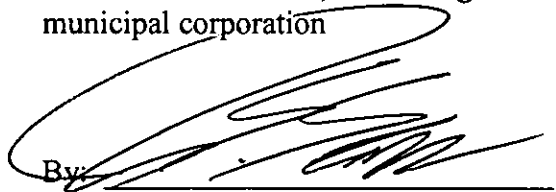
18.18 Fair Construction; Severability. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the context may require. The parties hereby acknowledge and agree that each was properly represented by counsel and this Agreement was negotiated and drafted at arms' length so that the judicial rule of construction to the effect that any ambiguities are to be construed against the drafting party shall be inapplicable in the interpretation of this Agreement. The provisions of this Agreement shall be construed as a whole according to their common meaning and consistent with the other provisions contained herein in order to achieve the objectives and purposes of this Agreement. If any term, provision, covenant, clause, sentence or any other portion of the terms and conditions of this Agreement or the application thereof to any person or circumstances shall apply, to any extent, become invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect, unless rights and obligations of the parties have been materially altered or abridged by such invalidation or unenforceability.

18.19 Time of the Essence. In all matters under this Agreement, the parties agree that time is of the essence.

[Signatures on the following page.]

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

CITY OF BOTHELL, a Washington  
municipal corporation



By: \_\_\_\_\_  
Name: Robert S. Stowe  
Title: City Manager

ANDERSON SCHOOL PROPERTIES  
LLC, a Washington limited liability  
company

By: New School Properties LLC, a  
Washington limited liability company, Its  
Manager

By: \_\_\_\_\_  
Name: Michael McMenamin  
Title: Sole Member and Manager

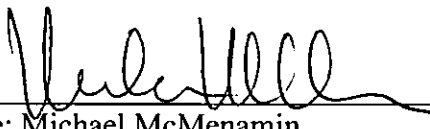
IN WITNESS WHEREOF, the parties hereto have executed this document as of the day and year first above written.

**CITY OF BOTHELL, a Washington  
municipal corporation**

By: \_\_\_\_\_  
Name: Robert S. Stowe  
Title: City Manager

**ANDERSON SCHOOL PROPERTIES  
LLC, a Washington limited liability  
company**

**By: New School Properties LLC, a  
Washington limited liability  
company, Its Manager**

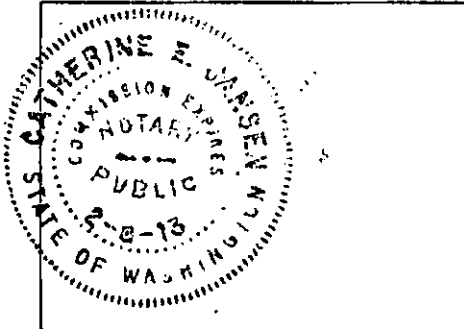
By:   
Name: Michael McMenamin  
Title: Sole Member and Manager



STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that Robert S. Stowe is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the City Manager of the City of Bothell to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 6-20-12



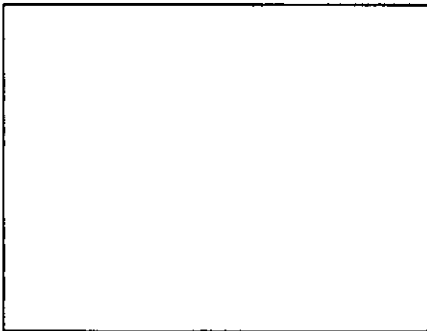
(Use this space for notarial stamp/seal)

Catherine E. Jansen  
Notary Public  
Print Name: Catherine E. Jansen  
My commission expires 2-8-13

STATE OF )  
 ) ss.  
COUNTY OF )

I certify that I know or have satisfactory evidence that Michael McMenamin is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Sole Member and Manager of New School Properties LLC, the Manager of Anderson School Properties LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_



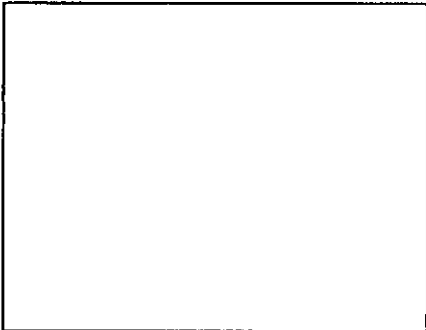
(Use this space for notarial stamp/seal)

\_\_\_\_\_  
Notary Public  
Print Name \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that Robert S. Stowe is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the City Manager of the City of Bothell to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_



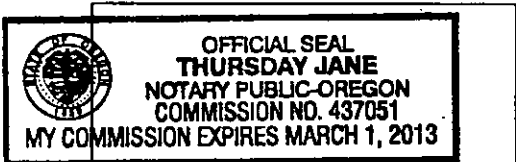
(Use this space for notarial stamp/seal)

\_\_\_\_\_  
Notary Public  
Print Name: Catherine E. Jansen  
My commission expires \_\_\_\_\_

STATE OF OREGON )  
 ) ss.  
COUNTY OF Multnomah

I certify that I know or have satisfactory evidence that Michael McMenamin is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Sole Member and Manager of New School Properties LLC, the Manager of Anderson School Properties LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: June 18, 2012



(Use this space for notarial stamp/seal)

Thursday Jane  
\_\_\_\_\_  
Notary Public  
Print Name Thursday Jane  
My commission expires March 1, 2013

EXHIBIT A-1

Legal Description of Anderson Parcel

PARCEL A (AKA ANDERSON SOUTHERLY PARCEL)

Lot 3, City of Bothell Boundary Line Adjustment Number BLA 2010-00006, recorded under Recording Number 20101230900001, in King County, Washington.

PARCEL B-- (AKA PARKING PARCEL/ANDERSON NORTHWESTERLY PARCEL)

Lot 1, City of Bothell Boundary Line Adjustment Number BLA 2010-00006, recorded under Recording Number 20101230900001, in King County, Washington.

EXHIBIT A-2

Legal Description of Pool Parcel

Lot 2, City of Bothell Boundary Line Adjustment Number BLA 2010-00006, recorded under Recording Number 20101230900001, in King County, Washington.

EXHIBIT B

Form of Certification of Performance

After recording return to

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CERTIFICATE OF PERFORMANCE

GRANTOR: CITY OF BOTHELL

GRANTEE: ANDERSON SCHOOL PROPERTIES LLC

Abbreviated Legal Description

(Full legal description on Ex. A): Lots 1-3, City of Bothell BLA No. 2010-00006,  
Rec. No. 20101230900001

Assessor's Tax Parcel No(s): 062605-9369-05; 062605-9370-02; 062605-09052-07

Related Document: Development Agreement (Doc. No. \_\_\_\_\_)

The CITY OF BOTHELL, a Washington municipal corporation ("City"), hereby certifies that ANDERSON SCHOOL PROPERTIES LLC, a Washington limited liability company, ("Developer"), has satisfactorily completed construction of the Improvements on the Property described on Exhibit A attached hereto (the "Property"), as such Improvements are described in the Development Agreement dated \_\_\_\_\_, 2012 (the "Agreement"), which was recorded in the Records of the King County Auditor, Washington, as Document No. \_\_\_\_\_, on \_\_\_\_\_, 2012.

This Certificate of Performance is and shall be a conclusive determination that the Developer has satisfied, or City has waived, each of the agreements, covenants and conditions contained in the Agreement as to the development of the Improvements pursuant to Section 5 of the Agreement.

Notwithstanding this Certificate of Performance, Section 16.4 of the Agreement provides for the survival of certain covenants as between City and Developer, and nothing in this Certificate of Performance affects such survival.

The Agreement is hereby terminated to the extent it is an encumbrance on the Property and is released from title to the Property.

IN WITNESS WHEREOF, City has caused this instrument to be executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

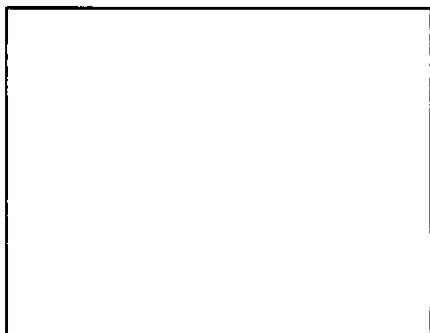
CITY OF BOTHELL, a Washington municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF WASHINGTON    )  
  ) ss.  
COUNTY OF KING        )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of City of Bothell to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_, \_\_\_\_\_.



(Use this space for notarial stamp/seal)

\_\_\_\_\_  
Notary Public  
Print Name \_\_\_\_\_  
My commission expires \_\_\_\_\_

## EXHIBIT C

### Form of Performance Guaranty

#### GUARANTY OF COMPLETION (Development Agreement)

This Guaranty of Completion is made as of the \_\_\_\_ day of \_\_\_\_\_, 2012, by McMenamins, Inc., an Oregon corporation ("Guarantor"), in favor of the City of Bothell, a Washington municipal corporation ("City"), with reference to the following facts.

#### RECITALS

A. Contemporaneously herewith, Anderson School Properties LLC, a Washington limited liability company ("Anderson"), is purchasing the property in Bothell, Washington commonly known as the Anderson Building campus and the Northshore Costie/Ruiz Pool Building (the "Property"). Anderson is leasing the Property to McMenamin's Brew Pubs, Inc., a Washington corporation ("Brew Pubs") concurrently herewith to facilitate the redevelopment and operation of the Property. Anderson is also referred to herein as "Developer."

B. As part of the closing of the purchase of the Property, Developer and City are entering into a Development Agreement of even date herewith (the "Development Agreement") that provides for the rehabilitation of the Anderson Building and other development of the Property. The Development Agreement requires that Guarantor provides this Guaranty to City. Capitalized terms not otherwise defined herein shall have the meaning given them in the Development Agreement.

C. Guarantor is the parent of Brew Pubs and will benefit from the purchase of the Property by Anderson. Guarantor understands that redevelopment of the Property is crucial to the mission and goals of City and that City would not sell the Property to Anderson without this Guaranty.

#### GUARANTY AGREEMENT

NOW, THEREFORE, in consideration of the sale of the Property to Anderson and as required by the Development Agreement, Guarantor unconditionally and irrevocably guarantees to City the full, faithful, timely and complete performance by Developer of Developer's obligations under the Development Agreement. Guarantor further agrees to pay all costs and expenses, including attorneys' fees, that may be incurred by City in enforcing this Guaranty. The obligations of Guarantor under this paragraph are called the "Obligations."

If for any reason there is an Event of Default by Developer under the Development Agreement then, in any such event, Guarantor, upon receipt of notice from City, agrees to cure such default and to perform, or cause Developer to perform, all of Developer's obligations under the Development Agreement.

If Guarantor fails to cure or cause cure of Developer's default as provided above (such cure by Guarantor in any event to commence not later than 30 days after notice to Guarantor

from City and thereafter proceed diligently and continuously), City, at City's option, shall have the right to complete the Project. City's rights to complete the Project shall be subject to the rights of the construction lender to the Project to also complete the Project, such that if such lender is undertaking the construction of the Project, City shall not interfere with such construction activity (provided that such construction activity is in compliance with the Development Agreement). The amount of all expenditures reasonably incurred by City in curing the default shall be immediately due and payable by Guarantor to City.

Guarantor shall be responsible and liable to City for any losses, costs or expenses that City may suffer or incur as a result of any breach by Guarantor of any of the terms of this Guaranty or in the event that any of the representations or warranties made in writing by Guarantor to City are or were incorrect. If Guarantor defaults under this Guaranty, City may enforce this Guaranty against any or all persons liable hereunder and pursue any rights and remedies available at law or in equity, including without limitation actions for damages and specific performance. Guarantor agrees that, given the unique nature of the proposed development on the Property, that City may not be in a position to complete the development and that specific performance is an appropriate remedy hereunder. In the event of any default under this Guaranty or in any action to enforce this Guaranty, City shall be entitled to recover all reasonable costs and expenses, including experts, accountants and attorneys' fees and costs and including any such fees in any bankruptcy and appellate proceedings.

Guarantor agrees that its liability shall not be impaired or affected by (i) any renewals or extensions of the time for performance under the Development Agreement; (ii) any enforcement of or any forbearance or delay in enforcing the Development Agreement against Developer; (iii) any modifications of the terms or provisions of the Development Agreement; (iv) any settlement, release or compromise with Developer (except to the extent that the same are in a writing signed by Developer and City); (v) any lack of notice to Guarantor from City except that expressly provided for herein. City has no obligation to resort for payment to Developer or to any other person or entity or their properties, or to resort to any security, property, rights or remedies whatsoever, before enforcing this Guaranty.

Any other provisions hereof notwithstanding, this Guaranty shall terminate upon the issuance by City of a Certificate of Performance for the Project or repurchase of the Property by City pursuant to Sections 5.7 or 16.1 of the Development Agreement.

All diligence in collection, protection, or enforcement and all presentment, demand, protest and notice, as to anyone and everyone, whether Developer, Guarantor or others, of dishonor or default, the creation and existence of the Obligations, the acceptance of this Guaranty or any extensions of credit and indulgence hereunder, are hereby expressly waived. The payment by Guarantor of any amount pursuant to this Guaranty shall not in any way entitle Guarantor to any rights by way of subrogation or otherwise against Developer unless and until the full amount owing to City on the Obligations has been paid and the Obligations have been fully performed.

Upon the occurrence of an Event of Default under the Development Agreement that is not cured within any applicable cure period under the Development Agreement, City may exercise any right or remedy it may have at law or in equity against Developer under the Development



Agreement. No such action by City will release or limit the liability of Guarantor to City, if the effect of that action is to deprive Guarantor of the right to collect reimbursement from Developer for any sums paid to City.

Guarantor assumes full responsibility for keeping fully informed of the financial condition of Developer and all other circumstances affecting Developer's ability to perform its obligations to City and agrees that City will have no duty to report to Guarantor any information that City receives about Developer's financial condition or any circumstances bearing on its ability to perform.

All notices which may be or are required to be given pursuant to this Guaranty shall be in writing and delivered to the parties at the following addresses:

To City: City of Bothell  
18305 – 101<sup>st</sup> Avenue NE  
Bothell, WA 98011  
Attn: Bob Stowe  
Fax No. (425) 486-2434  
Phone: (425) 486-3256

With a copy to: K&L Gates LLP  
925 Fourth Avenue  
Suite 2900  
Seattle, WA 98104  
Attn: Shannon Skinner  
Fax: (206) 623-7022

To Guarantor: McMenamins, Inc.  
430 N. Killingsworth  
Portland, OR 97217  
Attention: Larry Dortmund  
Fax No.: (503) 294-0837  
Phone: (503) 952-0579

Any such notices shall be either (a) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) days after deposit, postage prepaid in the U.S. mail, (b) sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered when actually delivered pursuant to the records of such courier, or (c) sent by facsimile transmission to the party and its counsel, receipt of which has been confirmed by telephone, and by regular mail, in which case notice shall be deemed delivered on the next business day following confirmed receipt, or (d) hand delivered, in which case notice shall be deemed delivered when actually delivered. The above addresses and phone numbers may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

This Guaranty shall be binding upon Guarantor, and upon the successors and assigns of Guarantor. This Guaranty shall run for the benefit of City, its successors and assigns.

This Guaranty may only be changed by an instrument in writing signed by the party against whom enforcement hereof is sought.

Guarantor acknowledges that the transactions contemplated hereby have been negotiated in the State of Washington, that Guarantor is to perform its obligations hereunder in the State of Washington and that after due consideration and consultation with counsel Guarantor and City have elected to have the internal laws of Washington apply hereto. Accordingly, this Guaranty shall be deemed made under and shall be construed in accordance and governed by the internal laws of the State of Washington without regard to principles of conflicts of laws. Guarantor hereby consents to the nonexclusive jurisdiction of the state courts located in King County, Washington and the federal courts in the Western District of Washington. Guarantor waives the defense of forum non conveniens in any such action and agrees that this Guaranty may be enforced in any such court.

NOTICE IS HEREBY GIVEN THAT ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, MODIFY LOAN TERMS, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

Notwithstanding any provision of this Guaranty to the contrary, Guarantor shall have no obligation hereunder on account of any Event of Default under the Development Agreement that occurs prior to commencement of construction on the Property pursuant to the Development Agreement. City's sole remedy on account of any such Event of Default shall be to repurchase the Property in accordance with the terms of Sections 5.7 and 16.1 of the Development Agreement.

McMenamins, Inc., an Oregon corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT D

Plans and Permits Schedule

Developer shall prepare the Plans for the development of the Project on the Property sufficiently detailed to obtain all necessary grading, right of way, utilities, building, plumbing, mechanical, electrical and other permits from the City of Bothell and other Governmental Authorities. Developer will submit such Plans and permit applications not later than the following dates (subject to extension for Force Majeure:

<u>Plans</u>	<u>Deadlines for Submission to City</u>
Concept Design Plans, Schematic Design Plans, Design Development Plans, Construction Plans and Construction Schedule	All Plans in this section are due at such time so that the Construction Plans and Construction Schedule are submitted to the City not later than (i) the fourth (4 <sup>th</sup> ) month anniversary of the date this Agreement is recorded for all proposed Plans and (ii) not later than the sixth (6 <sup>th</sup> ) month anniversary of the date this Agreement is recorded for all final Plans
<u>Permits/SEPA</u>	<u>Deadlines for Permit Application/SEPA Submissions</u>
Environmental (SEPA) determination  Permits: Grading, Right of Way, Utilities, Building, Plumbing, Mechanical, Electrical (from Washington State Department of Labor and Industries), Re-roof (if not done as part of Building Permit) and sign	All Permits/SEPA submissions in this section are due at such time so that the applications for the listed permits are submitted to the City not later than the seventh (7 <sup>th</sup> ) month anniversary of the date this Agreement is recorded.

## EXHIBIT E

### Development, Traffic Impact and Boulevard Frontage Fees Estimates

Type of fee / frontage improvement construction cost	How calculated	Amount
<b>Estimated development fees excluding traffic impact fees</b>		
Pre-application	Established by fee resolution.	\$1,213
Environmental review (SEPA)	Fee based on amount of review time, which should be shorter than normal review time because proposed uses are covered by the Planned Action EIS. Mitigating measures from the EIS may be applied. Assume 8 hours x \$140.80 per hour = \$1,126.	\$1,126
Plan check	Paid on submittal of application at 65 percent of permit fees. Permit fees are based on valuation of the proposed construction. Valuation of the McMenamins construction is assumed at \$15,000,000. Permit fees for a \$15,000,000 construction project are calculated at \$6,730.50 for the first \$1,000,000 + \$4.50 for each additional \$1,000 or fraction thereof, which totals \$69,731. The plan check fee would be 65 percent of \$69,731, or \$45,325, plus consultant review fees if required.	\$45,325
Fire plan check	Collected for all new commercial and multi-family buildings and first-time or change-of-use tenant improvements. The McMenamins construction would constitute change-of-use tenant improvements. Calculated at \$.06 per square foot x assumed total floor area of 67,024 square feet, or \$4,021.	\$4,021
Traffic concurrency capacity reporting and monitoring surcharge	Different fees depending on whether a development is classified as "minor" (generates between 3 and 19 peak hour trips), "medium" (between 20 and 50 peak hour trips) or "major" (more than 50 peak hour trips). Assuming as a "worst case" that McMenamins would be a major development, the fee would be \$2,722	\$2,722
Grading permit	Plan review + permit fee, varies by amount of grading. Grading of less than 1,000 cubic yards assumed.	\$232
Right of way permit	Major, associated with development, set fee	\$218
Utilities permits (water, storm drainage, sanitary sewer)	Various permits. Assumes 1) existing three-inch water meters serving the Anderson complex and the Northshore Pool are adequate for McMenamins' usage; 2) an existing unutilized two-inch water service to the property can be used for irrigation; and 3) no additional meters will be required. Remaining fees would cover service line fees, sanitary sewer facilities charges, backflow assembly inspections, processing fees and other related fees.	\$3,387
Building permits	See "Plan check" above for calculation method	\$69,731
Plumbing permits	(Permit fee) + (type of fixture x fee per fixture x number of fixtures) + (plan check fee at 65 percent of previous total). Total, assuming 70-room hotel and other previously identified uses: \$5,420	\$5,420
Mechanical permits	(Permit fee) + (type of fixture x fee per fixture x number of fixtures) + (plan check fee at 65 percent of previous total). Total, assuming 70-room hotel and other previously identified uses: \$2,809.62	\$2,810

Type of fee / frontage improvement construction cost	How calculated	Amount
Electrical permits	Not collected by City: administered by state Department of Labor and Industries	
Development review	Per-hour billing for planning, civil engineering and traffic review and related inspections. Assumes 160 hours x average per hour fee of \$141.63 = \$22,661	\$22,661
Energy review	For tenant improvements (assumes no new construction), \$263 per building (5) + \$68 per hotel room (70) = \$6,075	\$6,075
State building code fee	\$4.50 per building permit x assumed 5 building permits = \$22.50 + \$2 per hotel room (70) = \$162.50	\$163
Total estimated development fees, excluding traffic impact fees		\$165,104
<b>Estimated traffic impact fees</b>		
Traffic impact fees	<p>Traffic impact fees are based on the type of land use x unit of measure (e.g., number of dwellings, gross floor area), + a 3 percent administrative fee. Fees effective July 1, 2010, are utilized in this analysis. Proposed McMenamins land uses include a hotel, pub, restaurant, retail shops, pool, and movie and live theaters.</p> <p>In its analysis staff took into account overlapping uses (e.g., hotel guests are likely to dine in the restaurant and view movies in the theater) and the continuation of existing uses (e.g., the pool) that would not add new traffic.</p> <p>Total traffic impact fees based on individual McMenamins uses, as if new: \$496,828  After 10 percent deduction for overlapping uses (\$49,683):  \$447,145  After deduction for offsetting existing uses (\$248,720):  \$198,425  After addition of 3 percent administrative fee (\$5,953):  \$204,378</p>	\$204,378
Total estimated development fees		\$369,482
<b>Estimated frontage improvement construction costs</b>		
Frontage improvement construction cost	Frontage improvement construction costs are separate from and in addition to traffic impact fees, unless the required frontage improvements would increase roadway capacity, in which case a portion of the construction costs may be credited against the impact fees. In the case of McMenamins, none of the required frontage improvements would increase roadway capacity. It is assumed that the City would contribute all land for right of way and construct Bothell Way NE through-lanes and median landscaping; and that McMenamins would pay in lieu of construction for required improvements west of the median landscaping.	

Type of fee / frontage improvement construction cost	How calculated	Amount
	<p>The required improvements include a 10-foot vehicle access lane with pull-out in front of the Anderson Building, curb and gutter for the access lane, a 10-foot sidewalk, ADA ramps, trees immediately behind the sidewalk, related landscaping, irrigation, street furniture, and illumination. The improvements extend along Bothell Way NE from the parcel's southern boundary to its northern boundary. The concrete wall, seating area, and planting within the wall around the existing significant tree on the northern portion of the frontage is not included in the cost estimate. The materials, such as trees, access lane pavers, landscaping, illumination, and furniture, shall match the materials used in the rest of the boulevard. The estimated cost of constructing these improvements is \$339,000.</p> <p>To accommodate McMenamins' desire for more space between the northeast corner of the Anderson Building and the edge of sidewalk, required frontage improvements have been reduced from the standard boulevard design by eliminating a row of parallel parking and reducing the sidewalk width from 14 feet to 10 feet.</p>	\$339,000
	<b>Grand total, estimated development fees + estimated frontage improvement construction costs:</b>	<b>\$708,482</b>

**After Recording Return To:**  
City of Bothell  
City Clerk Division  
18305 – 101<sup>st</sup> Ave. NE  
Bothell, WA 98011

CONFORMED COPY

**20130521001177**

K&L GATES LLP AMND-RER 79.00  
PAGE-001 OF 008  
05/21/2013 12:03

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

**Grantor:**                   **ANDERSON SCHOOL PROPERTIES LLC**

**Grantee:**                   **CITY OF BOTHELL**

**Legal Description:**

Abbreviated form:   Lots 1-3, City of Bothell BLA No. 2010-00006,  
Rec. No. 20101230900001

Additional legal on Exhibit A

**Assessor's Property Tax Parcel Account Numbers:**

062605-9369-05  
062605-9370-02  
062605-09052-07

## FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

**THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT** (this “**First Amendment**”) is dated as of \_\_\_\_\_, 2013, between the **CITY OF BOTHELL**, a Washington municipal corporation (“**City**”) and **ANDERSON SCHOOL PROPERTIES LLC**, a Washington limited liability company (“**Anderson**” or “**Developer**”).

### RECITALS

A. City and Developer are parties to that Development Agreement dated July 20, 2012 and recorded on July 20, 2012 in the records of King County, Washington, as Document No. 20120720000378 (the “**Development Agreement**”), with respect to the real property described on attached Exhibit A (the “**Property**”). Capitalized terms used in this First Amendment but not otherwise defined in this First Amendment shall have the meaning set forth in the Development Agreement.

B. City and Developer desire to amend the Development Agreement as set forth below.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the benefits to be realized by each party and in future consideration of the benefit to the general public by the creation and operation of the Project upon the Property, and as a direct benefit to the City and other valuable consideration, the adequacy of which is hereby acknowledged, the parties hereby amend the Development Agreement as follows:

1. **Amended Definition of Project.** The following is deleted from the end of Recital D of the Development Agreement: “(the “Project”)”. The definition of “Project” in Section 1 of the Development Agreement is amended and restated as follows:

“Project” means the redevelopment of the Property to construct and/or renovate the Improvements and features described in Recital D pursuant to the Plans. Notwithstanding the foregoing, in the event title to the Property is transferred to a Mortgagee or Successor Developer as described in Section 14.1.5 below, the term “Project” shall mean the redevelopment of the Property to construct and/or renovate the Improvements to be a Hospitality Project pursuant to the Plans. Further notwithstanding the foregoing, if a “Buy-Out” has occurred as defined in and pursuant to Section 3 of the Public Benefits Agreement, then the Project shall not include redevelopment of the Pool and Pool Building and the term “Property” shall not include the Pool Parcel.

2. **Definition of Public Benefits Agreement.** The term “**Public Benefits Agreement**” in the Development Agreement shall mean the Public Benefits Agreement dated July 20, 2012 between City, Anderson, and McMenamin’s Brew Pubs, Inc. (“**Brew Pubs**”) and recorded on July 20, 2012 in the Records of King County, Washington as Document



No. 20120720000380, as amended by the First Amendment to Public Benefits Agreement dated as of the date hereof between City, Anderson and Brew Pubs, which First Amendment to Public Benefits Agreement is being recorded contemporaneously herewith.

3. **Definition of Hospitality Project.** The new defined term “**Hospitality Project**” is added to Section 1 of the Development Agreement in its alphabetical order as follows:

“ ‘Hospitality Project’ means a facility that is operated with the following key components of the Project, an approximately 70 room hotel, restaurant/bar(s) and event and meeting space.”

4. **Transfers Before Certificate of Performance.** The following is added as new Section 14.1.5 in its numeric order to the Development Agreement:

“14.1.5. Notwithstanding any provision in this Agreement to the contrary, in the event a Mortgagee permitted by the Financing Plan (or its designee) acquires title to all or any portion of the Property (including by foreclosure, deed in lieu of foreclosure or otherwise), then:

(a) such Mortgagee (which for purposes of this Section 14.1.5 shall include any affiliate of such Mortgagee who took title to the Property) shall have the right to but shall not be obligated to perform the obligations of Developer under this Agreement. Nevertheless, if such Mortgagee desires to undertake or cause the undertaking of the development and operation of the Project on the Property, it shall (i) notify City in writing that Mortgagee elects to do so before starting construction activities on the Property; (ii) such development and operation by or on behalf of Mortgagee shall be subject to and in accordance with the terms of this Agreement and the Public Benefits Agreement; and (iii) in such event Mortgagee shall succeed to all rights and obligations of Developer under this Agreement, including any unperformed obligations of Developer as of the date of such transfer.

(b) City shall not unreasonably withhold its consent to a transfer of the Property by such Mortgagee to a successor owner (a “Successor Developer”) who intends to develop the Project on the Property in accordance with this Agreement, provided that the proposed Successor Developer is or has been a reputable operator of a Hospitality Project with demonstrated expertise and not less than 10 years’ experience in the ownership and construction of similar projects similar to the Project and a net worth sufficient, in City’s reasonable judgment, to perform all of Developer’s obligations hereunder and to operate the Project in a manner that provides the Public Benefits as required thereunder (if a Buy-Out, as described in Section 3 of the Public Benefits Agreement, has not occurred). Successor Developer shall assume, succeed to and be required to perform all obligations of Developer under this Agreement, including any unperformed obligations of Developer as of the date of such transfer. In the event of a transfer to a Successor Developer approved by City, Mortgagee shall be released from all

obligations under this Agreement arising from and after the date of such transfer. No transfer shall release Developer from its obligations hereunder absent an express written release executed by City.

If a Mortgagee or Successor Developer desires to revise the Plans (because the Hospitality Project that it wishes to develop does not include all of the elements of the Project that Developer planned to develop or otherwise), then such revisions shall be considered a "material modification" pursuant to Section 5.4 hereof and shall be submitted to City for approval in accordance with such section.

(c) Notwithstanding the foregoing, a Mortgagee shall not be liable to City for damages that City may claim against Developer to the extent the same arose out of the acts or omissions of Developer before, and are attributable to the time period before, Mortgagee acquired title to the Property). Nothing herein shall affect any rights or remedies of City as against Developer, McMenemy's Inc. (as the guarantor of Developer's performance hereunder) or limit City's rights to repurchase the Property (regardless of its then-ownership) if it is entitled to do so under Sections 5.7 or 14.1.4 (even if such right arose out of an act or omission of Developer). Section 14.1.4 is hereby amended to insert "or any other owner of the Property" after "Developer" in the first and sixth lines of such section."

5. **Full Force and Effect.** The terms and conditions of this First Amendment are hereby incorporated in and made a part of the Development Agreement. The Development Agreement, as amended by this First Amendment, is in full force and effect. In the event of any conflict between the terms of the Development Agreement and those of this First Amendment, the terms of this First Amendment shall prevail.

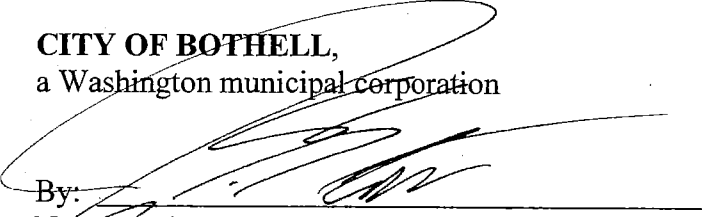
6. **Counterparts.** This First Amendment may be executed in any numbers of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same document.

[signatures on following page]

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

**CITY:**

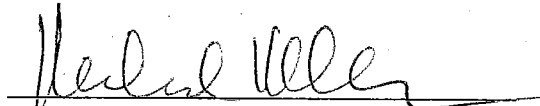
**CITY OF BOTHELL,**  
a Washington municipal corporation

By:   
Name: Robert S. Stowe  
Title: City Manager

**ANDERSON OR DEVELOPER:**

**ANDERSON SCHOOL PROPERTIES LLC,**  
a Washington limited liability company

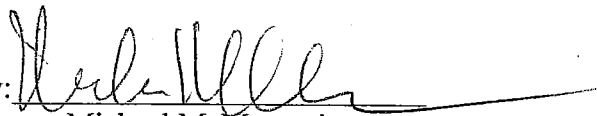
By: New School Properties LLC,  
a Washington limited liability company,  
its Manager

By:   
Name: Michael McMnamin  
Title: Sole Member and Manager

### Consent of Guarantor

McMenamins, Inc., an Oregon corporation (“**Guarantor**”), is the guarantor of the obligations of Developer under the Development Agreement pursuant to that certain Guaranty of Completion (Development Agreement) dated July 20, 2012 in favor of City (the “**Guaranty**”). Guarantor hereby consents to the foregoing First Amendment to Development Agreement and agrees that the Guaranty remains in full force and effect with respect to the Development Agreement as amended by the First Amendment.

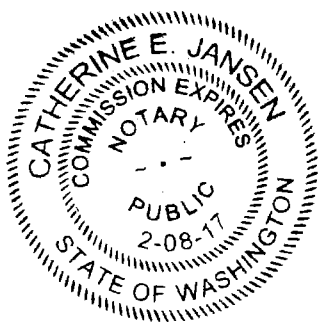
McMenamins, Inc., an Oregon corporation

By:   
Name: Michael McMnamin  
Title: President

STATE OF WASHINGTON )  
 )ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that Robert S. Stowe is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the City Manager of the City of Bothell to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: May 17, 2013

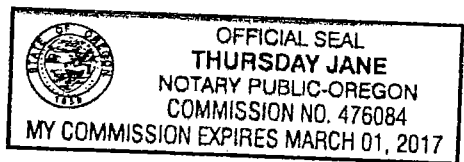


Catherine E. Jansen  
Notary Public  
Print Name: Catherine E. Jansen  
My commission expires: 2-8-17

STATE OF ORegon )  
 )ss.  
COUNTY OF Multnomah

I certify that I know or have satisfactory evidence that Michael McMenamin is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Sole Manager of New School Properties LLC, the Manager of Anderson School Properties LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: May 15, 2013



Thursday Jane  
Notary Public  
Print Name: Thursday Jane  
My commission expires: March 1 2017

STATE OF Oregon )  
COUNTY OF Multnomah )<sup>ss.</sup>

I certify that I know or have satisfactory evidence that Michael McMEnamin is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the President of McMEnamins, Inc. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

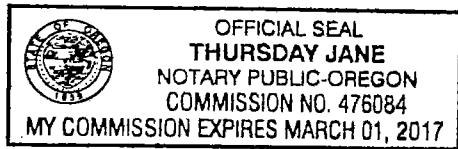
Dated: May 15, 2013

Thursday Jane

Notary Public

Print Name: Thursday Jane

My commission expires: March 1 2017



**EXHIBIT A**

**Legal Description**

**Parcel A**

(AKA Anderson Southerly Parcel)

Lot 3, City of Bothell Boundary Line Adjustment Number BLA 2010-00006, recorded under Recording Number 20101230900001, in King County, Washington.

**Parcel B**

(AKA Parking Parcel/Anderson Northwesterly Parcel)

Lot 1, City of Bothell Boundary Line Adjustment Number BLA 2010-00006, recorded under Recording Number 20101230900001, in King County, Washington.

**Pool Parcel**

Lot 2, City of Bothell Boundary Line Adjustment Number BLA 2010-00006, recorded under Recording Number 20101230900001, in King County, Washington.

**After Recording Return To:**

City of Bothell  
City Clerk Division  
18305 – 101<sup>st</sup> Ave. NE.  
Bothell, WA 98011

CONFORMED COPY

**20130930001858**

K & L GATES LL AMND-RER 81.00  
PAGE-001 OF 009  
09/30/2013 15:27

**SECOND AMENDMENT TO DEVELOPMENT AGREEMENT**

**Grantor:**                 **ANDERSON SCHOOL PROPERTIES LLC**

**Grantee:**                **CITY OF BOTHELL**

**Legal Description:**

Abbreviated form:    Lots 1-3, City of Bothell BLA No. 2010-00006,  
  Rec. No. 20101230900001

Additional legal on Exhibit A

**Assessor's Property Tax Parcel Account Numbers:**

062605-9369-05  
062605-9370-02  
062605-09052-07

**Recording No. of Related Documents:** 20120720000378, 20130521001177

## SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (this "**Amendment**") is dated as of September 23, 2013, between the CITY OF BOTHELL, a Washington municipal corporation ("**City**"), and ANDERSON SCHOOL PROPERTIES LLC, a Washington limited liability company ("**Developer**").

### RECITALS

A. City and Developer are parties to that certain Development Agreement dated July 20, 2012, recorded on July 20, 2012 in King County, Washington, under Recording No. 20120720000378, as amended by First Amendment to Development Agreement recorded under Recording No. 20130521001177 (as amended, the "**Development Agreement**"). The Development Agreement provides for Developer to develop the Project on the real property described on Exhibit A attached hereto (the "**Property**") on the terms and conditions in the Development Agreement. Capitalized terms used in this Amendment but not otherwise defined shall have the meaning set forth in the Development Agreement.

B. City and Developer desire to amend the Development Agreement as set forth below.

### AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the adequacy of which is hereby acknowledged, the parties hereby amend the Development Agreement as follows:

1. **Amended Deadlines**. The "July 1, 2013" date in each of the first, third and fourth sentences of Section 5.7 of the Development Agreement is deleted and replaced with "December 1, 2013". The following definitions in Section 1 of the Development Agreement are amended and restated to be as follows (and any default prior to the date hereof by reason of the failure to meet the previously existing Construction Start Date is hereby cured):

"**Construction Start Date**" means December 1, 2013, subject to extension for Force Majeure.

"**Opening Date**" means January 1, 2015, subject to extension for Force Majeure.

2. **Definition of Public Benefits Agreement**. The term "**Public Benefits Agreement**" in the Development Agreement shall mean the Public Benefits Agreement dated July 20, 2012 between City, Anderson, and McMenamin's Brew Pubs, Inc. ("**Brew Pubs**") and recorded on July 20, 2012 in the Records of King County, Washington as Document No. 20120720000380, as amended by First Amendment to Public Benefits Agreement between City, Anderson, and Brew Pubs and recorded on May 21, 2013 in the Records of King County, Washington as Document No. 20130521001176, as further amended by Second Amendment to Public Benefits Agreement dated as of the date hereof between City, Anderson and Brew Pubs,



which Second Amendment to Public Benefits Agreement is being recorded contemporaneously herewith, and as the same may be hereafter amended by written agreement of the parties.

3. **Full Force and Effect.** The terms and conditions of this Amendment are hereby incorporated in and made a part of the Development Agreement. The Development Agreement, as amended by this Amendment, is in full force and effect. In the event of any conflict between the terms of the Development Agreement and those of this Amendment, the terms of this Amendment shall prevail.

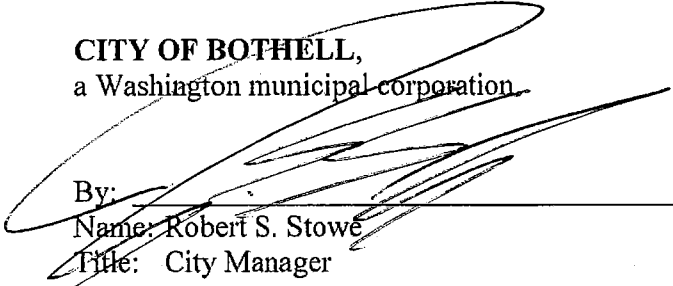
4. **Counterparts.** This Amendment may be executed in any numbers of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same document.

[signatures on following page]

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

**CITY:**

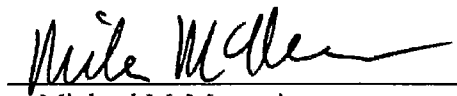
**CITY OF BOTHELL,**  
a Washington municipal corporation

By:   
Name: Robert S. Stowe  
Title: City Manager

**ANDERSON OR DEVELOPER:**

**ANDERSON SCHOOL PROPERTIES LLC,**  
a Washington limited liability company

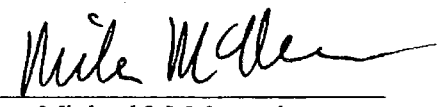
By: New School Properties LLC,  
a Washington limited liability company,  
its Manager

By:   
Name: Michael McMnamin  
Title: Sole Member and Manager

#### Consent of Guarantor

McMenamins, Inc., an Oregon corporation (“**Guarantor**”), is the guarantor of the obligations of Developer under the Development Agreement pursuant to that certain Guaranty of Completion (Development Agreement) dated July 20, 2012 in favor of City (the “**Guaranty**”). Guarantor hereby consents to the foregoing Amendment and agrees that the Guaranty remains in full force and effect with respect to the Development Agreement as amended by the Amendment.

McMenamins, Inc., an Oregon corporation

By:   
Name: Michael McMnamin  
Title: President

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

**CITY:**

**CITY OF BOTHELL,**  
a Washington municipal corporation

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

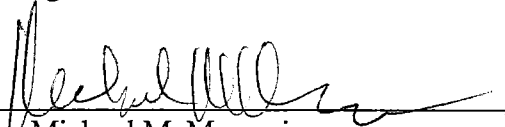
Name: Robert S. Stowe

Title: City Manager

**ANDERSON OR DEVELOPER:**

**ANDERSON SCHOOL PROPERTIES LLC,**  
a Washington limited liability company

By: New School Properties LLC,  
a Washington limited liability company,  
its Manager

By: 

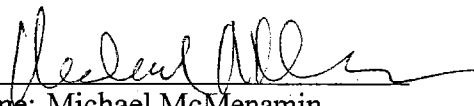
Name: Michael McMenamain

Title: Sole Member and Manager

**Consent of Guarantor**

McMenamins, Inc., an Oregon corporation (“**Guarantor**”), is the guarantor of the obligations of Developer under the Development Agreement pursuant to that certain Guaranty of Completion (Development Agreement) dated July 20, 2012 in favor of City (the “**Guaranty**”). Guarantor hereby consents to the foregoing Amendment and agrees that the Guaranty remains in full force and effect with respect to the Development Agreement as amended by the Amendment.

McMenamins, Inc., an Oregon corporation

By: 

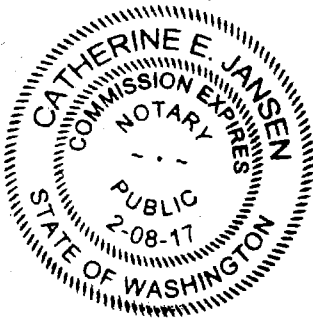
Name: Michael McMenamain

Title: President

STATE OF WASHINGTON )  
 )ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that Robert S. Stowe is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the City Manager of the City of Bothell to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: September 17, 2013



Catherine E. Jansen  
Notary Public  
Print Name: Catherine E. Jansen  
My commission expires: 2-8-17

STATE OF \_\_\_\_\_ )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that Michael McMenamin is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Sole Manager of New School Properties LLC, the Manager of Anderson School Properties LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 )ss.  
COUNTY OF KING )

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Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF Oregon )  
 )ss.  
COUNTY OF Multnomah )

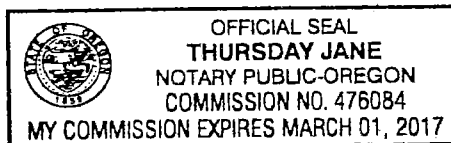


I certify that I know or have satisfactory evidence that Michael McMenamin is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Sole Manager of New School Properties LLC, the Manager of Anderson School Properties LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 9.23. \_\_\_\_\_, 2013

(tj)

Thursday Jane  
Notary Public  
Print Name: Thursday Jane  
My commission expires: March 1, 2017



STATE OF Oregon )  
 )ss.  
COUNTY OF Multnomah )

I certify that I know or have satisfactory evidence that Michael McMenamin is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the President of McMenamins, Inc. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: September 23, 2013

Thursday Jane  
Notary Public  
Print Name: Thursday Jane  
My commission expires: March 1, 2017

**EXHIBIT A**

**Legal Description**

**Parcel A**

(AKA Anderson Southerly Parcel)

Lot 3, City of Bothell Boundary Line Adjustment Number BLA 2010-00006, recorded under Recording Number 20101230900001, in King County, Washington.

**Parcel B**

(AKA Parking Parcel/Anderson Northwesterly Parcel)

Lot 1, City of Bothell Boundary Line Adjustment Number BLA 2010-00006, recorded under Recording Number 20101230900001, in King County, Washington.

**Pool Parcel**

Lot 2, City of Bothell Boundary Line Adjustment Number BLA 2010-00006, recorded under Recording Number 20101230900001, in King County, Washington.

CHICAGO TITLE INC. (S)  
REC-1308502-6  
2/8/12

After Recording Return To:  
K&L Gates LLP  
925 Fourth Avenue  
Suite 2900  
Seattle, WA 98104  
Attn: Shannon Skinner



**20120720000379**

CHICAGO TITLE AG 82.00  
PAGE-001 OF 021  
07/20/2012 09:41  
KING COUNTY, WA

**DEVELOPMENT AGREEMENT**  
**RE: FRONTAGE IMPROVEMENTS**

GRANTORS:           ANDERSON SCHOOL PROPERTIES LLC

GRANTEE:           CITY OF BOTHELL

Legal Description:

Abbreviated form:   Lots 1-3, City of Bothell Boundary Line Adjustment  
recorded under Recording No. 20101230900001.

Additional legal on Exhibit A

Assessor's Property Tax Parcel Account Number(s): 062605-9369-05, 062605-9370-02,  
062605-9052-07



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**DEVELOPMENT AGREEMENT  
RE: FRONTAGE IMPROVEMENTS**

THIS DEVELOPMENT AGREEMENT RE: FRONTAGE IMPROVEMENTS (this "Agreement") is dated as of the 20<sup>th</sup> day of July, 2012, between the CITY OF BOTHELL, a Washington municipal corporation ("City"), and ANDERSON SCHOOL PROPERTIES LLC, a Washington limited liability company ("Anderson" or "Developer").

RECITALS

A. Pursuant to that certain Purchase and Sale Agreement dated June 24, 2010, as amended, between City as seller and Anderson as buyer (the "Sale Agreement"), concurrently herewith Anderson has acquired that certain real property legally described in Exhibit A-1 and Exhibit A-2 attached hereto (the "Property"). The parcel described on Exhibit A-1 (the "Anderson Parcel") is improved with the historic W.A. Anderson School Building (the "Anderson Building") and its related campus. The parcel described on Exhibit A-2 (the "Pool Parcel") is improved with the Northshore Costie/Ruiz Pool and related building (the "Pool Building").

B. Concurrently herewith, Anderson has leased the Property to McMenamins' Brew Pubs, Inc., a Washington corporation ("Brew Pubs") pursuant to a long-term lease (the "Lease"). Brew Pubs is wholly owned by McMenamins, Inc., an Oregon corporation, which has common beneficial ownership with Anderson.

C. In August 2009, City solicited Requests for Concepts for redevelopment of the Property. Developer was the only respondent to provide a detailed concept for redevelopment of the Property, in McMenamins' Response to the City of Bothell's Request for Concepts, September 16, 2009 (the "RFC Response"), which concept was consistent with City's goals for the Property and the City.

D. As described in the Sale Agreement, City desires to foster the redevelopment of the Property, which is located in a key part of downtown Bothell, in a way that will contribute to the economic, cultural, and recreational revitalization of the City. Developer intends to submit plans for City's approval that provide for the redevelopment of the Property into a full service "McMenamins Complex" that includes a spa (soaking pool, spa and massage treatments), pub/bars, live music venue, movie theater, event meeting space, an approximately 70-room hotel and gardens and to redevelop the Pool and Pool Building, to be used by the public and in connection with such facility (the "Project"). Developer has agreed to construct the Project as further provided in and subject to the terms and conditions of the separate Development Agreement between

Developer and the City recorded contemporaneously herewith (the "Development Agreement"). Such Development Agreement is in addition to this Agreement.

E. The Property fronts on Bothell Way NE on its eastern boundary. As part of the development of the Project, certain improvements to Bothell Way NE are required by the City. These include construction of an access lane from the main highway and installing curbing, sidewalks, handicapped ramps, lighting and landscaping (collectively, the "Frontage Improvements").

F. The City is also planning to improve and realign Bothell Way NE as a larger project. Rather than having Developer construct the Frontage Improvements separately from the larger project, the parties have agreed that the City will construct them as part of its highway project. In the Sale Agreement, Anderson has agreed to pay or cause Brew Pubs to pay the City for its construction of the Frontage Improvements in the amount of the Frontage Fee (as defined below).

G. The Project is a private undertaking to be contracted, constructed and operated by Developer with Developer's resources and will provide a significant redevelopment of the Property with accompanying public benefits. The parties intend by this Agreement to set forth their mutual agreement and undertakings with regard to the Frontage Improvements.

#### AGREEMENT

NOW, THEREFORE, in consideration of the mutual undertaking and promises contained herein, and the benefits to be realized by each party and in future consideration of the benefit to the general public by the creation and operation of the Project upon the Property, and as a direct benefit to City and other valuable consideration, the adequacy of which is hereby acknowledged, the parties agree as follows:

Section 1. Definitions. In addition to the terms defined in the Recitals above, the following terms shall have the meanings set forth below:

"Certificate of Payment" means a certificate issued by City to Developer pursuant to Section 4 of this Agreement.

"Development Agreement" has the meaning given in Recital D.

"Event(s) of Default" has the meaning given in Section 15 herein.

"Project" means the redevelopment of the Property to construct the improvements and features described in Recital E.

“Project Documents” has the meaning given in the Development Agreement.

“Sale Agreement” has the meaning given in Recital A.

Section 2. Payment of Frontage Fee. Developer agrees to pay to the City the amount of Three Hundred Thirty-Nine Thousand Dollars (\$339,000) as Developer’s agreed contribution to the construction cost of the Frontage Improvements (the “Frontage Fee”). The Frontage Fee shall be due within thirty (30) days after written demand from the City. The City shall not demand payment of the Frontage Fee before January 1, 2012 and not after December 31, 2027. If the Frontage Fee is not timely paid to the City, it will bear interest at 12% per annum from the date it is due until paid. If the City has not completed the Frontage Improvements within five (5) years after it collects the Frontage Fee, it shall return the Frontage Fee (but not any interest thereon) it received to the Developer that paid the fee.

If City repurchases the Property pursuant to Sections 5.7 or 16.1 of the Development Agreement, Developer’s obligation to pay the Frontage Fee shall terminate. If Developer has paid the Frontage Fee to City before such repurchase occurs, City shall refund the Frontage Fee (but not any interest thereon) to the Developer that paid the fee.

Section 3. Guaranty of Payment. Contemporaneously with the execution of this Agreement, Developer shall furnish an irrevocable and unconditional guaranty of payment by McMenamins, Inc. (the parent of Brew Pubs), in the form of Exhibit C attached hereto (the “Guaranty”), guaranteeing the full and timely payment of the Frontage Fee as required by this Agreement. This Guaranty shall terminate upon issuance by City of the Certificate of Payment described in Section 4. Neither the provisions of this Section nor any guaranty accepted by City pursuant hereto, nor any damages or other amounts recovered by City thereunder, shall be construed to excuse payment by Developer as required under this Agreement.

Section 4. Certificate of Payment.

4.1 When Developer Entitled to Certificate of Payment. Upon timely payment of the Frontage Fee in accordance with this Agreement, City will furnish Developer with a recordable Certificate of Payment, substantially in the form attached hereto as Exhibit B.

4.2 Effect of Certificate of Payment; Termination of Agreement. Issuance by City of a Certificate of Payment shall terminate Developer’s obligations under this Agreement. No party acquiring or leasing any portion of the Property after issuance of the Certificate of Payment shall (because of such purchase or lease) have any obligation to pay the Frontage Fee under this Agreement.

Section 5. Default and Remedies. The failure by Developer to pay the Frontage Fee as and when required under this Agreement shall be an Event of Default hereunder.

Section 6. Remedies.

6.1 Remedies Upon Default. If an Event of Default occurs, City shall have all cumulative rights and remedies under law or in equity, including but not limited to the following:

6.2 Damages. Developer shall be liable for any and all damages in the amount of the Frontage Fee, plus interest as provided in Section 2.

6.3 Guaranty. City shall be entitled to commence an action against any guarantor under the Guaranty for the Frontage Fee, plus interest as provided in Section 2, as more particularly provided in the Guaranty.

Section 7. Miscellaneous.

7.1 Entire Agreement. This Agreement, the Project Documents and any documents attached as exhibits thereto contain the entire agreement between the parties as to the subject matter hereof and supersedes all prior discussions and understandings between them with reference to such subject matter.

7.2 Modification. This Agreement may not be amended or rescinded in any manner except by an instrument in writing signed by a duly authorized representative of each party hereto in the same manner as such party has authorized this Agreement.

7.3 Successors and Assigns; Joint and Several. This Agreement shall be binding upon and inure to the benefit of the successors in interest and assigns of each of the parties hereto except that there shall be no transfer of any interest by Developer except pursuant to the express terms of this Agreement or as permitted in the Development Agreement or the Public Benefits Agreement. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor or assign of such party who has acquired its interest in compliance with the terms of this Agreement, or under law.

7.4 Notices. All notices which may be or are required to be given pursuant to this Agreement shall be in writing and delivered to the parties at the following addresses:

To City: City of Bothell  
18305 – 101<sup>st</sup> Avenue NE  
Bothell, WA 98011  
Attn: Bob Stowe

With a copy to: K&L Gates LLP  
925 Fourth Avenue  
Suite 2900  
Seattle, WA 98104  
Attn: Shannon Skinner

To Developer: Anderson School Properties LLC  
c/o McMenamins  
430 N. Killingsworth  
Portland, OR 97217  
Attention: Larry Dortmund

Any such notices shall be either (a) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) days after deposit, postage prepaid in the U.S. mail, (b) sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered when actually delivered pursuant to the records of such courier, or (d) hand delivered, in which case notice shall be deemed delivered when actually delivered. The above addresses and phone numbers may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

7.5 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement.

7.6 Waiver. No waiver by any party of any provision of this Agreement or any breach thereof shall be of any force or effect unless in writing by the party granting the waiver; and no such waiver shall be construed to be a continuing waiver. The waiver by one party of the performance of any covenant, condition, or promise shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition, or promise hereunder. The waiver by either or both parties of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time.

7.7 Rights and Remedies Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by either party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default by the other party.

7.8 Applicable Law; Jurisdiction. This Agreement shall be interpreted under and pursuant to the laws of the State of Washington. In the event any action is brought to enforce any of the provisions of this Agreement, the parties agree to be subject to the jurisdiction in the King County Superior Court for the State of Washington or in the United States District Court for the Western District of Washington.

7.9 No Joint Venture. Nothing contained in this Agreement shall create any partnership, joint venture or other arrangement between City and Developer. The parties intend that the rights, obligations, and covenants in this Agreement and the collateral instruments shall be exclusively enforceable by City and Developer, their successors and assigns. No term or provision of this Agreement shall be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder, except as may be otherwise expressly provided herein.

7.10 Conflict of Interest. No member, official, or employee of City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his personal interests or the interest of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official, or employee of City shall be personally liable to Developer or any successor in interest upon the occurrence of any default or breach by City or for any amount which may become due to Developer or its successor or on any obligations under the terms of this Agreement.

7.11 Attorneys' Fees. In the event any proceeding is instituted to interpret or enforce any provision or resolve any dispute under this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys,' accountants,' and other experts' fees and all other fees, costs, and expenses, as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law. This provision shall cover costs and attorneys' fees related to or with respect to proceedings in federal bankruptcy courts.

7.12 Captions; Exhibits. The headings and captions of this Agreement and the Table of Contents preceding the body of this Agreement are for convenience of reference only and shall be disregarded in constructing or interpreting any part of the Agreement. All exhibits and appendices annexed hereto at the time of execution of this Agreement or in the future as contemplated herein, are hereby incorporated by reference as though fully set forth herein.

7.13 Fair Construction; Severability. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the context may require. The parties hereby acknowledge and agree that each was properly represented by counsel and this Agreement was negotiated and drafted at arms' length so that the judicial rule of construction to the effect that any ambiguities are to be construed against the drafting party shall be inapplicable in the interpretation of this Agreement. The provisions of this Agreement shall be construed as a whole according to their common meaning and consistent with the other provisions contained herein in order to achieve the objectives and purposes of this Agreement. If any term, provision, covenant, clause, sentence or any other portion of the terms and conditions of this Agreement or the application thereof to any person or circumstances shall apply, to any extent, become invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect, unless rights and obligations of the parties have been materially altered or abridged by such invalidation or unenforceability.

7.14 Time of the Essence. In all matters under this Agreement, the parties agree that time is of the essence.

[Signatures on the following page.]



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

CITY OF BOTHELL, a Washington municipal corporation

By: [Signature]  
Name: Robert S. Stowe  
Title: City Manager

ANDERSON SCHOOL PROPERTIES LLC, a Washington limited liability company

By: New School Properties LLC, a Washington limited liability company, Its Manager

By: \_\_\_\_\_  
Name: Michael McMenamin  
Title: Sole Member and Manager

STATE OF WASHINGTON )  
  ) ss.  
COUNTY OF KING        )

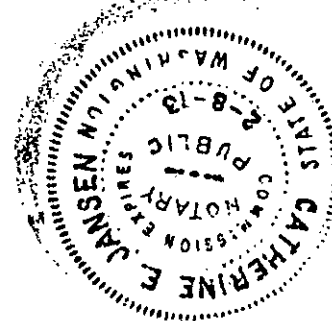
I certify that I know or have satisfactory evidence that Robert S. Stowe is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the City Manager of the City of Bothell to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 6-20-12



(Use this space for notarial stamp/seal)

Catherine E. Jansen  
Notary Public  
Print Name: Catherine E. Jansen  
My commission expires 2-8-13




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

CITY OF BOTHELL, a Washington municipal corporation

ANDERSON SCHOOL PROPERTIES LLC, a Washington limited liability company

By: \_\_\_\_\_  
Name: Robert S. Stowe  
Title: City Manager

By: New School Properties LLC, a Washington limited liability company, Its Manager

By:   
Name: Michael McMenam  
Title: Sole Member and Manager

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that Robert S. Stowe is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the City Manager of the City of Bothell to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_.



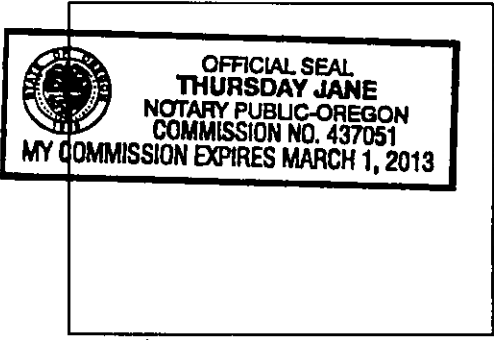
(Use this space for notarial stamp/seal)

\_\_\_\_\_  
Notary Public  
Print Name: Catherine E. Jansen  
My commission expires \_\_\_\_\_

STATE OF Oregon )  
 ) ss.  
COUNTY OF Multnomah

I certify that I know or have satisfactory evidence that Michael McMenamin is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Sole Member and Manager of New School Properties LLC, the Manager of Anderson School Properties LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: June 18, 2012



(Use this space for notarial stamp/seal)

Thursday Jane  
Notary Public  
Print Name Thursday Jane  
My commission expires March 1, 2013

**EXHIBIT A-1**

**Legal Description of Anderson Parcel**

**PARCEL A (AKA ANDERSON SOUTHERLY PARCEL)**

Lot 3, City of Bothell Boundary Line Adjustment Number BLA 2010-00006, recorded under Recording Number 20101230900001, in King County, Washington.

Tax Parcel No. 062605-9052-07

**PARCEL B (AKA PARKING PARCEL/ANDERSON NORTHWESTERLY PARCEL)**

Lot 1, City of Bothell Boundary Line Adjustment Number BLA 2010-00006, recorded under Recording Number 20101230900001, in King County, Washington.

Tax Parcel No. 062605-9369-05

**EXHIBIT A-2**

**Legal Description of Pool Parcel**

**PARCEL C (AKA ANDERSON NORTHEASTERLY PARCEL)**

Lot 2, City of Bothell Boundary Line Adjustment Number BLA 2010-00006, recorded under Recording Number 20101230900001, in King County, Washington.

Tax Parcel No. 062605-9370-02

**EXHIBIT B**

**Form of Certification of Payment**

After recording return to

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CERTIFICATE OF PAYMENT**

GRANTOR: CITY OF BOTHELL

GRANTEE: ANDERSON SCHOOL PROPERTIES LLC

Abbreviated Legal Description

(Full legal description on Ex. A): Lots 1-3, City of Bothell Boundary Line  
Adjustment recorded under Recording No.  
20101230900001.

Assessor's Tax Parcel No(s): 062605-9369-05, 062605-9370-02, 062605-9052-07

Related Document: Development Agreement Re: Frontage Improvements (Doc. No. \_\_\_\_  
\_\_\_\_)

The CITY OF BOTHELL, a Washington municipal corporation ("City"), hereby certifies that ANDERSON SCHOOL PROPERTIES LLC, a Washington limited liability company ("Developer"), has timely paid the Frontage Fee due to the City with respect to the Property described on Exhibit A attached hereto (the "Property"), as required in the Development Agreement Re: Frontage Improvements dated \_\_\_\_\_, 2012 (the "Agreement"), which was recorded in the Records of the King County Auditor, Washington, as Document No. \_\_\_\_\_, on \_\_\_\_\_, 20\_\_.

This Certificate of Payment is and shall be a conclusive determination that the Developer has paid the Frontage Fee.

The Agreement is hereby terminated to the extent it is an encumbrance on the Property and is released from title to the Property.

IN WITNESS WHEREOF, City has caused this instrument to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF BOTHELL, a Washington  
municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF KING         )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of City of Bothell to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_, \_\_\_\_\_.



(Use this space for notarial stamp/seal)

\_\_\_\_\_  
Notary Public  
Print Name \_\_\_\_\_  
My commission expires \_\_\_\_\_

**Exhibit A to Certificate of Payment**

**Legal Description of the Property**

**PARCEL A (AKA ANDERSON SOUTHERLY PARCEL)**

Lot 3, City of Bothell Boundary Line Adjustment Number BLA 2010-00006, recorded under Recording Number 20101230900001, in King County, Washington.

Tax Parcel No. 062605-9052-07

**PARCEL B (AKA PARKING PARCEL/ANDERSON NORTHWESTERLY PARCEL)**

Lot 1, City of Bothell Boundary Line Adjustment Number BLA 2010-00006, recorded under Recording Number 20101230900001, in King County, Washington.

Tax Parcel No. 062605-9369-05

**PARCEL C (AKA ANDERSON NORTHEASTERLY PARCEL)**

Lot 2, City of Bothell Boundary Line Adjustment Number BLA 2010-00006, recorded under Recording Number 20101230900001, in King County, Washington.

Tax Parcel No. 062605-9370-02



## EXHIBIT C

### GUARANTY OF PAYMENT

This Guaranty of Payment is made as of the \_\_\_ day of \_\_\_\_\_, 2012, by McMenamins, Inc., an Oregon corporation ("Guarantor"), in favor of the City of Bothell, a Washington municipal corporation ("City"), with reference to the following facts.

### RECITALS

A. Contemporaneously herewith, Anderson School Properties LLC, a Washington limited liability company ("Anderson"), is purchasing the property in Bothell, Washington commonly known as the Anderson Building campus and the Northshore Costie/Ruiz Pool Building (the "Property"). Anderson is leasing the Property to McMenamins's Brew Pubs, Inc., a Washington corporation ("Brew Pubs") concurrently herewith to facilitate the redevelopment and operation of the Property. Anderson is also referred to herein as "Developer."

B. As part of the closing of the purchase of the Property, Developer and City are entering into a Development Agreement Re: Frontage Improvements of even date herewith (the "Frontage Agreement") that provides for payment of a certain Frontage Fee as described and defined in the Frontage Agreement. The Frontage Agreement requires that Guarantor provides this Guaranty to City. Capitalized terms not otherwise defined herein shall have the meaning given them in the Frontage Agreement.

C. Guarantor is the parent of Brew Pubs and will benefit from the purchase of the Property by Developer. Guarantor understands that redevelopment of the Property is crucial to mission and goals of City and that City would not sell the Property to Anderson without this Guaranty.

### GUARANTY AGREEMENT

NOW, THEREFORE, in consideration of the sale of the Property to Anderson and as required by the Frontage Agreement, Guarantor unconditionally and irrevocably guarantees to City the full, faithful, timely and complete payment of the Frontage Fee and interest thereon by Developer as required by the Frontage Agreement. Guarantor further agrees to pay all costs and expenses, including attorneys' fees that may be incurred by City in enforcing this Guaranty. The obligations of Guarantor under this paragraph are called the "Obligations."

If for any reason there is an Event of Default by Developer under the Frontage Agreement then, in any such event, Guarantor, upon receipt of notice from City, agrees to cure such default and to perform, or cause Developer to perform, all of Developer's obligations under the Frontage Agreement.

If Guarantor defaults under this Guaranty, City may enforce this Guaranty against any or all persons liable hereunder and pursue any rights and remedies available at law or in equity, including without limitation actions for damages and specific performance. In the event of any default under this Guaranty or in any action to enforce this Guaranty, City shall be entitled to recover all reasonable costs and expenses, including experts, accountants and attorney's fees and

costs and including any such fees in any bankruptcy and appellate proceedings. Guarantor's obligations under this Guaranty shall not exceed the amount of the Obligations.

Guarantor agrees that its liability shall not be impaired or affected by (i) any renewals or extensions of the time for performance under the Frontage Agreement; (ii) any enforcement of or any forbearance or delay in enforcing the Frontage Agreement against Developer; (iii) any modifications of the terms or provisions of the Frontage Agreement; (iv) any settlement, release or compromise with Developer (except to the extent that the same are in a writing signed by Developer and City); (v) any lack of notice to Guarantor from City except that expressly provided for herein. City has no obligation to resort for payment to Developer or to any other person or entity or their properties, or to resort to any security, property, rights or remedies whatsoever, before enforcing this Guaranty.

Any other provisions hereof notwithstanding, this Guaranty shall terminate upon the issuance by City of a Certificate of Payment for the Frontage Fee or upon the repurchase of the Property by City pursuant to Section 5.7 or 16.1 of the Development Agreement.

All diligence in collection, protection, or enforcement and all presentment, demand, protest and notice, as to anyone and everyone, whether Developer, Guarantor or others, of dishonor or default, the creation and existence of the Obligations, the acceptance of this Guaranty or any extensions of credit and indulgence hereunder, are hereby expressly waived. The payment by Guarantor of any amount pursuant to this Guaranty shall not in any way entitle Guarantor to any rights by way of subrogation or otherwise against Developer unless and until the full amount owing to City on the Obligations has been paid and the Obligations have been fully performed.

Upon the occurrence of a default under the Frontage Agreement, City may elect exercise any other right or remedy it may have at law or in equity against Developer. No such action by City will release or limit the liability of Guarantor to City, if the effect of that action is to deprive Guarantor of the right to collect reimbursement from Developer for any sums paid to City.

Guarantor assumes full responsibility for keeping fully informed of the financial condition of Developer and all other circumstances affecting Developer's ability to perform its obligations to City and agrees that City will have no duty to report to Guarantor any information that City receives about Developer's financial condition or any circumstances bearing on its ability to perform.

All notices which may be or are required to be given pursuant to this Guaranty shall be in writing and delivered to the parties at the following addresses:

To City:                      City of Bothell  
   18305 – 101<sup>st</sup> Avenue NE  
   Bothell, WA 98011  
   Attn: Bob Stowe

With a copy to: K&L Gates LLP  
925 Fourth Avenue  
Suite 2900  
Seattle, WA 98104  
Attn: Shannon Skinner

To Guarantor: McMenamins, Inc.  
430 N. Killingsworth  
Portland, OR 97217  
Attention: Larry Dortmund

Any such notices shall be either (a) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) days after deposit, postage prepaid in the U.S. mail, (b) sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered when actually delivered pursuant to the records of such courier, or (c) sent by facsimile transmission to the party and its counsel, receipt of which has been confirmed by telephone, and by regular mail, in which case notice shall be deemed delivered on the next business day following confirmed receipt, or (d) hand delivered, in which case notice shall be deemed delivered when actually delivered. The above addresses and phone numbers may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

This Guaranty shall be binding upon Guarantor, and upon the successors and assigns of Guarantor. This Guaranty shall run for the benefit of City, its successors and assigns.

This Guaranty may only be changed by an instrument in writing signed by the party against whom enforcement hereof is sought.

Guarantor acknowledge that the transactions contemplated hereby have been negotiated in the State of Washington, that Guarantor are to perform their obligations hereunder in the State of Washington and that after due consideration and consultation with counsel Guarantor and City have elected to have the internal laws of Washington apply hereto. Accordingly, this Guaranty shall be deemed made under and shall be construed in accordance and governed by the internal laws of the State of Washington without regard to principles of conflicts of laws. Guarantor hereby consents to the nonexclusive jurisdiction of the state courts located in King County, Washington and the federal courts in the Western District of Washington. Guarantor waives the defense of forum non conveniens in any such action and agrees that this Guaranty may be enforced in any such court.

**NOTICE IS HEREBY GIVEN THAT ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, MODIFY LOAN TERMS, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

MCMENAMINS, INC., an Oregon  
corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

February 6, 2014



City of Bothell™

Anderson School Properties, LLC  
c/o McMenamins, Inc.  
430 N. Killingsworth  
Portland, Oregon 97217

Attention: Mr. Larry Dortmund

Re: Development Agreements--Letter Agreement Re: Dates

Dear Larry:

The City of Bothell (the "City") and Anderson School Properties LLC ("Developer") are parties to that certain Development Agreement dated July 20, 2012 and recorded in King County, Washington under No. 20120720000378, as amended by First Amendment to Development Agreement recorded under No. 20130521001177 and Second Amendment to Development Agreement recorded under No. 20130930001858 (as amended, the "Development Agreement"). Pursuant to the Development Agreement, the Construction Start Date was December 1, 2013. That date has passed and Developer has not commenced construction of the Project. This gives the City an option to repurchase the Property pursuant to Section 5.7 of the Development Agreement. Developer is still planning to construct the Project and is working on financing for the Project. Thus, the parties wish to extend the deadline for the City's exercise of the Repurchase Option as provided herein. Capitalized terms used herein and not otherwise defined shall have the meaning given in the Development Agreement.

The City and Developer are also parties to that certain Development Agreement Re: Frontage Improvements dated July 20, 2012 and recorded in King County, Washington under No. 20120720000379 (the "Frontage Agreement"). The Frontage Agreement provides that Developer will pay \$339,000 (the "Frontage Fee") as its contribution to the frontage improvements described therein when demanded by the City. The City currently has the right to demand such payment. Developer has requested that the City delay such demand to better coincide with its equity commitment described below.

McMenamins, Inc. provided a guaranty of each of the Development Agreement and Frontage Agreement.

Therefore, the parties agree to the following deadline extensions:

1. Repurchase Option. The deadline for the City to give written notice under Section 5.7 of the Development Agreement as to whether it is exercising the Repurchase Option is extended to July 1, 2014. Thus, the first paragraph of such Section 5.7 shall be amended and restated to read as follows:

18305 101st Ave. NE  
Bothell, WA 98011  
425.486.3256  
[www.ci.bothell.wa.us](http://www.ci.bothell.wa.us)

“If Developer fails to commence construction of the Project by December 1, 2013, then City shall have the option to repurchase the Property (the “Repurchase Option”) for the cash portion of the purchase price paid by Developer for the Property under the Sale Agreement. Such Repurchase Option shall be City’s sole remedy for such failure hereunder. To exercise the Repurchase Option, City shall give written notice to Developer by July 1, 2014. If Developer fails to commence construction by December 1, 2013 and City has not exercised the Repurchase Option in writing (or provided written notice to Developer that City elects to not exercise its Repurchase Option) by July 1, 2014, then City shall be deemed to have exercised the Repurchase Option as of July 1, 2014.”

2. Frontage Fee. The City agrees not to demand payment of the Frontage Fee until April 30, 2014. Thereafter, if Developer has an Equity Commitment as of April 30, 2014, then the City agrees not to demand payment of the Frontage Fee before the earlier of the following dates: (a) the date on which the City issues a building permit for the Project; and (b) July 1, 2014.

“Equity Commitment” means that one or more equity investors have executed a limited liability company or partnership agreement with Developer (or constituent entities in Developer) pursuant to which they agree to provide sufficient equity, together with any construction loan and mezzanine loan for which Developer has obtained a firm commitment (that has been approved by the necessary lender investment, loan, management or similar committee) to finance construction of the Project.

If the foregoing changes are acceptable to you, please have this letter executed to evidence the agreement of Developer and consent of Guarantor to these changes. Except as expressly provided herein, the Development Agreement and Frontage Agreement are not amended and are in full force and effect.

Sincerely,



Robert S. Stowe  
City Manager

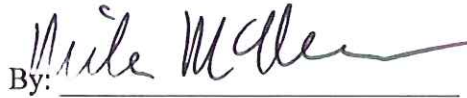


Anderson School Properties, LLC  
February 6, 2014  
Page 3 of 3

The foregoing letter agreement and the changes set forth above are agreed, accepted and consented to as of the date of this letter:

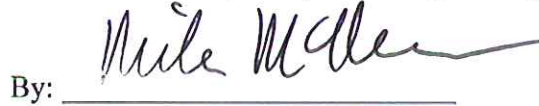
ANDERSON SCHOOL PROPERTIES LLC, a  
Washington limited liability company

By: New School Properties LLC, a Washington  
limited liability company, Its Manager

By: 

Name: Michael McMEnamin  
Title: Sole Member and Manager

MCMENAMINS, INC., a Washington corporation

By: 

Name: Michael McMEnamin  
Title: President