

C. Planned Contract



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Whatcom County, WA

Request of: BELLINGHAM CITY OF

AFTER RECORDING RETURN DOCUMENT TO:

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

↑ *Reserved for Recording Purposes Only* ↑

DOCUMENT TITLE: *Planned Contract*

GRANTOR: *City of Bellingham*

GRANTEE: *8th and Harris Holding Company LLC*

LEGAL DESCRIPTION: *Lots 1-16, Block 40, Amended Plat of Fairhaven with vacated portion McKenzie.*

ASSESSOR'S TAX/PARCEL NUMBER: *370201 - 041075 & 052077*

PLANNED CONTRACT #PDC2004-00034 **Fairhaven Harbor**

THIS IS A PLANNED DEVELOPMENT CONTRACT, ENTERED INTO BETWEEN **8TH AND HARRIS HOLDING COMPANY LLC**, (HEREINAFTER "DEVELOPER") AND THE **CITY OF BELLINGHAM** (HEREINAFTER "CITY") IN CONJUNCTION WITH DEVELOPER'S APPLICATION FOR SITE PLAN APPROVAL.

WITNESSETH:

WHEREAS, Developer is the owner of record of .9 acres at 800 Harris, bound by Harris and McKenzie Avenues and 8th and 9th Streets, and has made application for a Planned Commercial contract; and

WHEREAS, The City has reviewed the application pursuant to procedures of Bellingham Municipal Code (BMC) 20.38.040, and has issued a Determination of Nonsignificant Environmental Impact under the State Environmental Policy Act, SEP2004-00103, on February 9, 2005;

WHEREAS, The City issued the Developer a Shoreline Conditional Use Permit (SHC2004-00008) and a Shoreline Substantial Development Permit (SHR2004-00008) for this project. The Department of Ecology (DOE) approved the Shoreline Conditional Use Permit with conditions;

WHEREAS, The Shoreline Permits issued by the City for this project have been appealed to the Shorelines Hearings Board.

NOW THEREFORE, in recognition of the foregoing, the Developer enters into this Agreement with the City and agrees to adhere to the following terms and conditions:

Section 1 -- Legal Description: The land use restrictions incorporated herein, and the approved site plan, Exhibit A attached hereto, shall apply to subsequent development of the property legally described as: Lots 1-16, Block 40, Amended Plat of Fairhaven together with 20' of McKenzie Avenue vacated by Ordinance 10259.

Section 2 -- Shoreline Permits: In accordance with WAC 173-27-190, the City of Bellingham shall not allow work on the project site to begin until the Shoreline appeal proceedings are complete, except as provided in RCW 90.58.140(5)(b).

Any changes to the Shoreline Permits as a result of the Shorelines Hearings Board's or appellate court's decision in this appeal shall be incorporated by reference into this contract and binding on the City and the Developer.

Section 3 -- Design: Construction shall comply with the requirements of Design Review Permit DRC2004-00033.

Section 4 -- Permitted Uses:

a. Permitted uses are limited to:

- i. Retail facilities of all kinds except heavy farm and/ or construction equipment sales and feed, grain and/ or farm supply sales.
- ii. Branch; post office, banks, financial institutions, and libraries.
- iii. Offices of all kinds.
- iv. Personal service facilities, such as barber and beauty shops, consumer credit agencies, laundry and dry cleaning establishments, computer data services, and veterinary establishments (keeping of 3 or fewer animals overnight is permitted if animals are kept in a fully enclosed structure).
- v. Commercial recreation facilities.
- vi. Eating and/or drinking establishments.
- vii. Repair shops for small equipment and items.
- viii. Public uses and facilities when similar in nature to other permitted uses.
- ix. Private clubs and lodges.
- x. Schools and Institutions of Higher Education.
- xi. Day care.
- xii. Apartments in conjunction with other permitted uses.
- xiii. Neighborhood clubs and activity centers.
- xiv. Churches
- xv. Service Care
- xvi. Medical Care Center

xvii. Attached Wireless Communication Facilities, subject to the provisions of BMC Title 20.

xviii. Non-commercial parking lots.

b. No use shall have facilities that provide for the ordering, payment, or pick-up of goods and/or services for customers staying within motorized vehicles.

Section 5 – Streets and Utilities

a. Streets:

- i. Public Improvement (street and utility) plans shall be approved before construction may begin on this site.
- ii. McKenzie Avenue and 9th Street shall be improved to at least a ¾ Street Standard.
- iii. Harris Avenue shall be improved to Public Works Street Standards. Sidewalk bulb-outs shall be constructed at both Harris Avenue corners. The applicants may be required to build a ramp on the north side of Harris Avenue across from the bulb-outs, to provide for wheelchair ramps.

iv. Eighth Street:

1. Shall be improved as per Shoreline Conditional Use Permit SHR2004-00008 and Hearing Examiner Decision HE-05-PL-006 and as specified in Section 2, Shorelines.
2. This street's section shall be (from west to east):
 - I) A vertical curb,
 - II) A 4-foot wide reinforced grass strip capable of supporting emergency service vehicles,
 - III) A rolled curb,
 - IV) A 14-foot wide structural lane,
 - V) A vertical curb, and
 - VI) A sidewalk with 4' x 4' street tree wells.

- v. Parking, especially disabled parking, shall be preserved in the long term on the south side of McKenzie Avenue.
- vi. Site work shall allow access to the property immediately south.
- vii. Sidewalks along:
 - 1. Harris Street shall be 14' wide including 5' x 5' tree wells.
 - 2. 9th Street shall be 12' wide including 5' x 5' tree wells.
 - 3. McKenzie Avenue shall be 10' wide including 4' x 4' tree wells.
- viii. Sidewalks may be reduced in width only if there is insufficient right of way, as determined by the Public Works Department (PWD).
- ix. The right of way shall be improved before occupancy.

- b. Utilities: Provide street lighting as per Shoreline Permit #SHR2004-00008. The Arts Commission may have review authority over these fixtures.

Section 6 – Drainage: Present a Stormwater Site Plan (SSP) for review in accordance with BMC 15.42 and the Washington State Department of Ecology (DOE) Stormwater Management Manual for Western Washington (“Manual”), published 2005. The SSP and its report shall address all minimum requirements specified within Volume 1 of the Manual. The Manual shall be used in the design of all Best Management Practices including those for reduction of impervious surfaces under Low Impact Development. Landscape plans must be provided with the SSP for any open water quality/quantity system. The final SSP design and completed construction must be approved and accepted by the PWD and the Planning Department and installed by the applicant. All new roadway and site improvements associated with this development must provide enhanced treatment per the 2005 DOE manual.

Section 7 – Street Trees: Supply one street tree for every fifty feet of frontage. Trees shall be planted in a minimum 4' square street tree well if the sidewalk is 10' wide or narrower, or a 5' square street tree well if the sidewalk is wider than 10'. A street tree permit shall be submitted and approved before any trees are planted.

Section 8 – Archaeology Requirements: Provide a professional archaeological assessment before site work begins. The archaeologist shall assess the project area for significant archaeological resources and impacts of the proposal, and shall make recommendations for preservation and/or protection of the resource and/or mitigation of adverse effects. The City, affected Tribe(s), and the State of Washington Office of Archaeology and Historic Preservation shall review this assessment before any construction or garage excavation.

Section 9 -- Crime Prevention Through Environmental Design (CPTED): Include CPTED principals in the design and operation of this proposal, as required by the Police Department.

Section 10-- Lighting: Before building permit approval, Developer shall submit an exterior Master Lighting Plan (MP) for review and approval by the City. This MP shall include:

- a. The location and height of all lighting fixtures.
- b. The design specifications for all lighting fixtures, including photometric data, cutoff fixtures, and other descriptive information.
- c. Lighting shall not shine in or toward nearby residences.
- d. Lighting shall not shine towards the Padden Creek Estuary, as per SHR2004-00008.

- e. The Police Department shall review and approve the lighting design for conformance with Crime Prevention principles.

Section 11-- Fees: The Developer shall provide traffic and school impact fees as calculated by the PWD and the Bellingham School District.

Section 12-- Fire Department Requirements: The development shall meet all applicable fire flow and fire code standards as adopted by the City of Bellingham and is subject to the approval of the Fire Marshal.

Section 13 -- Building Permit:

- a. Before a Building Permit is issued, plans in conformance with the restrictions of this agreement and Exhibit "A" attached hereto, as well as any other applicable City code, shall be submitted and approved.
- b. At the time of Building Permit, provide facility connections from the building to the right of way. Do not provide facilities in the sidewalk that can be better sited on the building, such as Fire Department Connections.
- c. Venting may be allowed in the sidewalk with PWD approval.
- d. The PCDD Director may approve non structural excavation in writing under BMC 16.70.050, when the Shoreline Appeal discussed in Section 2 has expired. Such work shall provide:
 - i. An archaeology plan as described in Section 5, above;
 - ii. Stormwater site plans approved by PWD; and
 - iii. Engineered excavation plans reviewed and approved by the Building Services Division and PWD.
 - iv. NOTE: A separate permit for work on the public right of way may be required.

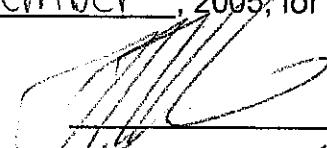
Section 14 -- Occupancy: Before the issuance of any Certificate of Occupancy, all terms and requirements of this agreement shall be met.

Section 15 -- Amendment: This agreement shall become effective immediately upon signature. Modifications to this agreement and the attached exhibits shall be reviewed and considered in the same manner as a request for plan approval, except that minor changes to the site plan attached as Exhibit A that do not violate the specific terms and requirements of this agreement or other applicable codes may be approved by the Planning and Community Development Department or as specified in Section 2, Shorelines.

Section 16 -- Subsequent Changes in Land Use Ordinance: References to the BMC Chapter 20 are intended to adopt sections of this chapter as of the date of the agreement and as subsequently amended.

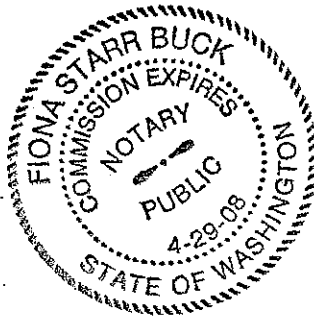
Section 17 -- Requirements Binding on Successors: The covenants, agreements, restrictions, and requirements contained herein shall run with the land and be binding upon all subsequent owners, successors, and assigns of Developers. This contract expires in five (5) years from the date of the signature of the Mayor of Bellingham unless construction or establishment of the use has begun.

APPROVED this 14th day of November, 2005, for the Developers, 8th and Harris Holding Company LLC,


Title: Managing Member

STATE OF WASHINGTON
COUNTY OF WHATCOM ss

I CERTIFY that I know or have satisfactory evidence that Theodore
Mischaiikov, signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the Managing Member (title) of the **8th and Harris Holding Company LLC**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



11/14/05
DATED


SIGNATURE OF NOTARY PUBLIC

Fiona Starr Buck
NAME PRINTED

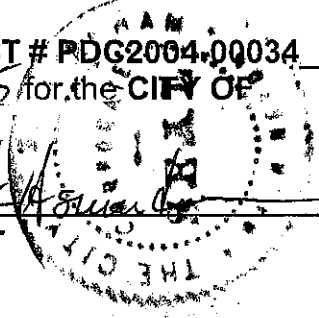
Notary Public
TITLE

4/29/08
MY APPOINTMENT EXPIRES

APPROVED PLANNED DEVELOPMENT CONTRACT # PDG2004-00034
this 7th day of Dec, 2005 for the CITY OF
BELLINGHAM.

ATTEST: [Signature]
Finance Director

[Signature]
Mayor

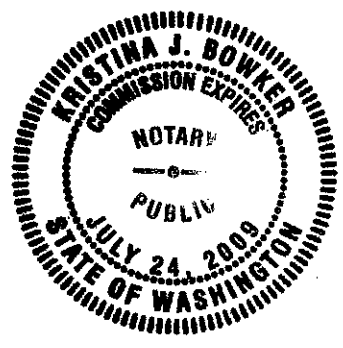


APPROVED AS TO FORM:
[Signature]
Office of the City Attorney

DEPARTMENTAL APPROVAL: [Signature]
[Signature]
Department of Planning & Community
Development
[Signature]
Department of Public Works

STATE OF WASHINGTON
COUNTY OF WHATCOM SS

I CERTIFY that I know or have satisfactory evidence that **MARK ASMUNDSON** 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 **Mayor** of the **CITY OF BELLINGHAM** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



12/7/05
DATED

[Signature]
SIGNATURE OF NOTARY PUBLIC

Kristina J. Bowker
NAME PRINTED

Notary Public
TITLE

7/24/09
MY APPOINTMENT EXPIRES

STATE OF WASHINGTON }
COUNTY OF WHATCOM } SS

I CERTIFY that I know or have satisfactory evidence that **THERESE HOLM** 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 **Finance Director** of the **CITY OF BELLINGHAM** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



12/9/05
DATED

Linda D. Anderson
SIGNATURE OF NOTARY PUBLIC

LINDA D. ANDERSON
NAME PRINTED

Notary Public
TITLE

9/29/06
MY APPOINTMENT EXPIRES

