

AGREEMENT REGARDING REAL PROPERTY EXCHANGE

THIS AGREEMENT REGARDING REAL PROPERTY EXCHANGE (this "Agreement") is entered into this ____ day of November, 2004, by and between the **CITY OF BAINBRIDGE ISLAND, WASHINGTON**, a municipal corporation (the "City") and the **BAINBRIDGE ISLAND PARK & RECREATION DISTRICT**, a Washington special purpose district (the "District").

Recitals

A. The City is the owner of certain unimproved real property located at 692 Highway 305 and commonly called the "John Nelson Park" (the "Park Property").

B. The District leases the Park Property from the City pursuant to that Ground Lease executed between the parties on or about March 26, 2001 (the "Lease"). A true and correct copy of the Lease is attached hereto as **Exhibit "A"** and is incorporated by this reference.

C. The City is currently engaged in negotiations with Island Seniors Community, LLC ("ISC") regarding a potential real property exchange between the City and ISC. Pursuant to such negotiations, the City has agreed to convey to ISC the Park Property in consideration of ISC's conveyance to the City of certain unimproved real property commonly called "Strawberry Plant Property" (as legally described in **Exhibit "B"**, attached hereto and incorporated by this reference.

D. As a condition to the proposed real property exchange, the City must obtain from the District a written termination of the Lease.

E. In consideration of the terms and conditions set forth in this Agreement, the District has agreed to execute and deliver to the City the requested written termination of Lease.

NOW, THEREFORE, the parties hereto agree as follows:

1. Termination of Park Property Lease. In consideration of the terms and conditions set forth in this Agreement, the District shall concurrently herewith execute a Termination of Lease Agreement in substantially similar form as that set forth in **Exhibit "C"**, attached hereto and incorporated by this reference. The District shall deliver two original signed copies to the Mayor or designee within three (3) days of the mutual execution of this Agreement.

2. Conveyance of Strawberry Plant Property to the District. The parties acknowledge and agree that it is their mutual intent and desire that the City eventually transfer

to the District an interest in the Strawberry Plant Property for purposes of operating, maintaining and managing a park located thereon. Towards this mutual goal, the parties agree to negotiate in good faith the specific terms of said transfer by the City to the District, including but not limited to the nature of the interest to be conveyed to the District (i.e., whether a leasehold interest or fee simple title) and the timing of the contemplated transfer.

3. Joint Planning Effort. Until such time as an interest in the Strawberry Plant Property is conveyed to the District, and consistent with the parties' mutual intent that the District ultimately plan, operate, maintain and manage the Strawberry Plant Property as a park, the parties agree to engage in a cooperative joint planning process for the Strawberry Plant Property. Beginning in the first quarter of 2005, the District will convene a cooperative planning effort to determine the future uses of the Strawberry Plant Property, and how the Property may best serve the public for its intended purpose. An initial desire of the City and District is the establishment of a sailing, rowing and kayaking (and other non-motorized boating activities as determined appropriate) center at the Strawberry Plant Property. The parties shall meet in intervals to be determined by them to consider the various planning issues associated with the Strawberry Plant Property, including but not limited to: clean up, shoreline, environment, future uses, construction of structures, etc. The parties shall reasonably endeavor to create a mutually agreeable plan for the Property; provided, however, that until such time as a formal agreement is reached and/or an interest in the Strawberry Plant Property is conveyed to the District, nothing herein shall prohibit the City from undertaking improvements, construction, maintenance or work to the Property that the City, after good faith negotiations with the District, or in cases of emergency, deems to be in the best interest of the public or the Property.

4. Relocation or Replacement of Building. The parties acknowledge that, in agreeing to terminate its leasehold interest in the John Nelson Park Property, the District is relinquishing its right to use the metal building currently located thereon (the "Building"), which constitutes a detriment to the District. To offset the loss of the District's use of the Building, the City shall reimburse the District the sum of \$25,000.00 for the relocation of the Building or for construction of a new building at another property suitable and appropriate to locate such Building. The District shall be responsible for planning, bidding and coordinating all work required to relocate or construct the Building. The City shall reimburse the District the aforementioned funds when a contract to relocate or construct the Building is approved.

5. Partial Invalidity. If any term, covenant or condition of this Agreement, or the application thereof, to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term covenant and condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

6. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, and all of which together will constitute one and the same instrument.

7. Governing Law. This Agreement is governed by and shall be construed according to the laws of the State of Washington. Venue for any dispute arising hereunder shall be Kitsap County, Washington.

8. Binding Effect. This Agreement is binding on the City, the District, and their respective successors, assigns and legal representatives.

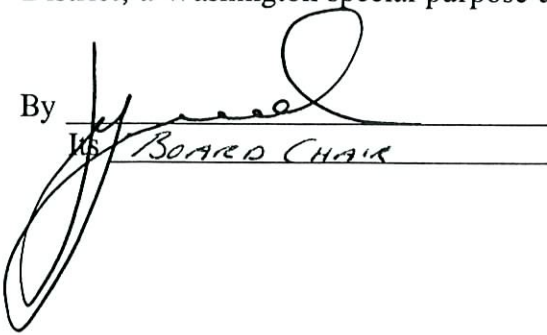
9. Assignment. The District may assign this agreement to its successor, the Bainbridge Island Metropolitan Park and Recreation District, also a Washington special purpose district. Except as specifically permitted herein, this Agreement may not be assigned without the express written consent of the parties, which consent shall not be unreasonably withheld.

10. No Waiver. The failure of either party to seek redress for breach, or to insist upon the strict performance, of any covenant, agreement, provision or condition of this Agreement shall not constitute a waiver thereof, and the each party shall have all remedies provided herein and by applicable law with respect to any subsequent act which would have originally constituted a breach

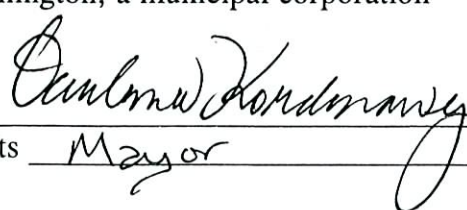
11. Entire Agreement; Amendment. This Agreement sets forth the final and entire Agreement between the parties hereto and neither they nor their agents shall be bound by any terms, conditions, statements, warranties or representations, oral or written, not herein contained. No amendment or modification of this Agreement will be effective unless in writing and signed by the City and the District.

THIS AGREEMENT is effective as of the date set forth in the first sentence of this Agreement.

DISTRICT:
Bainbridge Island Parks & Recreation
District, a Washington special purpose district

By 
Its BOARD CHAIR

CITY:
The City of Bainbridge Island,
Washington, a municipal corporation

By 
Its Mayor