ORDINANCE NO. 021-13

AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON, RATIFYING THE CITY COUNCIL’S APPROVAL OF AND AUTHORIZATION FOR THE MAYOR TO EXECUTE A DEVELOPMENT AGREEMENT WITH THE SINCLAIR, LLC

WHEREAS, City staff has been working diligently to address the sanitary sewer capacity needs for the service area located in and around the Sedgwick/Sidney Road intersection, aka the Joint Planning Area (JPA); and

WHEREAS, the City’s efforts include the acquisition of a sanitary sewer lift station easement from the South Kitsap School District for a future sanitary sewer lift station; and

WHEREAS, The Sinclair, LLC is building a mixed use development on property located at the southwest corner of the Sedgwick/Sidney Road intersection; and

WHEREAS, the City and The Sinclair, LLC have entered into a development agreement pursuant to which The Sinclair, LLC will construct a sanitary sewer lift station on the South Kitsap School District property that will serve the mixed use development project and provide additional capacity for future growth within the JPA service area; and

WHEREAS, development agreements are authorized pursuant to RCW 36.70B.170 and POMC 16.72.080; and

WHEREAS, in accordance with RCW 36.70B.200, the Port Orchard City Council held a properly noticed public hearing on October 22, 2013 regarding the proposed development agreement between the City and The Sinclair, LLC and by motion approved and authorized the Mayor to sign the agreement; and

WHEREAS, RCW 36.70B.200 requires that development agreements be approved by ordinance or resolution; now, therefore,

THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, DO ORDAIN AS FOLLOWS:
SECTION 1. The City Council hereby ratifies its approval on October 22, 2013 of the development agreement between the City and The Sinclair, LLC and its authorization for the Mayor to sign said agreement. A copy of the development agreement is attached to this Ordinance as Exhibit A.

SECTION 2. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of constitutionality of any other section, sentence, clause or phrase of this ordinance.

SECTION 3. This ordinance shall be in full force and effect five (5) days after posting and publication as required by law. A summary of this Ordinance may be published in lieu of the entire ordinance, as authorized by State Law.

PASSED by the City Council of the City of Port Orchard, APPROVED by the Mayor and attested by the City Clerk in authentication of such passage this 12th day of November 2013.

Timothy C. Matthes, Mayor

ATTEST:

Brandy Rinearson, CMC, City Clerk

APPROVED AS TO FORM:

Gregory A. Jacoby, City Attorney

Sponsored by:

Robert Putaansuu, Councilmember

[Seal]
DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF PORT ORCHARD
AND THE SINCLAIR, LLC FOR THE
SOUTHWEST SIDNEY PLAZA DEVELOPMENT
Contract No. 083-13

THIS DEVELOPMENT AGREEMENT is made and entered into this 22nd day of October, 2013, by and between the City of Port Orchard, a Washington municipal corporation, hereinafter the “City,” and The Sinclair, LLC, a limited liability corporation, organized under the laws of the State of Washington, hereinafter the “Developer.”

RECITALS

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

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement (RCW 36.70B.170(1)); and

WHEREAS, for the purposes of this development agreement, “development standards” includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3); and

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by a local government planning under chapter 36.70A RCW (RCW 36.70B.170(1)); and

WHEREAS, this Agreement by and between the City and the Developer (hereinafter the “Development Agreement”), relates to the mixed use development known as Southwest Sidney Plaza which is to be constructed on property located at the southwest corner of the Sedgwick/Sidney Road intersection in Port Orchard (hereinafter the “Subject Property”); and

WHEREAS, the following events have occurred in the processing of the Developer’s application:

a) On February 22, 2013, the City issued a Mitigated Determination of Nonsignificance with conditions; and
b) By Hearing Examiner’s decision No. CUP 037-12, dated April 4, 2013, the City’s Hearing Examiner approved a conditional use permit for the Project, a copy of which is attached hereto; and

c) After a public hearing, the City Council authorized the Mayor to sign this Development Agreement with the Developer.

Now, therefore, the parties hereto agree as follows:

GENERAL PROVISIONS

1. The Project. The Project is the development and use of the Subject Property, consisting of 13.78 acres in the City of Port Orchard. The conditional use permit/approval describes the Project as a mixed use development, including a 14,000 square foot retail building, nine 3-story apartment buildings, recreational building, pool, and associated parking.

2. The Subject Property. The Project site is legally described in Attachment 1, attached hereto and incorporated herein by this reference.

3. Definitions. As used in this Development Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section.

   3.1. “Adopting Ordinance” means the Ordinance which approves this Development Agreement, as required by RCW 36.70B.200.

   3.2. “Certificate of occupancy” means either a certificate issued after inspections by the City authorizing a person(s) in possession of property to dwell or otherwise use a specified building or dwelling unit, or the final inspection if a formal certificate is not issued.

   3.3. “City” means the City of Port Orchard, 216 Prospect Street, Port Orchard, WA 98366.

   3.4. “Council” means the duly elected legislative body governing the City of Port Orchard.

3.6. “Developer” means The Sinclair, LLC, its successors or assigns. Under this Agreement, the Developer is also the Landowner.

3.7. “Director” means the City’s Community Development Director.

3.8. “Effective Date” means the effective date of the Adopting Ordinance.

3.9. “Existing Land Use Regulations” means the ordinances adopted by the Port Orchard City Council in effect on the Effective Date, including the adopting ordinances that govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards and specifications applicable to the development of the Subject Property, including but not limited to the Comprehensive Plan, the City’s Official Zoning Map and development standards, the Design Manual, the Public Works Standards, SEPA, Concurrency Ordinance, and all other ordinances, codes, rules and regulations of the City establishing subdivision standards, park regulations, building standards. Existing Land Use Regulation does not include non-land use regulations, which includes taxes and impact fees.

3.10. “Landowner” means The Sinclair, LLC or any party who has acquired any portion of the Subject Property from the Landowner and who, unless otherwise released as provided in this Agreement, shall be subject to the applicable provisions of this Agreement.

3.11. “Project” means the anticipated development of the Subject Property, as described in Section 1 and as provided for in all associated permits/approvals, and all incorporated exhibits.

4. Attachments. Attachments to this Agreement are as follows:

4.1. Attachment 1 – Legal description of the Subject Property.

4.2. Attachment 2 – Sanitary Sewer Easement.

4.3. Attachment 3 – Interlocal Agreement between City of Port Orchard and South Kitsap School District No. 402 Regarding the Sanitary Sewer Pottery Avenue Lift Station Facility, dated July 15, 2013.
4.3.1. In the event of a conflict between the terms of this Development Agreement and the Interlocal Agreement between the City and South Kitsap School District No. 402, the terms of the Interlocal Agreement shall control.

5. **Parties to the Development Agreement.** The parties to this Development Agreement are the City and the Developer/Landowner.

6. **Project is a Private Undertaking.** It is agreed among the parties that the Project is a private development and that the City has no interest therein except as authorized in the exercise of its governmental functions.

7. **Term of Agreement.** This Agreement shall commence upon the effective date of the Adopting Ordinance approving this Agreement, and shall continue in force for a period of ten (10) years unless extended or terminated as provided herein. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject however, to post-termination obligations of the Developer or Landowner.

8. **Vested Rights of Developer.** During the term of this Agreement, unless sooner terminated in accordance with the terms hereof, in developing the Subject Property consistent with the Project described herein, Developer is assured, and the City agrees, that the development rights, obligations, terms and conditions specified in this Agreement, are fully vested in the Developer and may not be changed or modified by the City, except as may be expressly permitted by, and in accordance with, the terms and conditions of this Agreement, including the Exhibits hereto, or as expressly consented thereto by the Developer.

9. **Permitted Uses and Development Standards.** The permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation and dedication of land or payment of fees in lieu of dedication for public purposes, the construction, installation and extension of public improvements, development guidelines and standards for development of the Subject Property shall be those set forth in this Agreement, the permits and approvals identified herein, and all exhibits incorporated herein.

10. **Minor Modifications.** Minor modifications from the approved permits or the exhibits attached hereto may be approved in accordance with the provisions of the City’s code, and shall not require an amendment to this Agreement.

11. **Further Discretionary Actions.** Developer acknowledges that the Existing Land Use Regulations contemplate the exercise of further discretionary powers by the City.

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Re: Southwest Sidney Plaza  
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These powers include, but are not limited to, review of additional permit applications under SEPA. Nothing in this Agreement shall be construed to limit the authority or the obligation of the City to hold legally required public hearings, or to limit the discretion of the City and any of its officers or officials in complying with or applying Existing Land Use Regulations.

12. **Financing and Construction of Sewer Improvements.**

12.1. Certificates of occupancy for the Project will not be issued until additional sanitary sewer infrastructure, consisting of a new lift station and appurtenances (collectively, the “Pottery Lift Station Facility” and individually, the “Pottery Lift Station”) and a connection to an existing force main and pump station have been constructed and inspected and accepted by the City. The City has determined that the appropriate location for the proposed Pottery Lift Station Facility is on property owned by South Kitsap School District No. 402 located at the Cedar Heights Junior High School (Cedar Heights School), 2220 Pottery Avenue, Port Orchard, as legally described and depicted in Exhibits A, B, and C to Attachment 2.

12.2. The School District has granted a sanitary sewer easement to the City, Kitsap County Auditor’s No. 201307150243, for the purpose of constructing, reconstructing, installing, repairing, replacing, operating and maintaining a sewer pump station, gravity sewer lines, and associated appurtenances, together with right of ingress and egress thereto. A copy of said easement is attached hereto as Attachment 2.

12.3. Developer agrees to finance and construct the sewer force main connection and the Pottery Lift Station in accordance with the terms and conditions set forth in this Section 12.

12.4. Developer agrees to pay all costs of design, engineering, and construction to extend the existing gravity sewer line at the Albertson’s Pump Station westward beneath Sidney Road SW and across the Subject Property to the northwest corner of the Subject Property at Sedgwick Road SW for future use by Developer and/or others.

12.4.1. All construction shall be done to City standards and according to plans approved by the City’s Public Works Department and City Engineer. Any and all costs incurred by the City in reviewing plans and inspecting construction shall be paid for by the Owner.
12.4.2. The Albertson's Pump Station has sufficient pump capacity and force main capacity to receive Developer's effluent. However, minor modifications and/or repair may be required. Developer shall provide the City with a written assessment of the suitability of the Albertson's pump station to receive Developer's additional effluent and agrees to make, at its sole cost, such minor modifications or repairs as are necessary for full functionality. The City and its consultants agree to provide to the Developer all available operation and maintenance records; operational data, pump station plans, flow modeling analysis reports completed to date; or other documentation that will allow for the written assessment of the Albertson's pump station.

12.5. Developer shall pay all costs of designing, engineering and constructing the Pottery Lift Station Facility. All construction shall be done to City standards and according to plans approved by the City's Public Works Department and City Engineer. Any and all costs incurred by the City in reviewing plans and inspecting construction shall be paid for by the Owner.

12.6. Developer shall prepare the design documents required for the Pottery Lift Station in accordance with the City's specifications and the following requirements:

12.6.1. The Pottery Lift Station and the improvements within the Easement shall be generally located as shown on Exhibits B and C to Attachment 2 and shall be:

(i) located in the north section of the Easement approximately 40 feet x 120 feet so as to maximize a parking layout (as set forth below under Section 12.7) for the benefit of the School District and enclosed by a minimum 5 foot slatted chain link fence and landscaped around the perimeter of the fenced Lift Station as approved by the City in coordination with the School District; and

(ii) designed with two gated entrances that are aligned with drive aisles in the parking lot to be constructed within the southern section of the Easement.

12.7. Developer shall prepare and submit to the City a Parking Lot Plan (which shall include the above-identified items under Section 12.6.1) to be approved by the City and the School District within a reasonable period of time following submittal of such Parking Lot Plan and which approval shall not be
unreasonably withheld. The Parking Lot Plan shall include but not be limited to the following specifications:

12.7.1. The Parking Lot shall be located within the Easement and shall be approximately 120 feet x 120 feet in size as generally shown on Exhibit B to Attachment 2.

12.7.2. The Parking Lot shall be properly graded (for stormwater runoff) and a base course shall be placed thereon at such depth as is required by the City in consultation with the School District in the exercise of its reasonable discretion, inclusive of rip rap and ¾” minus.

12.7.3. The Parking Lot will be paved with HMA pavement at such depth as is required by the City in consultation with the School District in the exercise of its reasonable discretion. Parking stalls shall be striped and wheel stops installed.

12.8. Construction of the Pottery Lift Station and Parking Lot (the Work) shall begin after the Developer receives the necessary approvals and permits from the City and after the School District has approved the Parking Lot Plan. The School District has requested that the Work be performed during those periods when students are not present at Cedar Heights School. However, if this is not feasible due to the Developer’s development schedule, then the Work shall be performed at such other times as agreed upon between the School District and the Developer in the exercise of the School District’s reasonable discretion. Prior to commencement of the Work, the Developer shall provide the District with not less than fourteen (14) days’ advance notice in accordance with Section 24 below and the Developer shall make its bests efforts to coordinate a pre-construction meeting with the School District and the City. The Work, including the Parking Lot, shall be guaranteed by the Developer for the Maintenance Period required under the City’s development regulations.

12.9. Developer agrees to turn over and dedicate the new sewer force main and Pottery Lift Station Facility to the City, at no cost, upon the completion of construction and approval and acceptance of the same by the City. As a prerequisite to such turn over and acceptance, Developer will furnish to the City the following:

12.9.1. As built plans or drawings in a form acceptable to the City Public Works Department and City Engineer.
12.9.2. Any necessary easements, permits or licenses for the continued operation, maintenance, repair or reconstruction of such facilities by the City, in a form approved by the City Attorney.

12.9.3. A bill of sale in a form approved by the City Attorney; and

12.9.4. A bond or other suitable surety in a form approved by the City Attorney and in an amount approved by the City Engineer, ensuring that the facilities will remain free from defects in workmanship and materials for a period of two (2) years.

12.9.5. As prescribed by POMC 13.04.040, Developer shall be entitled to a credit against the sewer capital facilities charge, which is $6,192 per equivalent residential unit (ERU). The amount of the credit shall equal the design, engineering, and construction cost of the sewer facilities that Developer will construct and dedicate to the City; provided, however, the amount of the credit shall not exceed the amount of the sewer capital facilities charge for the Project to which the credit is being applied. Notwithstanding the foregoing, Developer shall be responsible for payment of all applicable permit and inspection fees, as provided by Code.

12.9.6. Should the costs of the improvements required under this agreement (Albertson’s Pump Station upgrades, if required, and the design, engineering and construction of the Pottery Lift Station) be greater than the amount of credit against sewer capital facilities charge the Developer is entitled to under POMC 13.04.040, nothing in this Agreement shall preclude the Developer from setting up a latecomers agreement for the amount exceeding said credit. Provided, however, the property owned by South Kitsap School District No. 402 at 2220 Pottery Avenue, Port Orchard, Kitsap County parcel no. 032301-1-011-2000, and commonly referred to as Cedar Heights Junior High School, shall be exempt from any latecomer’s agreement established by the Developer to recover costs incurred under this Development Agreement.

13. Existing Land Use Fees and Impact Fees.

13.1. Land use fees adopted by the City by ordinance as of the Effective Date of this Agreement may be increased by the City from time to time, and applicable to permits and approvals for the Subject Property, as long as such fees apply to similar applications and projects in the City.
13.2. All impact fees shall be paid as set forth in the approved permit or approval, or as addressed in Chapter 16.70 of the Port Orchard Municipal Code, as now or hereafter amended.

14. Phasing of Development. The parties acknowledge that the most efficient and economic development of the Subject Property depends upon numerous factors, such as market orientation and demand, interest rates, competition, and similar factors, and that generally it will be most economically beneficial to the ultimate purchasers of the Subject Property to have the rate of development determined by the Developer. However, the parties also acknowledge that because the Development will be phased, certain amenities associated with the Project must be available to all phases of the Project, in order to address health, safety, and welfare of the residents. Therefore, the parties agree that the improvements associated with the Project shall be constructed according to the conditions set forth in the Hearing Examiner’s decision No. CUP 037-12, dated April 4, 2013.

15. Dedication of Public Lands. Except as otherwise provided herein, the Developer shall dedicate all public lands required in the permits/approvals within ninety (90) days of the Effective Date of this Agreement.


16.1. Subject to extensions of time by mutual consent in writing, failure or delay by either party or Landowner not released from this Agreement, to perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party or Landowner not less than thirty (30) days’ notice in writing, specifying the nature of the alleged default and the manner in which said default may be cured. During this thirty (30) day period, the party or Landowner charged shall not be considered in default for purposes of termination or institution of legal proceedings.

16.2. After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party or Landowner to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement. In addition, the City may decide to take any action to enforce the City’s Codes, and to obtain penalties and costs as provided in the Port Orchard Municipal Code for violations of this Development Agreement and the Code.

17. Termination. This Agreement shall expire and/or terminate as provided below:

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17.1. This Agreement shall expire and be of no further force and effect if the development contemplated in this Agreement and all of the permits and/or approvals issued by the City for such development are not substantially underway prior to expiration of such permits and/or approvals. Nothing in this Agreement shall extend the expiration date of any permit or approval issued by the City for any development.

17.2. This Agreement shall expire and be of no further force and effect if the Developer does not construct the Project as contemplated by the permits and approvals identified in this Agreement, and submits applications for development of the Property that are inconsistent with such permits and approvals.

17.3. This Agreement shall terminate upon the expiration of the term identified in Section 7 or when the Subject Property has been fully developed, which ever first occurs, and all of the Developer's obligations in connection therewith are satisfied as determined by the City. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City Attorney that the Agreement has been terminated. This Agreement shall automatically terminate and be of no further force and effect as to any single-family residence, any other residential dwelling unit or any nonresidential building and the lot or parcel upon which such residence or building is located, when it has been approved by the City for occupancy.

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

19. **Effect upon Termination on City.** Upon any termination of this Agreement as to the Developer of the Subject Property, or any portion thereof, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the property affected by such termination (provided that vesting of such entitlements, conditions or fees may then be established for such property pursuant to then existing planning and zoning laws).

Development Agreement
Re: Southwest Sidney Plaza
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20. **Assignment and Assumption.** The Developer shall have the right to sell, assign or transfer this Agreement with all their rights, title and interests therein to any person, firm, or corporation at any time during the term of this Agreement. Developer shall provide the City with written notice of any intent to sell, assign, or transfer all or a portion of the Subject Property, at least 30 days in advance of such action.

21. **Covenants Running with the Land.** The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties. The Developer, Landowner and every purchaser, assignee or transferee of an interest in the Subject Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Subject Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of a Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Subject Property sold, assigned or transferred to it.

22. **Amendment to Agreement; Effect of Agreement on Future Actions.**

22.1. This Agreement may be amended by mutual consent of all of the parties, provided that any such amendment shall follow the process established by law for the adoption of a development agreement (see, RCW 36.70B.200).

22.2. Nothing in this Agreement shall prevent the City Council from making any amendment to the Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations affecting the Subject Property during the term of this Agreement, as the City Council may deem necessary to the extent required by a serious threat to public health and safety.

22.3. Nothing in this Agreement shall prevent the City Council from making any amendments of any type to the Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations relating to the Subject Property after the termination or expiration of the term of this Agreement.

23. **Releases.** Developer, and any subsequent Landowner, may free itself from further obligations relating to the sold, assigned, or transferred property, provided that the buyer, assignee or transferee expressly assumes the obligations under this Agreement as provided herein.

Development Agreement  
Re: Southwest Sidney Plaza  
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24. Notices. Notices, demands, correspondence to the City, South Kitsap School District No. 402, and Developer shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated below. Notice to the City shall be to the attention of the City Engineer. Notices to subsequent Landowners shall be required to be given by the City only for those Landowners who have given the City written notice of their address for such notice. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

City: City of Port Orchard
216 Prospect Street
Port Orchard, WA 98366
Telephone: 360-866-4991
Facsimile: 360-876-4980
Email: mdorsey@cityofportorchard.us
Attention: City Engineer

Developer: Thair Jorgenson, P.E.
Rush Design, Inc./The Rush Companies
6622 Wollochet Drive NW
Gig Harbor, WA 98335
Office: 253-858-8204 ext. 248
Facsimile: 253-858-3188
tjorgenson@therushcompanies.com

South Kitsap School
School District No. 402: Tom O’Brien
South Kitsap School District No. 402
2689 Hoover Avenue S.E.
Port Orchard, WA 98366
Tel: (360) 874-6001
Fax: (360) 874-6230
Email: obrien@skitsap.wednet.edu

Andrew Cain, Principal of
Cedar Heights Junior High School
2220 Pottery Avenue
Port Orchard, WA 98366
Tel: (360) 874-6020
Fax: (360) 874-6420
Email: cain@skitsap.wednet.edu
25. **Reimbursement for Agreement Expenses of the City.** Developer agrees to reimburse the City for actual expenses incurred over and above fees paid by Developer as an applicant incurred by City directly relating to this Agreement, including recording fees, publishing fees, and reasonable staff and attorney costs not otherwise included within application fees. This Agreement shall not take effect until the fees provided for in this section, as well as any processing fees owed to the City for the Project, are paid to the City. Upon payment of all expenses, the Developer may request written acknowledgement of all fees. Such payment of all fees shall be paid, at the latest, within thirty (30) days from the City's presentation of a written statement of charges to the Developer.

26. **Applicable Law and Attorney's Fees.** This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. If litigation is initiated to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. Venue for any action shall lie in Kitsap County Superior Court or the U.S. District Court for Western Washington.

27. **Third Party Legal Challenges.** In the event any legal action or special proceeding is commenced by any person or entity other than a party to challenge this Agreement or any provision herein, the City may elect to tender the defense of such lawsuit or individual claims in the lawsuit to Developer. In such event, Developer shall hold the City harmless from and defend the City from all costs and expenses incurred in the defense of such lawsuit or individual claims in the lawsuit, including but not limited to, attorneys' fees and expenses of litigation, and damages awarded to the prevailing party or parties in such litigation. The Developer shall not settle any lawsuit without the consent of the City. The City shall act in good faith and shall not unreasonably withhold consent to settle.

28. **Specific Performance.** The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Agreement by any party in default hereof.

29. **Construction.** The captions throughout this Agreement are for convenience and reference only and the words contained in them shall not be held to expand, modify, amplify, or aid in the interpretation, construction, or meaning of this Agreement. Each party has been represented by legal counsel and accordingly waives the general rule of construction that an agreement shall be construed against its drafter.
30. **Severability.** If any phrase, provision or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the effective date of the ordinance adopting this Development Agreement, and either party in good faith determines that such provision or provisions are material to its entering into this Agreement, that party may elect to terminate this Agreement as to all of its obligations remaining unperformed.

    IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed as of the dates set forth below:

**CITY OF PORT ORCHARD:**

By: ____________________________
    Timothy C. Matthes
Its: Mayor
Date: ____________________________

**THE SINCLAIR, LLC**

By: ____________________________
    Print Name: Gordon Rush
Its: Managing Member
Date: ____________________________

**ATTEST:**

By: ____________________________
    Brandy Rinearson, City Clerk

**APPROVED AS TO FORM:**

By: ____________________________
    Gregory A. Jacoby, City Attorney

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Re: Southwest Sidney Plaza  
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STATE OF WASHINGTON  )
COUNTY OF KITSAP    ) ss.

On this day personally appeared before me Timothy C. Matthes to me known to be the Mayor of the City of Port Orchard, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged that he signed said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of said municipal corporation.

GIVEN under my hand and official seal this _____ day of _________ 2013.

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

Print Name: _______________________
My appointment expires: __________

STATE OF WASHINGTON  )
COUNTY OF KITSAP    ) ss.

On this day personally appeared before me Gordon Rush to me known to be the Managing Member of The Sinclair, LLC, the corporation described in and that executed the within and foregoing instrument, and acknowledged that he signed said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of said corporation.

GIVEN under my hand and official seal this _____ day of _________ 2013.

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

Print Name: _______________________
My appointment expires: __________
NOTICE OF CITY OF PORT ORCHARD
ORDINANCE

The following is a summary of an Ordinance approved by the Port Orchard City Council at their regular Council meeting held November 12, 2013.

ORDINANCE NO. 021-13

AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON, RATIFYING THE CITY COUNCIL'S APPROVAL OF AND AUTHORIZATION FOR THE MAYOR TO EXECUTE A DEVELOPMENT AGREEMENT WITH THE SINCLAIR, LLC

Copies of Ordinance No. 021-13 are available for review at the office of the City Clerk of the City of Port Orchard. Upon written request a statement of the full text of the Ordinance will be mailed to any interested person without charge. Thirty days after publication, copies of Ordinance No. 021-13 will be provided at a nominal charge.

City of Port Orchard

Brandy Rinearson
City Clerk

Publish: Port Orchard Independent
November 22, 2013