



**CITY OF KIRKLAND**  
**Department of Public Works**  
123 Fifth Avenue, Kirkland, WA 98033 425.587.3800  
[www.ci.kirkland.wa.us](http://www.ci.kirkland.wa.us)

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**MEMORANDUM**

**QUASI JUDICIAL**

**To:** David Ramsay

**From:** Rob Jammerman, Development Engineering Manager  
Daryl Grigsby, Public Works Director

**Date:** June 5, 2007

**Subject:** Development Agreement with Derek and Susan Arndt

RECOMMENDATION:

It is recommended that the City Council hold a Public Hearing and approve Resolution 4645 authorizing the City Manager to sign the attached Development Agreement with Derek and Susan Arndt (see Exhibit 1).

POLICY IMPLICATIONS:

RCW 36.70B.170 - 210 (copy attached as Exhibit 2) authorizes local governments to enter into Development Agreements with property owners. A Public Hearing is required before the City Council takes action on the Development Agreement.

BACKGROUND DISCUSSION:

Derek and Susan Arndt own a several parcels of undeveloped land in the Norkirk Neighborhood (a map of the property is attached as Exhibit 3). The Arndts had planned to use the unopened 15<sup>th</sup> Avenue public right-of-way as access to their property, but recently realized that the unopened right-of-way is subject to the "Non-User Statute" and was vacated as a matter of law in 1904. When the Arndts realized that the right-of-way was subject to the non-user statute, they purchased a 30 ft wide piece of the vacated 15<sup>th</sup> Avenue right-of-way from the property at 630 14<sup>th</sup> Place in order to preserve their ability to access their property from the improved portion of 15<sup>th</sup> Avenue (see Exhibit 3).

Under the current development standards in Chapter 110 of the Kirkland Zoning Code, the 30 ft wide parcel of land that the Arndts purchased is wide enough to accommodate a standard R-20 Neighborhood Access type public street, which is adequate for redevelopment of their property (see Exhibit 4 for a copy of the R-20 Street Standard detail). While the Arndts understand that the 30-foot wide property is adequate for a public road at this time, they are concerned that the standard could be changed in the future and they would be denied from using the land for access. Thus, the Arndts are requesting that the City enter into a 10-year Development Agreement that preserves their ability to use the property for access under the current standards. The agreement does stipulate that the City can impose new or different regulations with respect to the width of the right-of-way for public health and safety reasons. As part of the agreement, the Arndts will grant a 15 ft wide water line easement for an 8-inch water main that is in the vacated right-of-way.

cc: William Evans, Assistant City Attorney

Attachments (4)

After Recording, Return to:

David B. Johnston  
Livengood, Fitzgerald & Alskog, PLLC  
P.O. Box 908  
Kirkland, WA 98083-0908

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**Reference No.** N/A

**Document Title:** **ARNDT – KIRKLAND DEVELOPMENT AGREEMENT**  
(Pursuant to RCW Chapter 36.70B)

**Grantor(s):** City of Kirkland, a Washington municipal corporation; Derek Arndt and Susan Arndt, husband and wife

**Grantee(s):** City of Kirkland, a Washington municipal corporation; Derek Arndt and Susan Arndt, husband and wife

**Legal Description:** Lake Avenue Addition, Vol. 6 of Plats, Page 86  
Additional legal is on Exhibit A

**Tax Account No.:** 398270-0960; 398270-0925; 398270-1190; 398270-1210; 398270-1120; 398270-1155; 398270-1130; 398270-1160; 398270-0915; and 398270-1230

THIS DEVELOPMENT AGREEMENT (the "Agreement"), is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007 by and between **Derek Arndt and Susan Arndt**, husband and wife ("Arndts"), and the **City of Kirkland**, a Washington municipal corporation (the "City"), as follows:

#### RECITALS

A. Arndt are the owners of real property located in Kirkland, Washington, that is legally described on *Exhibit A* that is attached hereto and incorporated herein by reference. Attached hereto as *Exhibit B*, and incorporated herein by reference, is a plat map that illustrates the property owned by the Arndts ("Arndt Property"). Portions of the Arndt Property are bordered by 16<sup>th</sup> Avenue to the north and 15<sup>th</sup> Avenue to the south. These two streets were originally part of the Lake Avenue Addition to Kirkland plat.

B. RCW 36.70B, *et seq.*, authorizes the City as a local government to enter into a development agreement with the Arndts as owners of real property described on Exhibit A. This

Development Agreement is consistent with the City's local land regulations and sets forth below development standards and other provisions that apply to and vest the development of the Arndt Property.

C. A City water line is located within 15<sup>th</sup> Avenue (the "Water Line"). The location of the Water Line is shown on *Exhibit C*.

D. The Arndts purchased any interest held by John and Monica Kobasic in the 30 foot portion of unopened 15<sup>th</sup> Avenue adjacent to the Kobasics' property ("the Access Property"). The Kobasics also granted the Arndts an easement for ingress and egress over the Access Property. The location of the Access Property is illustrated on Exhibit B.

E. Under current City Code, an ingress and egress right of way or easement would need to be 30 feet in width to allow for the number of building sites currently allowed for the Arndt Property. The Access Property is 30 feet in width and therefore meets the minimum width for that number of sites at this time.

### **AGREEMENT**

In furtherance of the recitals set forth above, which are incorporated herein by reference, and in consideration of the mutual promises and covenants set forth below, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties acknowledge and agree to the following:

1. Pursuant to RCW 36.70B, commencing on the date this Agreement is fully executed and recorded, and continuing for a period of 10 years thereafter, so long as the Arndts have obtained an approved lot line alteration as required by paragraph 4 below, the City will not require that access to the Arndt Property be greater than 30 feet in width over the Access Property for the Arndts to be entitled to the same number of building sites on the Arndt Property that they are currently entitled to have under City Code with a 30 foot access. The City will process a development application or permit request with respect to street and related improvements (e.g., right of way dedications, curbs, gutters and sidewalks) consistent with the City Code in effect at the time this Agreement is fully executed and recorded, which provisions are incorporated herein as if fully set forth.

2. In consideration for the City's agreement as provided herein, the Arndts agree to provide the City with an easement for the Water Line on the Access Property, the Arndt Property, and any property adjacent to the Arndt Property in which the Arndts may have an interest, within 30 days of mutual execution and recordation of this Agreement. The water line easement premises shall be located within the south 30 feet of 15<sup>th</sup> Avenue and shall be in the minimum width necessary to accommodate the Water Line. The form of the easement will be the same as the one attached hereto as *Exhibit D*.

3. Consistent with RCW 36.70B.170 (4), the City reserves authority to impose new or different regulations with respect to the width of the right of way described in paragraph 1 above to the extent required by a serious threat to public health and safety.

4. The Arndts agree to apply for a lot line alteration pursuant to Kirkland Municipal Code Section 22.04.020 as currently written or hereafter amended to incorporate the Access Property into the Arndt Property.

5. Other than as set forth herein, this Agreement shall not be construed to vest the Arndts or the Arndt Property to any other City development standards, including park, traffic, school or any other impact fees, which development standards may change from the date this Agreement is mutually executed until it expires.

6. This Agreement and the obligations of the parties set forth herein shall expire 10 years from mutual execution and recordation of the Agreement. Except as addressed herein, the remaining development standards referenced in Chapter 36.70B, as well as other applicable development regulations, will be addressed with reference to the laws current at the time of any development application.

7. Additional Provisions.

a. The City represents and warrants that, prior to execution of this Agreement by the parties, this Agreement has been approved by the City Council by ordinance after a duly-called public meeting and the person executing this Agreement on behalf of the City has the authority to do so. Whenever, in this instrument, a reference to any party is made, such reference shall be deemed to include a reference to the heirs, successors and assigns of such party.

b. This Agreement, and the exhibits attached hereto, contains the entire understanding between the parties in connection with the subject matter and it supersedes or replaces all prior negotiations, agreements, or representations, whether oral or written. This Agreement may not be modified in any way unless such modification is in a writing which has been executed by all parties affected by said modification.

c. Time is expressly made of the essence with respect to the performance by the parties of each and all of their respective obligations under this Agreement.

d. The interpretation, construction and enforcement of this Agreement shall be governed by the laws of the State of Washington.

e. This Agreement has been jointly drafted by the parties following negotiations between them. It shall be construed according to the fair intent of the language as a whole and not for or against any party. The parties hereto declare that the terms and conditions of this Agreement have been completely read, reviewed and are fully understood and voluntarily

accepted and that they have had assistance of counsel to explain each and every term of this Agreement.

f. No consent or waiver, express or implied, by any party to or of any breach or default by any other party in the performance by such party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of such party of the same or any other obligations of such party hereunder. Failure to act on the part of any party or to declare any other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

g. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby. It is the intention of the parties that this Agreement and the provisions hereof be enforced to the greatest extent permitted by law.

h. In the event that any party to this Agreement initiates legal proceedings to enforce his, her or its rights under this Agreement, the prevailing party or parties in any such litigation shall be entitled to recover the reasonable attorneys' fees, taxable costs and reasonable expenses incurred by them.

i. This Agreement may be signed in counterpart copies and shall be effective when each party hereto has signed at least one copy. Signatures transmitted by facsimile shall be acceptable and just as binding as a signature on the original hereof.

j. This Agreement shall be recorded with the King County Recording Office. The terms, conditions and covenants of this Agreement are not personal, but shall run with the land and shall be binding upon and inure to the benefit of the parties and their respective heirs, personal representatives, transferees or successors in interest.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first appearing herein above.

\_\_\_\_\_  
Derek Arndt

\_\_\_\_\_  
Susan Arndt

632 14<sup>th</sup> Place  
Kirkland, WA 98033

**City of Kirkland**  
a Washington municipal corporation

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
David B. Johnston  
Livengood, Fitzgerald & Alskog, PLLC  
Attorneys for the Arndts

121 Third Avenue  
P.O. Box 908  
Kirkland, WA 98083-0908

\_\_\_\_\_  
William R. Evans  
Kirkland City Attorney

STATE OF WASHINGTON )  
 ) ss.  
County of King )

I certify that I know or have satisfactory evidence that **Derek Arndt and Susan Arndt**, husband and wife, are the persons who appeared before me, and said persons acknowledged that they are the individual described in and who signed this instrument and acknowledged it to be their free and voluntary act, for the uses and purposes mentioned in this instrument.

DATED: \_\_\_\_\_, 2007.

\_\_\_\_\_  
Name (typed or printed): \_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington  
Residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 )  
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 is the individual(s) described in and who signed this instrument as the \_\_\_\_\_ of the City of Kirkland, a Washington municipal corporation, and acknowledged it to be the said party's free and voluntary act, for the uses and purposes mentioned in this instrument, and on oath stated that (he/she) is authorized to execute the instrument on behalf of said party.

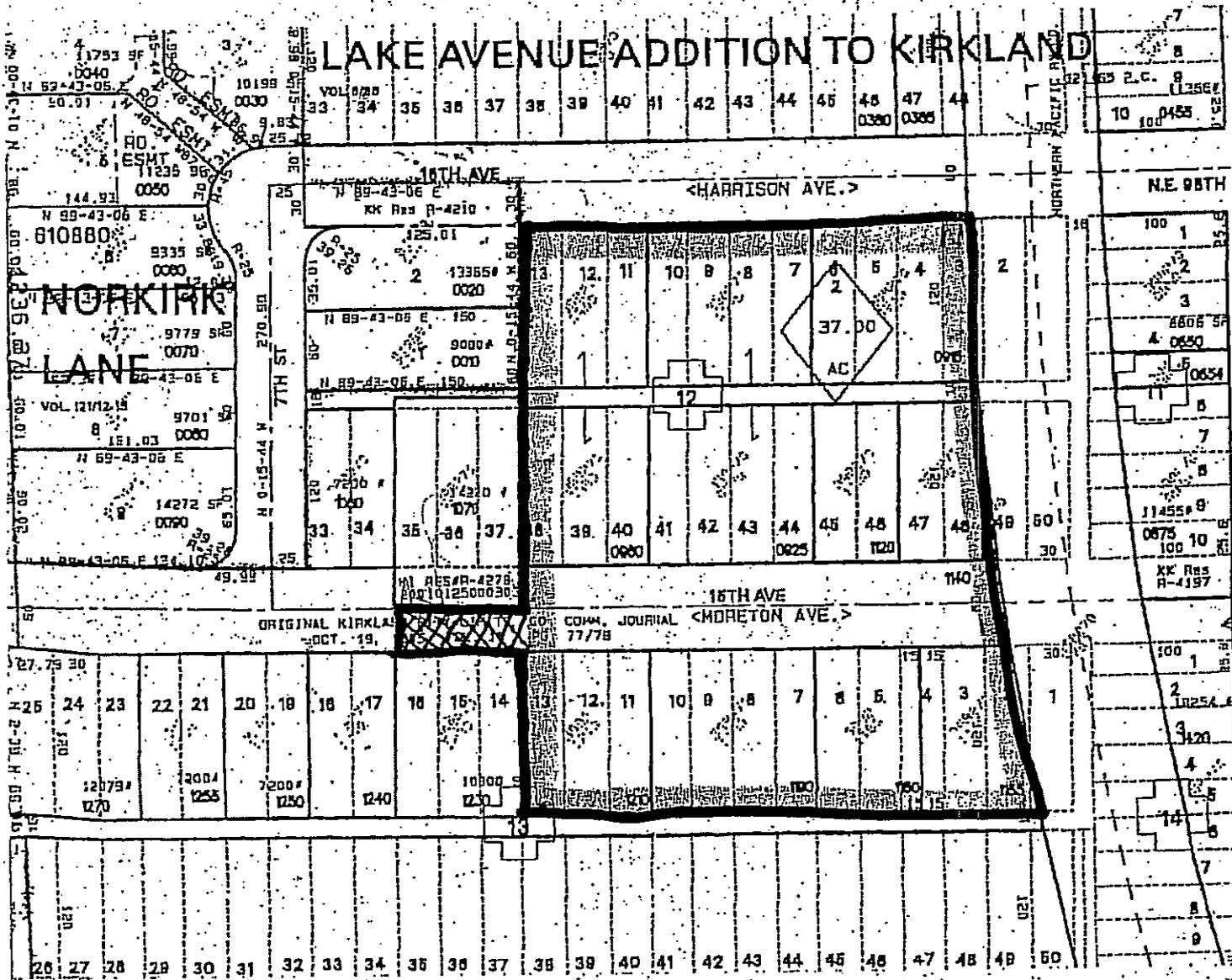
DATED: \_\_\_\_\_, 2007.

\_\_\_\_\_  
Name (typed or printed): \_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington  
Residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

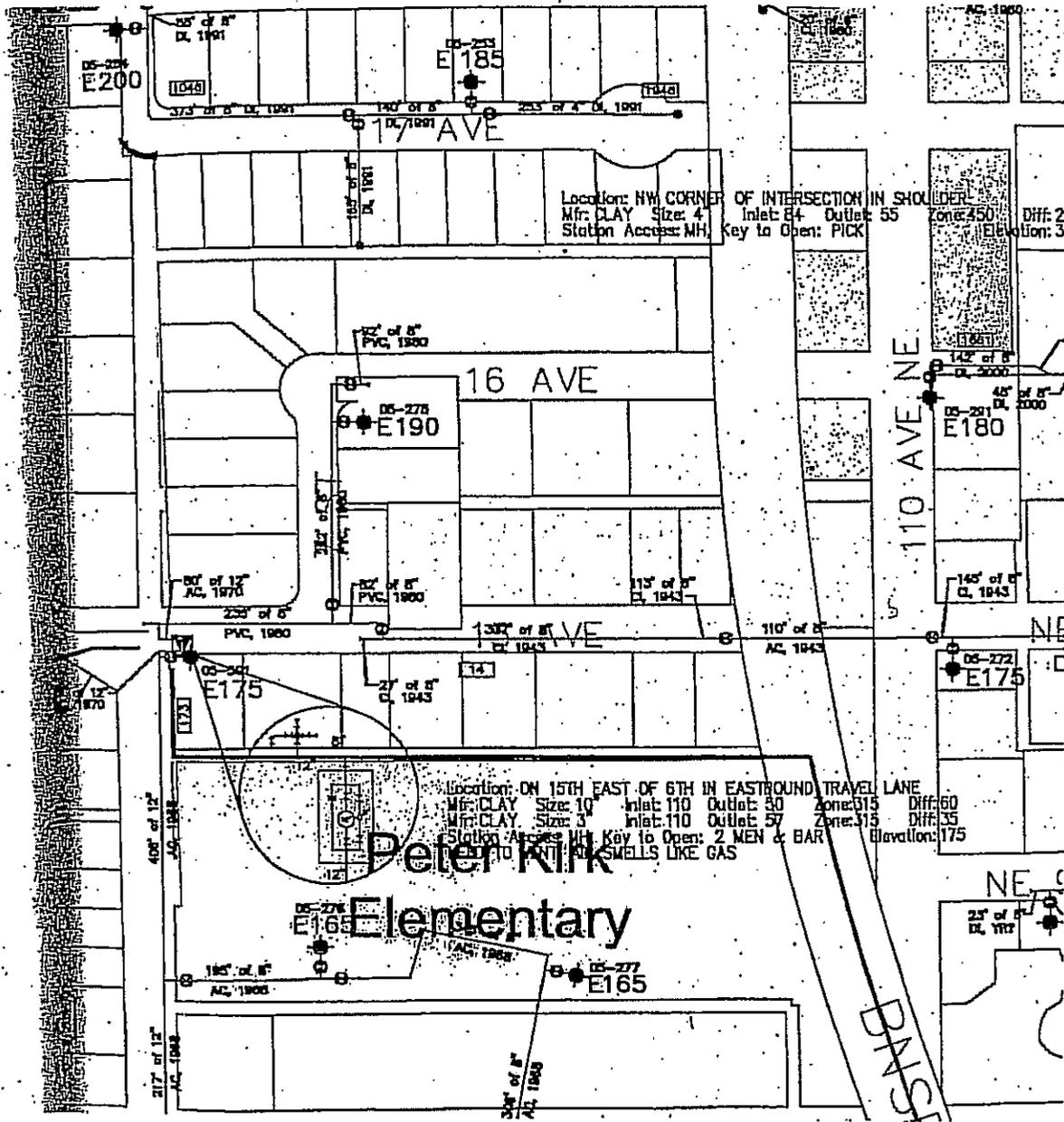
## **EXHIBIT A**

The following described real estate, situated in King County of the State of Washington: Lots 3 through 13 and Lots 38 through 48 and a portion of Lot 49 west of NPR right of way, Block 12, and Lots 1 through 13, Block 13, of Lake Avenue Addition to Kirkland, according to the plat recorded in Volume 6 of Plats, page 86, in King County, Washington; and

Portion of unopened 15<sup>th</sup> Avenue dedicated in the Lake Avenue Addition to Kirkland, Volume 6 of Plats, page 86, records of King County, which abuts Lots 14, 15 and 16 of 13 Lake Avenue Addition to the City of Kirkland, being identified as the portion of the south 30 feet of unopened 15<sup>th</sup> Avenue, which abuts the north side of the herein described property.



Access Property is  
**EXHIBIT B** cross-hatched.



= Water Line location

**EXHIBIT C**



## WATER LINE EASEMENT

THIS WATER LINE EASEMENT ("Easement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between Derek and Susan Arndt ("Grantor") and City of Kirkland, a Washington Municipal Corporation ("Grantee").

Grantor(s) are the owners of the real property legally described as follows:

The following described real estate, situated in King County of the State of Washington: Lots 3 through 13 and Lots 38 through 48 and a portion of Lot 49 west of NPR right of way, Block 12, and Lots 1 through 13, Block 13, of Lake Avenue Addition to Kirkland, according to the plat recorded in Volume 6 of Plats, page 86, in King County, Washington; and

Portion of unopened 15<sup>th</sup> Avenue dedicated in the Lake Avenue Addition to Kirkland, Volume 6 of Plats, page 86, records of King County, which abuts Lots 14, 15 and 16 of 13 Lake Avenue Addition to the City of Kirkland, being identified as the portion of the south 30 feet of unopened 15<sup>th</sup> Avenue, which abuts the north side of the herein described property owned by Grantor ("the Property").

Grantor, for and in consideration of valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants and conveys unto Grantee, its successors and assigns, a perpetual, nonexclusive easement for a water line and related appurtenances now in place or hereafter constructed over, under, in, along, across, together with the right of ingress and egress upon the Property for access to said easement area described as follows:

The current, as-built location of the water line found within that portion of 15<sup>th</sup> Avenue located within the real property described above or, if it is reasonably necessary to move or replace the water line, the water line shall be located within the south thirty (30) feet of that portion of 15<sup>th</sup> Avenue located within the Property and the easement area shall then be an area 15 feet in width, 7.5 feet on both sides of the newly located water line.

Grantor also grants to Grantee and those acting under or on behalf of Grantee the use of such additional area immediately adjacent to the above Easement as shall be required for the construction or maintenance of a water line in the Easement, such additional area to be held to a minimum necessary for that purpose. However, it shall be in Grantee's sole discretion to determine how much additional area is necessary for maintenance or repair of the water line.

In case of an emergency, the Grantee shall have the right without prior notice or proceeding at law, to enter upon the Property for purpose of construction, repair and/or reconstruction of said water line and related appurtenances or making any connections therewith. In all other cases, Grantee shall notify Grantor of the need to enter onto the Property prior to doing so.

**EXHIBIT**     D    

Page 1 of 4

Grantee shall, upon completion of any work within the Property, restore the surface of the Property, and any private improvements disturbed or destroyed during the execution of the work, as nearly as practicable, to the condition they were in before commencement of the work or entry by Grantee.

Grantor may continue to use and enjoy the Property, including the right to use the surface of the property, provided that (1) such use shall not in any way interfere with construction, installation, maintenance, repair, alteration, or reconstruction of Grantee's water line and related appurtenances; (2) Grantor shall not construct any structures or improvements within 7.5 feet on either side of or upon the easement area; and (3) Grantor shall not plant vegetation having deep root patterns which may cause damage to or interfere with the water line placed within the easement by Grantee.

In any legal action between the parties hereto to enforce any of the terms of this Easement, the prevailing party shall be entitled to recover all its expenses incurred in connection therewith, including reasonable attorney's fees, including and in connection with appeals.

This Easement contains the entire understanding between the parties and supersedes any prior understanding and agreements between the parties respecting the Easement. There are no representations, agreements, arrangements, or understandings, oral or written, between and among the parties hereto relating to the subject matter of this Easement which are not fully expressed herein.

This Easement shall be recorded with the King County Recorder, shall run with the land described herein, and shall be binding upon the parties, their heirs, successors-in-interest, and assigns.

DATED at Kirkland, Washington, this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Derek Arndt

\_\_\_\_\_  
Susan Arndt



STATE OF WASHINGTON )  
 )  
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 is the individual described in and who signed this instrument as the \_\_\_\_\_ of the City of Kirkland, a Washington municipal corporation, and acknowledged it to be the said party's free and voluntary act, for the uses and purposes mentioned in this instrument, and on oath stated that (he/she) is authorized to execute the instrument on behalf of said party.

DATED: \_\_\_\_\_, 2007.

\_\_\_\_\_  
Name (typed or printed): \_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington  
Residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

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## **RCW 36.70B.170**

### **Development agreements – Authorized.**

(1) A local government may enter into a development agreement with a person having ownership or control of real property within its jurisdiction. A city may enter into a development agreement for real property outside its boundaries as part of a proposed annexation or a service agreement. A development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. A development agreement shall be consistent with applicable development regulations adopted by a local government planning under chapter [36.70A](#) RCW.

(2) RCW [36.70B.170](#) through [36.70B.190](#) and section 501, chapter 347, Laws of 1995 do not affect the validity of a contract rezone, concomitant agreement, annexation agreement, or other agreement in existence on July 23, 1995, or adopted under separate authority, that includes some or all of the development standards provided in subsection (3) of this section.

(3) For the purposes of this section, "development standards" includes, but is not limited to:

(a) Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes;

(b) The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;

(c) Mitigation measures, development conditions, and other requirements under chapter [43.21C](#) RCW;

(d) Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;

(e) Affordable housing;

(f) Parks and open space preservation;

(g) Phasing;

(h) Review procedures and standards for implementing decisions;

(i) A build-out or vesting period for applicable standards; and

(j) Any other appropriate development requirement or procedure.

(4) The execution of a development agreement is a proper exercise of county and city police power and contract authority. A development agreement may obligate a party to fund or provide services, infrastructure, or other facilities. A development agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

[1995 c 347 § 502.]

**NOTES:**

**Findings – Intent – 1995 c 347 §§ 502-506:** "The legislature finds that the lack of certainty in the approval of development projects can result in a waste of public and private resources, escalate housing costs for consumers and discourage the commitment to comprehensive planning which would make maximum efficient use of resources at the least economic cost to the public. Assurance to a development project applicant that upon government approval the project may proceed in accordance with existing policies and regulations, and subject to conditions of approval, all as set forth in a development agreement, will strengthen the public planning process, encourage private participation and comprehensive planning, and reduce the economic costs of development. Further, the lack of public facilities and services is a serious impediment to development of new housing and commercial uses. Project applicants and local governments may include provisions and agreements whereby applicants are reimbursed over time for financing public facilities. It is the intent of the legislature by RCW [36.70B.170](#) through [36.70B.210](#) to allow local governments and owners and developers of real property to enter into development agreements." [1995 c 347 § 501.]

**RCW 36.70B.180**

**Development agreements – Effect.**

Unless amended or terminated, a development agreement is enforceable during its term by a party to the agreement. A development agreement and the development standards in the agreement govern during the term of the agreement, or for all or that part of the build-out period specified in the agreement, and may not be subject to an amendment to a zoning ordinance or development standard or regulation or a new zoning ordinance or development standard or regulation adopted after the effective date of the agreement. A permit or approval issued by the county or city after the execution of the development agreement must be consistent with the development agreement.

[1995 c 347 § 503.]

**NOTES:**

**Findings – Intent – 1995 c 347 §§ 502-506:** See note following RCW [36.70B.170](#).

**RCW 36.70B.190****Development agreements – Recording – Parties and successors bound.**

A development agreement shall be recorded with the real property records of the county in which the property is located. During the term of the development agreement, the agreement is binding on the parties and their successors, including a city that assumes jurisdiction through incorporation or annexation of the area covering the property covered by the development agreement.

[1995 c 347 § 504.]

**NOTES:**

**Findings – Intent – 1995 c 347 §§ 502-506:** See note following RCW [36.70B.170](#).

**RCW 36.70B.200****Development agreements – Public hearing.**

A county or city shall only approve a development agreement by ordinance or resolution after a public hearing. The county or city legislative body or a planning commission, hearing examiner, or other body designated by the legislative body to conduct the public hearing may conduct the hearing. If the development agreement relates to a project permit application, the provisions of chapter [36.70C](#) RCW shall apply to the appeal of the decision on the development agreement.

[1995 c 347 § 505.]

**NOTES:**

**Findings – Intent – 1995 c 347 §§ 502-506:** See note following RCW [36.70B.170](#).

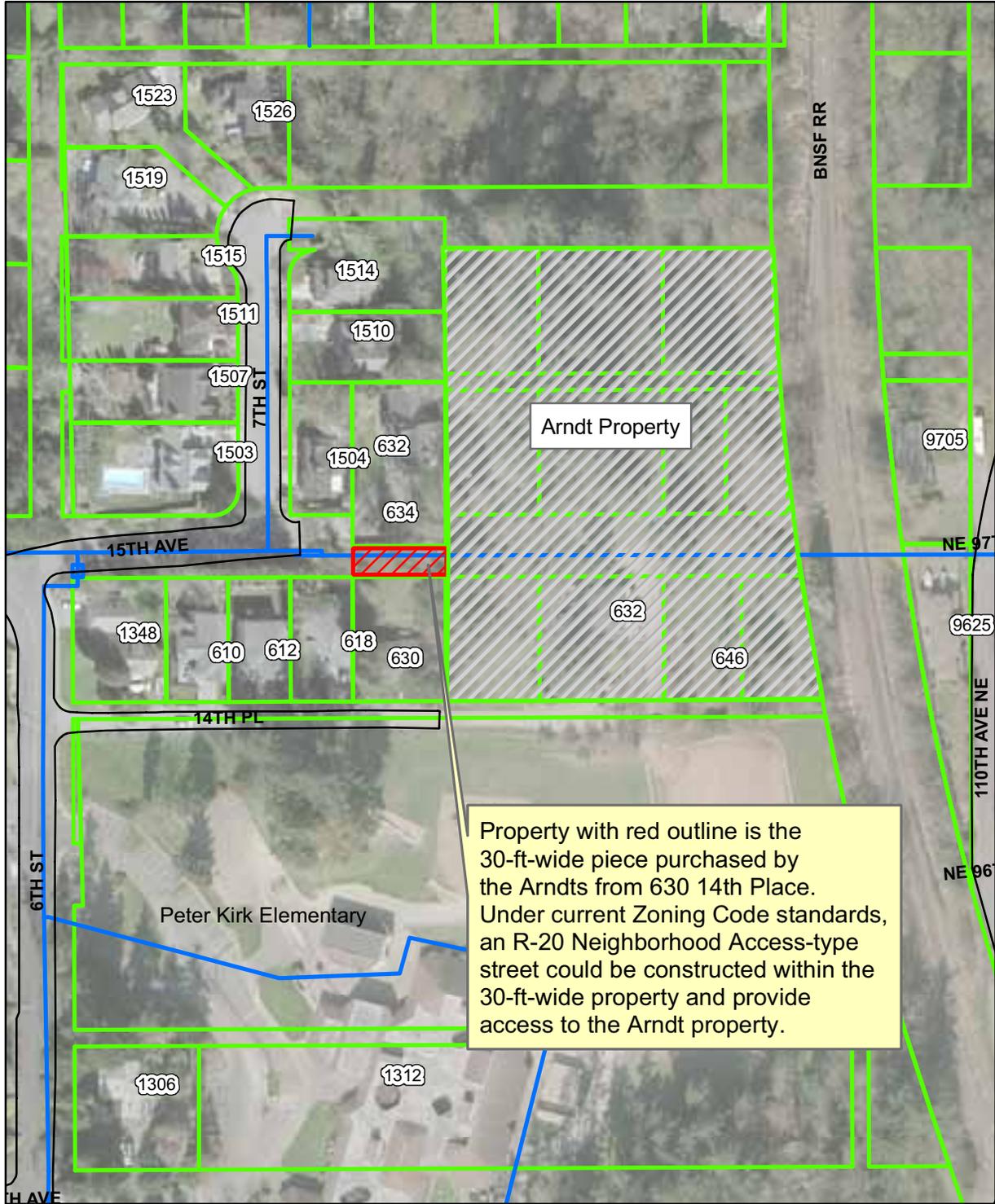
**RCW 36.70B.210****Development agreements – Authority to impose fees not extended.**

Nothing in RCW [36.70B.170](#) through [36.70B.200](#) and section 501, chapter 347, Laws of 1995 is intended to authorize local governments to impose impact fees, inspection fees, or dedications or to require any other financial contributions or mitigation measures except as expressly authorized by other applicable provisions of state law.

[1995 c 347 § 506.]

**NOTES:**

**Findings – Intent – 1995 c 347 §§ 502-506:** See note following RCW [36.70B.170](#).



Produced by the City of Kirkland.

(c) 2007, the City of Kirkland, all rights reserved.

No warranties of any sort, including but not limited to accuracy, fitness or merchantability, accompany this product.

### Exhibit 3

— Pavement edge

— Water\_main



RESOLUTION R-4645

A RESOLUTION OF THE CITY COUNCIL APPROVING A DEVELOPMENT AGREEMENT WITH DEREK AND SUSAN ARNDT AND AUTHORIZING THE CITY MANAGER TO SIGN.

WHEREAS, the City of Kirkland is authorized under RCW 36.70B.170 to enter into development agreements with the owners of real property in the City; and

WHEREAS, Derek and Susan Arndt ("the Arndts") own several adjoining undeveloped parcels of land within the City which, under current development standards, could be developed and accessed by a 30 foot wide right-of-way; and

WHEREAS, the City of Kirkland is willing to accept a 30 foot wide right-of-way for access to the Arndts' property during the duration of a ten-year development agreement; and

WHEREAS, the Arndts are willing to grant the City a 15 foot wide water line easement on the Arndts' real property; and

WHEREAS, consistent with RCW 36.70.170, the City has reserved authority to impose new or different regulations to the extent required by a serious threat to public health and safety; and

WHEREAS, as required by RCW 36.70B.200, the City held a public hearing on a development agreement with the Arndts on June 5, 2007; and

WHEREAS, having considered the testimony, staff analysis and comments at the public hearing, the City desires to enter into a development agreement with the Arndts;

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

1. The City Manager and directed to execute a development agreement with Derek and Susan Arndt substantially in the form of the Arndt - Kirkland Development Agreement attached to this Resolution.

Passed by majority vote of the Kirkland City Council in open meeting this \_\_\_\_ day of \_\_\_\_\_, 2007.

Signed in authentication thereof this \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
MAYOR

Attest:

\_\_\_\_\_  
City Clerk