REAL PROPERTY EXCHANGE AGREEMENT

THIS REAL PROPERTY EXCHANGE AGREEMENT (this "Agreement") is entered into this 28 day of Jan, 2005 by and between the CITY OF BAINBRIDGE ISLAND, WASHINGTON (the "City") and ISLAND SENIORS COMMUNITY, LLC, a Washington limited liability company ("ISC").

Recitals

A. The City is the owner of certain real property located in Bainbridge Island, Kitsap County, Washington, as legally described on **Exhibit A**, attached hereto and incorporated by this reference (the "John Nelson Park Property").

B. ISC is the owner of certain real property located in Bainbridge Island, Kitsap County, Washington, as legally described on **Exhibit B**, attached hereto and incorporated by this reference (the "Strawberry Plant Property").

C. As evidenced by appraisals performed by Anthony M. Gibbons of RE*SOLVE for both the John Nelson Park Property and the Strawberry Plant Property, each dated June 4, 2004 respectively, the fair market values of the John Nelson Park Property and the Strawberry Plant Property are almost identical.

D. The City has determined that the Strawberry Plant Property, which is vacant waterfront property, has great potential for passive recreational use, and would make a desirable waterfront park for the benefit of the citizens of Bainbridge Island. The John Nelson Park, which is owned by the City and leased to the Bainbridge Island Parks District (the "Parks District") for public park purposes, has been underutilized by the public due to problems with the Park's location and topography.

E. ISC desires to acquire the John Nelson Park Property for purposes of developing and constructing a seniors community. In addition, ISC contemplates the continued use of a portion of the John Nelson Park Property as a park, as set forth more fully below. The City has determined that ISC's proposed use of the John Nelson Park Property, in conjunction with the proposed real estate exchange set forth herein, will constitute a benefit to the citizens of Bainbridge Island.

F. The Parks District, as the current lessee of the John Nelson Park, has agreed to the termination of its leasehold interest in the John Nelson Park Property.

G. The City desires to exchange its John Nelson Park Property for ISC's Strawberry Plant Property, and ISC desires to exchange its Strawberry Plant Property for the City's John Nelson Park Property, all in accordance with the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties agree as follows:

1. Real Property Exchange. Subject to the contingencies set forth in Section 3 below, and in accordance with the terms of this Agreement, the City shall transfer to ISC the John Nelson Park Property in exchange for ISC's Strawberry Plant Property. Subject to the contingencies set forth in Section 3 below, and in accordance with the terms of this Agreement, ISC shall transfer to the City the Strawberry Plant Property in exchange for the City's John Nelson Park Property.

2. Property Appraisals. The John Nelson Park Property and the Strawberry Plant Property are the subjects of independent appraisals prepared by Anthony Gibbons and RE*SOLVE, dated June 4, 2004 (the "Appraisals"). The parties acknowledge and agree that, pursuant to such Appraisals, the John Nelson Park Property has a current market value of $1,525,000.00 and the Strawberry Plant Property has a current market value of $1,540,000.00. The parties agree to exchange their respective properties without further remuneration to the other, and they acknowledge that the consideration for the exchange shall be the value of the property received by each party hereunder and the covenants set forth herein.

To the extent that the value of the Strawberry Plant Property being transferred by ISC is greater than the value of the John Nelson Park Property being transferred to the City, ISC shall have the right, but not the obligation, to claim the difference between the fair market value of the properties as a tax deductible charitable contribution from ISC. However, the City makes no representation as to the tax consequences of the exchange contemplated by this Agreement, including but not limited to any Section 1031 exchange issues, and ISC has not relied upon the advice of the City and/or its officers, agent or consultants with respect to any tax issues arising from this transaction. ISC shall obtain independent tax counsel and shall be solely responsible for compliance with all applicable tax regulations and requirements. To the extent that the appraised value of the John Nelson Park Property is below the appraised value of the Strawberry Plant Property, the parties agree that this difference does not reflect the existence of defects in the John Nelson Park Property.

3. Contingencies. The parties' respective obligations under this Agreement shall be subject to the following contingencies:

3.1 The City's Contingencies. The City's obligations hereunder are expressly contingent upon the City determining in its sole discretion to waive each of the following contingencies. The City shall have the below-described time periods from the date of mutual execution of this Agreement to waive and remove the City contingencies:

3.1.1 Condition of Title. Upon mutual acceptance of this Agreement, ISC shall cause Pacific Northwest Title Company, 9927 Mickelberry Road, N.W., Silverdale, Washington, (the "Title Company") to issue to the City a preliminary commitment for standard owner's policy of title insurance for the Strawberry Plant Property, together with full copies of

any exceptions set forth therein (the "City's Preliminary Commitment"). The City shall have ten (10) days after deliver of the City's Preliminary Commitment within which to notify ISC, in writing, of the City's disapproval of any exceptions shown on the Preliminary Commitment.

If the City disapproves any of the exceptions or defects set forth in the City's Preliminary Commitment, ISC shall have five (5) days from delivery of the City's notice to eliminate any disapproved exceptions from the policy of title insurance to be issued in favor of the City; provided, that all monetary encumbrances and liens, if any, shall be deemed automatically disapproved and shall be paid by ISC at Closing; and provided, further that, if such exceptions or defects cannot be eliminated within such five (5) day period, ISC may notify the City in writing of ISC's agreement to remove such exceptions or defects, in which case such exceptions or defects shall be removed from title prior to Closing.

If disapproved exceptions are not eliminated within said five (5) day period, or if ISC fails to notify the City within five (5) days of its willingness to remove such exceptions prior to Closing, or if ISC notifies the City in writing that ISC will not eliminate the same, then this Agreement shall terminate, and neither the City nor ISC shall have any further rights, duties or obligations hereunder, unless within two (2) days after the earlier of (1) the expiration of said five (5) day period, or (ii) the date that ISC notifies the City that ISC will not eliminate the disapproved exceptions, the City waives its prior disapproval and elects to proceed with Closing subject to the disapproved exceptions.

3.1.2 Inspection. The City has ten (10) days from the date of mutual execution hereof within which to fully examine all aspects and conditions of the Strawberry Plant Property and to determine that the Strawberry Plant Property and the conditions thereof are fully acceptable for the City's Intended Purpose. In conjunction with such Inspection, the parties acknowledge and agree that ISC has previously delivered to the City the two environmental assessments performed in 2004 on the Strawberry Plant Property at the request of ISC, and that such assessments may be used by the City in its inspection and approval of the Strawberry Plant Property. If the City does not notify ISC of its disapproval of the inspection or environmental assessments within the deadline set forth herein, this contingency shall be deemed waived.

3.1.3 Approval by City Council. This Agreement is subject to the approval of the City Council of Bainbridge Island prior to Closing. The parties acknowledge and agree that Council approval was obtained on or about, November 10, 2004, and that this contingency is therefore deemed satisfied.

3.1.4 Termination of Parks District Lease. This Agreement is contingent upon the Parks District's agreement to the termination of its leasehold interest in the John Nelson Park. The City shall diligently pursue the termination of its lease with the Parks District, in accordance with this Agreement and at Closing shall deliver to Escrow a Termination of Lease in substantially similar form as that set forth in **Exhibit C**, attached hereto and incorporated by this reference.

3.1.5 Consent of Heir. This Agreement is contingent upon the City's obtaining prior to Closing a written consent to the proposed exchange from Eric Stanley Lund, in substantially similar form as that set forth in **Exhibit D**, attached hereto and incorporated by this reference. The parties acknowledge that the City received such consent on or about October 6, 2004, and that this contingency is therefore deemed satisfied. The parties acknowledge and agree that the John Nelson Park Property was deeded to the City by the estate of John Nelson via Deed of Executrix, dated April 25, 1950. Pursuant to such bequest, the John Nelson Park Property was dedicated as a public park. Eric Stanley Lund, the only and closest known living heir of John Nelson, has consented to the exchange contemplated herein, and the City and ISC accept this consent as proper authorization for the proposed exchange; provided, however, that neither the City nor ISC make any representations or warranties to the other as to the legal effect of such consent, and each assumes the risk that such consent may be subsequently challenged and/or invalidated. As set forth more fully in Section 8 below, the parties agree to release each other from any direct, consequential and incidental damages sustained by either party as a result of any legal challenge to the proposed exchange based upon the dedication of John Nelson.

3.1.7 Waiver of Contingencies. If the City notifies ISC in writing that the contingencies set forth herein have been waived, or if the contingencies otherwise are satisfied or expire on their own terms, the Closing of this transaction shall thereafter proceed in accordance with the terms hereof.

3.1.8 The conditions contained in Subsection 3.1 of this Agreement are intended solely for the benefit of the City. Except as otherwise expressly provided herein, if any of the foregoing conditions are not satisfied, the City will have the right as its sole election either to waive the condition in question and proceed with the exchange, or in the alternative to terminate this Agreement by the delivery of timely written notice to ISC, whereupon, except as otherwise provided in this Agreement, neither party hereto will have any further rights, duties or obligations under this Agreement.

3.2 ISC's Contingencies. ISC's obligations hereunder are expressly contingent upon ISC determining in its sole discretion to waive each of the following contingencies. ISC shall have the below-described time periods from the date of mutual execution of this Agreement to waive and remove the ISC contingencies:

3.2.1 Condition of Title. Upon mutual acceptance of this Agreement, the City shall cause the Title Company) to issue to ISC a preliminary commitment for standard owner's policy of title insurance for the John Nelson Park Property, together with full copies of any exceptions set forth therein ("ISC's Preliminary Commitment"). ISC shall have ten (10) days after deliver of ISC's Preliminary Commitment within which to notify the City, in writing, of ISC's disapproval of any exceptions shown on ISC's Preliminary Commitment.

If ISC disapproves any of the exceptions or defects set forth in ISC's Preliminary Commitment, the City shall have five (5) days from delivery of ISC's notice to eliminate any disapproved exceptions from the policy of title insurance to be issued in favor of

ISC; provided, that all monetary encumbrances and liens, if any, shall be deemed automatically disapproved and shall be paid by the City at Closing; and provided, further that, if such exceptions or defects cannot be eliminated within such five (5) day period, the City may notify ISC in writing of the City's agreement to remove such exceptions or defects, in which case such exceptions or defects shall be removed from title prior to Closing.

If disapproved exceptions are not eliminated within said five (5) day period, or if the City fails to notify ISC within five (5) days of its willingness to remove such exceptions prior to Closing, or if the City notifies ISC in writing that the City will not eliminate the same, then this Agreement shall terminate, and neither the City nor ISC shall have any further rights, duties or obligations hereunder, unless within two (2) days after the earlier of (1) the expiration of said five (5) day period, or (ii) the date that the City notifies ISC that the City will not eliminate the disapproved exceptions, ISC waives its prior disapproval and elects to proceed with Closing subject to the disapproved exceptions.

For purposes of this Subsection 3.2.1, ISC acknowledges that the John Nelson Park Property is the subject of that Contract for Office Trailer Removal, dated August 12, 2004 between the City and Pacific Heights Construction, Inc., relating to Pacific Heights Construction's use and removal of a trailer located upon the John Nelson Park Property (the "Trailer Removal Agreement"). ISC has received a copy of the Trailer Removal Agreement and hereby consents to the same as a permitted encumbrance upon the John Nelson Park Property.

3.2.2 Inspection. ISC has ten (10) days from the date of mutual execution hereof within which to fully examine all aspects and conditions of the John Nelson Park Property and to determine that the John Nelson Park Property and the conditions thereof are fully acceptable for ISC's Intended Purpose. In conjunction with such the City has, at the City's sole cost and expense, delivered to ISC a Phase I environmental assessment for the John Nelson Park Property, which assessment may be used by ISC in connection with its inspection hereunder.

3.2.3 Zoning Confirmation. This Agreement is contingent upon ISC's receipt prior to Closing of confirmation from the City, upon proper application to the City and in accordance with the City's normal practices and procedures, that (1) the zoning laws, ordinances and regulations applicable to the John Nelson Park Property permits the construction of a seniors residential project upon the John Nelson Park Property; (2) the available FAR for the property is not less than .50; and (3) based upon ISC's application, no extraordinary circumstances exist that would prevent the development of ISC's proposed seniors residential project. ISC shall diligently pursue the confirmation contemplated herein and shall provide the City with all documentation and information necessary for the City to make such a determination.

3.2.4 Waiver of Contingencies. If ISC notifies the City in writing that the contingencies set forth herein have been waived, or if the contingencies otherwise are

satisfied or expire on their own terms, the Closing of this transaction shall thereafter proceed in accordance with the terms hereof.

3.2.5 The conditions contained in Subsection 3.2 of this Agreement are intended solely for the benefit of ISC. Except as otherwise expressly provided herein, if any of the foregoing conditions are not satisfied, ISC will have the right as its sole election either to waive the condition in question and proceed with the exchange, or in the alternative to terminate this Agreement by the delivery of timely written notice to the City, whereupon, except as otherwise provided in this Agreement, neither party hereto will have any further rights, duties or obligations under this Agreement.

4. Closing and Escrow

4.1 Escrow Agent. Upon mutual execution of this Agreement, the parties shall cause to be delivered an executed counterpart with Olympic Northwest Mortgage and Escrow, 793 Ericksen, Bainbridge Island, Washington 98110 (the "Escrow Agent") for consummation of the exchange contemplated hereby. The City and ISC shall execute such additional and supplementary escrow instructions as may be reasonable or appropriate to enable the Escrow Agent to comply with the terms of this Agreement. In the event of a conflict between the provisions of this Agreement and any escrow instructions, the terms of this Agreement shall govern.

4.2 Closing Date. The exchange transaction set forth in this Agreement shall be closed as soon as reasonably possible following review and approval of this transaction by the City Council of Bainbridge Island, subject only to the satisfaction of the contingencies set forth herein. The parties shall endeavor to close no later than May 31, 2005.

4.3 Conveyance of Title. On the Closing Date, the City shall convey to ISC title to the John Nelson Park Property by statutory warranty deed, subject only to the exceptions to title approved by ISC. Prior to or concurrent with the delivery of the statutory warranty deed, the City shall also deliver or cause to be delivered to ISC, for ISC's benefit, a final ALTA Standard Coverage Owner's Policy of Title Insurance for the Property, in ISC's name and in the amount of the appraised value of the John Nelson Park Property, as set forth in the RE*SOLVE appraisal, dated June 4, 2004. The final title policy shall contain only those permitted exceptions approved by ISC pursuant to this Agreement.

On the Closing Date, ISC shall convey to the City title to the Strawberry Plant Property by statutory warranty deed, subject only to the exceptions to title approved by the City. Prior to or concurrent with the delivery of the statutory warranty deed, ISC shall also deliver or cause to be delivered to the City, for the City's benefit, a final ALTA Standard Coverage Owner's Policy of Title Insurance for the Property, in the City's name and in the amount of the appraised value of the Strawberry Plant Property, as set forth in the RE*SOLVE appraisal, dated June 4, 2004. The final title policy shall contain only those permitted exceptions approved by the City pursuant to this Agreement.

4.4 Prorations. All taxes and assessments for the John Nelson Park Property and the Strawberry Plant Property shall be respectively prorated as of the Date of Closing between the two parties.

4.5 Closing Costs. On Closing, the parties shall share equally: (i) all recording fees; and (ii) escrow fees charged by the Escrow Agent.

With respect to the John Nelson Park Property, the City shall pay any and all real estate excise taxes and compensating taxes associated with the transfer of the John Nelson Park Property, financing costs, if any, costs associated with the exchange, and the premium for the owner's standard form of title insurance to be issued by Title Company for the benefit of ISC in the amount of the appraised value of the John Nelson Park Property. ISC shall pay the cost of any other title insurance, including any extended coverage and any endorsement thereto that ISC may require.

With respect to the Strawberry Plant Property, ISC shall pay any and all real estate excise taxes and compensating taxes associated with the transfer of the Strawberry Plant Property, financing costs, if any, costs associated with the exchange, and the premium for the owner's standard form of title insurance to be issued by Title Company for the benefit of the City in the amount of the appraised value of the Strawberry Plant Property. The City shall pay the cost of any other title insurance, including any extended coverage and any endorsement thereto that the City may require.

4.6 Closing Obligations of the City. At Closing, the City shall deliver to the Escrow Agent the following duly executed and acknowledged documents (where appropriate):

4.6.1 A statutory warranty deed sufficient to convey fee simple title to the John Nelson Park Property, subject only to the title exceptions approved by ISC pursuant to this Agreement.

4.6.2 A consent to property exchange, in substantially similar form as that set forth in **Exhibit E**, executed by Eric Stanley Lund.

4.6.3 A Termination of Lease between the City and the Parks Department, in substantially similar form as that set forth in **Exhibit D.**

4.6.4 A Closing Statement in form and content reasonably satisfactory to ISC.

4.6.5 A FIRPTA certification, to the extent required by the Escrow Agent.

4.7 Closing Obligations of ISC. At Closing, ISC shall deliver to the Escrow Agent the following duly executed and acknowledge documents (where appropriate):

4.7.1 A statutory warranty deed sufficient to convey fee simple title to the Strawberry Park Property, subject only to the title exceptions approved by the City pursuant to this Agreement.

4.7.2 A Closing Statement in form and content reasonably satisfactory to the City.

4.7.3 A FIRPTA certification, to the extent required by the Escrow Agent.

4.8 Possession. The City shall be entitled to possession of the Strawberry Plant Property, and ISC shall be entitled to possession of the John Nelson Park Property upon Closing.

5. Miscellaneous Covenants.

5.1 Access Easement. In conjunction with this Agreement, ISC is in need of an access easement across the John Nelson Park Property, for fire lane purposes. In consideration of the covenants and promises set forth herein, and to facilitate the contemplated exchange, upon mutual execution of this Agreement the City shall convey to ISC an access easement in substantially similar form as that set forth in **Exhibit E**, attached hereto and incorporated by this reference. The uses contemplated under the Easement are permanent in nature but the Easement shall expire upon the Closing of this transaction and transfer of the John Nelson Park Property to ISC. If the exchange contemplated in this Agreement fails to Close for any reason whatsoever, the City shall nevertheless grant ISC the access easement set forth in Exhibit E; provided, however, that as a condition to such conveyance, ISC shall pay to the City an amount equal to the fair market value of the Easement. The fair market value of the Easement shall be determined via an appraisal performed by a certified appraiser mutually acceptable to both parties. Said appraisal shall be conducted within thirty (30) days following the termination of this Agreement, and ISC shall pay to the City the required compensation within fifteen (15) days following ISC's receipt of said appraisal. The covenants set forth herein shall survive termination of this Agreement.

5.2 Park Dedication. As part of ISC's development of the John Nelson Park Property, and as a condition to the City's approval of said development, ISC shall dedicate to the Parks District or the Parks District's successor a public passive use park and/or a children's play area consisting of not less than .8 acres and not more than 1 acre of the John Nelson Park Property. Said dedication shall specify that the dedicated property shall be used as a public passive use park and/or a children's play area in perpetuity, and that the name of such park shall be "John Nelson Park". Such dedication shall be effectuated by way of statutory warranty deed or other instrument approved by the City and Parks District and ISC agrees that it will negotiate the details of this dedication and the park uses, including the terms set forth above, with the Parks District. The City agrees that this dedication shall not reduce ISC's FAR calculation at the time of its development, but that such calculation shall be made as if the

dedication has not been made prior to development of the John Nelson Park Property. The obligations set forth in this Subsection 5.2 shall survive Closing.

5.3 Removal of Telemetry System. . The City shall remove the City's public works telemetry equipment and system currently installed and kept on the John Nelson Park Property and shall relocate and reinstall such system at the City's main public works facility, in accordance with the timing standards and specifications to be determined by the parties. ISC shall reimburse the City for the costs the City incurs for such removal and relocation; provided, however, that ISC shall not be required to reimburse the City for more than $20,000 of such costs. The obligations set forth in this Subsection 5.3 shall survive Closing, and the City's approval of ISC's development of the John Nelson Park Property shall be conditioned upon ISC's satisfactory performance of this obligation.

6. Default. If either party fails, without legal excuse, to complete the exchange provided for herein, the defaulting party shall pay to the non-defaulting party the sum of $25,000.00, as agreed and liquidated damages, and not as a penalty, as the non-defaulting party's sole and exclusive remedy for the defaulting party's breach. Upon receipt of such amount by the non-defaulting party, the parties shall be relieved of any further obligations or liability hereunder, except for the obligations set forth in Subsection 5.2 and 5.3 above and the obligations set forth in Section 8 below, which shall survive any termination or breach of this Agreement.

_____ The City's Initials _____ ISC's Initials

7. Covenants to Operate and Maintain.

7.1 The City's Covenants. The City shall maintain, repair, manage and operate the John Nelson Park Property in a businesslike manner in accordance with the City's prior practices. The City agrees that it will not damage, dissipate, nor commit waste on any portion of the John Nelson Park Property, nor through inaction permit any damage, dissipation or waste on any portion of the John Nelson Park Property, between the date of acceptance of this Agreement and the Closing Date. The City shall surrender the John Nelson Park Property to ISC in as good condition (normal wear and tear excepted) as exists on the date of this Agreement.

7.2 ISC's Covenants. ISC shall maintain, repair, manage and operate the Strawberry Plant Property in a businesslike manner. ISC agrees that it will not damage, dissipate, nor commit waste on any portion of the Strawberry Plant Property, nor through inaction permit any damage, dissipation or waste on any portion of the Strawberry Plant Property, between the date of acceptance of this Agreement and the Closing Date. ISC shall surrender the Strawberry Plant Property to the City in as good condition (normal wear and tear excepted) as exists on the date of this Agreement.

8. Cooperation and Indemnification Regarding Elimination of Park Dedication. As set forth above, the parties acknowledge and agree that the John Nelson Park was dedicated to

the City on the condition that it be used as a public park. The City has provided ISC with all testamentary documents in its possession relating to the dedication, receipt of which is hereby acknowledged by ISC. The only and closest known living heir to John Nelson, Eric Stanley Lund, has consented to the exchange set forth herein, and both the City and ISC, based upon their own independent legal counsel, have accepted Eric Stanley Lund's consent as proper authorization for the exchange. In effectuating the exchange, the City shall reasonably cooperate with ISC in delivering to the Title Company any information and/or documentation reasonably required by the Title Company to clear title to the John Nelson Park; provided, that the ISC shall be solely responsible for all costs associated with the Title Company's requirement in this regard.

Notwithstanding, the parties acknowledge the risks associated with this exchange, and each party expressly assumes all such risks and agrees to release the other from liability resulting from such exchange, as set forth herein.

If a legal challenge of any nature is filed which effectively blocks and/or delays Closing, or otherwise renders Closing impracticable or imprudent, either party may thereafter terminate this Agreement upon thirty (30) days written notice to the other party. Alternatively, upon written agreement between the parties, which agreement shall be attached hereto as an addendum, the parties may agree to proceed with Closing (to the extent not prohibited by any court order or mandate) and/or to cooperatively defend against such legal challenge. In the event that the parties agree to cooperatively defend against any legal challenge, they shall do so in accordance with their written agreement, as to be determined by the parties; provided, however, that nothing herein shall be construed as obligating either party to agree to certain terms and/or conditions of the cooperative defense, and either party may elect to terminate this Agreement, without recourse, offset or further liability, if the parties cannot agree as to the terms and conditions of such cooperative defense. Unless and until this Agreement is terminated, neither party shall settle with any plaintiff or claimant without the other party's written consent, which consent shall not be unreasonably withheld.

If a legal challenge and/or litigation is filed after Closing, and if such legal challenge and/or litigation is in any part based upon or related to the dedication of the John Nelson Park Property to the City (the "Dedication Issue"), the parties shall jointly defend such challenge and/or and shall share equally in the cost of such defense, as it relates to the Dedication Issue. Upon notice of such challenge and/or litigation, whether in the form of service or otherwise, the party receiving such notice shall provide such notice to the other, including all known information relating to such challenge and/or litigation. To the extent that only one party is named in the challenge and/or litigation, the named party shall move to include the other party as a necessary defendant. Except as may be precluded by a conflict of interest, the parties shall endeavor to select legal counsel to jointly defend them; provided, however, that to the extent that any part of the claims asserted against the parties are covered by the City's insurance, and, to the extent permitted by the City's insurance contract, the City's insurance defense counsel shall be accepted by both parties as reasonable legal counsel and ISC expressly acknowledges the adequacy of such representation. (Notwithstanding the foregoing, ISC acknowledges and agrees that nothing herein shall be construed as a guarantee

by the City that any claim regarding the Dedication Issue will be covered by the City's insurance or that the City's insurance counsel is permitted to act as joint counsel for the City and ISC, as contemplated herein. In the event that ISC is required to retain independent counsel, ISC shall bear the costs and expenses of such independent counsel). The parties shall bear all costs and expenses of separate legal representation, to the extent that joint legal representation is precluded by a conflict of interest, by the City's insurance contract, or if separate counsel is otherwise retained at the discretion of such party. The parties shall reasonably cooperate with each other in defending any challenge and/or litigation and shall share equally in any damages, costs, fees or expenses awarded to any claimant, to the extent that such damages, costs, fees or expenses relate to the Dedication Issue; provided, however, that each party shall be solely responsible for any damages, costs, fees or expenses which are solely attributable to that party's negligence or malfeasance; and provided, further, that the parties shall each release the other from liability for any direct, incidental, or consequential damages which may be sustained by the releasing party as a result of any court order or decision relating to the Dedication Issue. Neither party shall settle such challenge and/or litigation without the prior written consent of the other party, which consent shall not be unreasonably withheld.

The obligations set forth in this Section 8 shall survive Closing.

9. Notices. All notices, demands, consents, approvals and other communications which are required or allowed to be given by either party to the other hereunder shall be in writing and shall be either (i) hand delivered to the other party; (ii) sent by United States regular mail, postage prepaid, return receipt requested; or (iii) delivered by a duly licensed and reliable professional same-day or overnight courier, all addressed to the appropriate party at its address set forth below, or at such other address as such party shall have last designated by notice to the other. Notices, demands, consents, approvals and other communications shall be deemed given when delivered or three days after mailing to the following addresses:

To the City:

Attn: City Administrator
280 Madison Avenue North
Bainbridge Island, Washington 98110

With a copy to the City's Attorney:

Rod P. Kaseguma
Inslee, Best, Doezie & Ryder, P.S.
777 - 108th Avenue NE, Suite 1900
P.O. Box C-90016
Bellevue, WA 98009-9016

To ISC:

Attn: Bill Carruthers

_____

_____

With a copy to ISC's Attorney:

Kathryn M. Carruthers
Law Offices of Kate Carruthers
355 Ericksen Avenue Ste 410
Bainbridge Island, Washington 98110

10. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto, each of which counterpart when so executed shall have the same force and effect as if that party had signed all other counterparts.

11. Brokers and Finders. Each party represents and warrants to the other that, to such party's knowledge, no broker, agent or finder is involved in this transaction. In the event any broker or other person makes a claim for a commission or finder's fee based upon the transaction contemplated by this Agreement, the party through whom said broker or other person makes its claim will indemnify and hold harmless the other party from said claim and all liabilities, costs, and other expenses related thereto, including but not limited to, reasonable attorneys' fees, which may be incurred by such other party in connection with such claim. This indemnity shall survive the closing of this transaction.

12. Amendments. This Agreement may be amended or modified only by a written instrument executed by the party against whom enforcement of such amendment or modification is sought.

13. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Washington. Venue for any dispute arising hereunder shall be Kitsap County, Washington.

14. Attorney's Fees. If either party fails to perform any of its obligations under this Agreement or if a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the party not prevailing in the dispute will pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights under this Agreement, including without limitation, court costs and reasonable attorney's fees, whether incurred at the pre-trial, trial or appeals level and including arbitration fees, if any.

15. Time of the Essence. Time is of the essence of this Agreement and of all acts required to be done and performed by the parties hereto.

16. Waiver. Neither the City's nor ISC's waiver of the breach of any covenant under this Agreement will be construed as a waiver of the breach of any other covenants or as a waiver of a subsequent breach of the same covenant.

17. Assignment. Neither party may assign this Agreement without the other party's prior written consent, which may be withheld for any reason.

18. Negotiation and Construction. This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either party.

19. Additional Acts. Except as otherwise provided herein, in addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by any

party hereto, the parties agree to perform, execute and/or deliver, or cause to be performed, executed and/or delivered, any and all such further acts, deeds and assurances which may reasonably be required to effect the transactions described in this Agreement.

20. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the exchange of the John Nelson Park Property and the Strawberry Plant Property, and supersedes all prior agreements and understandings, oral or written, between the parties relating to the subject matter of this Agreement.

21. Authorization. Each of the individuals executing this Agreement warrants and represents to the others that he or she has the full power and authority to enter into this Agreement on behalf of the entity that such party purports to represent.

The parties have executed this Agreement as of the date first stated above.

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

By Darlene Kordonowy
Its Mayor

ISC:
Island Seniors Community, LLC, a Washington limited liability company:

By Bainbridge Projects LLC
Its Manager
By: [illegible]
Its Manager.

EXHIBIT A

Legal Description of John Nelson Park Property

Situate in the County of Kitsap, State of Washington and described as follows:

Beginning at the Northwest corner of the Southeast quarter (SE ¼) of Northwest quarter (NW ¼) of Section 26, Township 25 North, Range 2 East, W.M.; thence South 66 rods, more or less, to the outer edge of gulch or ravine; thence along the outer edge of said gulch or ravine easterly and northerly to the north boundary line of said Southeast quarter of Northwest quarter; thence West 16 rods, more or less, to the place of beginning; (EXCEPTING therefrom the 4.12 acres, more or less, which lie in the South portion therefore as described in Book 86 of Deeds, page 430, Auditor's records of said above County and State), the same being part of the Southeast quarter of the Northwest quarter of said Section 26, Township 25 North, Range 2 East, W.M., containing 4.88 acres, more or less.

EXHIBIT B

Legal Description of Strawberry Plant Property

EXHIBIT C

Termination of Lease

AFTER RECORDING RETURN TO:
Katherine F. Weber
Inslee, Best, Doezie & Ryder
Rainier Plaza, Suite 1900
777 108th Avenue N.E.
P.O. Box C-90016
Bellevue, WA 98009-9016

LEASE TERMINATION AGREEMENT

Grantor(s):	City of Bainbridge Island, Washington, a municipal corporation
Grantee(s):	Bainbridge Island Park & Recreation District, a Washington special purpose district
Short Legal Description:	NW corner of SE ¼ of NW ¼ of Section 26, Township 25 N, Range 2 E, W.M. [Complete legal description on p. 3]
Assessor's Property Tax Parcel/Account Number(s):	262502-2-052-2008
Reference Number(s) of Documents Assigned or Released:	_____

THIS LEASE TERMINATION AGREEMENT (this "Agreement") is entered into this ___ day of _____, 2004, by and between the CITY OF BAINBRIDGE ISLAND, WASHINGTON, a municipal corporation (the "City") and BAINBRIDGE ISLAND PARK & RECREATION DISTRICT, a Washington special purpose district (the "District").

Recitals

A. The City and the District are parties to a Ground Lease, dated March 26, 2001, (the "Lease") whereby the City is leasing to the District and the District is leasing from the City, that certain real property located in Bainbridge Island, Kitsap County, Washington, as legally described in **Exhibit A**, attached hereto and incorporated by this reference, and

commonly called the "John Nelson Park" (the "Property"). The Lease is incorporated by this reference as if set forth fully herein.

B. The City has entered into a Real Property Exchange Agreement with Island Seniors Community, LLC ("ISC"), dated _____, 2005, whereby the City has agreed to exchange the Property for certain waterfront property owned by ISC and commonly called the "Strawberry Plant".

C. As a condition to the proposed exchange, the Lease must be terminated. The District has consented to the termination of the Lease and desires to evidence its consent by this document.

NOW, THEREFORE, the parties hereto agree as follows:

1. Termination of Lease. The City and the District hereby agree that the Lease between the City and the District for the Property is terminated effective _____, 2005, (the "Termination Date") and that the City shall have full and quiet possession of the Property from and after such date. The parties acknowledge and agree that the District has met all obligations in the Lease and, except as set forth in Paragraph 2 below, shall have no further obligations under the Lease.

2. The District's Duties. Until it vacates the Property, the District shall maintain, manage and operate the Property in a businesslike manner in accordance with the District's prior practices. The District shall not damage, dissipate, nor commit waste on any portion of the Property, nor through inaction permit any damage, dissipation or waste on any portion of the Property, between the date of acceptance of this Agreement and the effective termination date. On or before the Termination Date, the District shall surrender the Park Property to the City in as good condition (normal wear and tear excepted) as exists on the date of this Agreement. The District shall remove all of the District's personal property from the Property by the Termination Date.

3. Memorandum of Lease. To the extent that the parties have recorded a Memorandum of Lease for the Property, as contemplated by Paragraph 33 of the Lease, this Agreement shall be recorded in the real estate records of Kitsap County, Washington and shall specifically reference the recording number of such Memorandum of Lease.

DATED as of the day and year first written above.

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

By _____
Its _____

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

By _____
Its _____

STATE OF WASHINGTON)
) ss
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that Darlene Kordonowy is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument, and acknowledged it as the mayor of City of Bainbridge Island, Washington to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

DATED: _____

_____

NAME: _____
(Print Name)
Notary Public in and for the State of Washington.
Commission Expires: _____

STATE OF WASHINGTON)
) ss
COUNTY OF KITSAP)

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 Bainbridge Island Park & Recreation District to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

DATED: _____

NAME: _____
(Print Name)
Notary Public in and for the State of Washington.
Commission Expires: _____

EXHIBIT A
TO
LEASE TERMINATION AGREEMENT

Legal Description of Property

Situate in the County of Kitsap, State of Washington and described as follows:

Beginning at the Northwest corner of the Southeast quarter (SE ¼) of Northwest quarter (NW ¼) of Section 26, Township 25 North, Range 2 East, W.M.; thence South 66 rods, more or less, to the outer edge of gulch or ravine; thence along the outer edge of said gulch or ravine easterly and northerly to the north boundary line of said Southeast quarter of Northwest quarter; thence West 16 rods, more or less, to the place of beginning; (EXCEPTING therefrom the 4.12 acres, more or less, which lie in the South portion therefore as described in Book 86 of Deeds, page 430, Auditor's records of said above County and State), the same being part of the Southeast quarter of the Northwest quarter of said Section 26, Township 25 North, Range 2 East, W.M., containing 4.88 acres, more or less.

EXHIBIT D

Consent of Heir

AFTER RECORDING RETURN TO:
City Administrator
City of Bainbridge Island, Washington
280 Madison Avenue North
Bainbridge Island, Washington 98110

CONSENT TO REAL PROPERTY EXCHANGE

Grantor(s):	Erik S. Lund, an individual, as the heir to John Nelson
Grantee(s):	City of Bainbridge Island, Washington, a municipal corporation
Short Legal Description:	NW corner of SE ¼ of NW ¼ of Section 26, Township 25 N, Range 2 E, W.M. [Complete legal description on p. 3]
Assessor's Property Tax Parcel/Account Number(s):	262502-2-052-2008
Reference Number(s) of Documents Assigned or Released:	510679 (Vol. 503, Page 315)

I, ERIK S. LUND, am the only and closest living heir to JOHN NELSON of Bainbridge Island, Washington. John Nelson, who died on September 6, 1949, was my uncle; to my knowledge, there are no other heirs who have a closer lineal descent to John Nelson than me.

I have received a copy of the Real Estate Exchange Agreement between the City of Bainbridge Island, Washington and Island Seniors Community, which agreement is incorporated herein by this reference, as if set forth fully herein, and, as the only and closest living heir to John Nelson, I hereby give my consent and approval to the exchange of the John Nelson Park Property (as legally described in the Real Estate Exchange Agreement, incorporated herein by this reference) by the City for the Strawberry Plant Property (as legally described in the Real Estate Exchange Agreement). I, for myself and for my heirs, devisees,

successors and assigns, hereby waive all my rights and entitlements to enforce the dedication contained in John Nelson's Last Will and Testament, dated August 15, 1949, as executed by virtue of that Deed of Executrix, dated April 25, 1950 and recorded under Kitsap County Auditor's No. 510679. Notwithstanding the dedication language restricting use of the John Nelson Park Property for public park purposes, and further requiring that the property be called "John Nelson Park", I hereby authorize the exchange set forth in the Real Estate Exchange Agreement and waive all rights to enforce the limitations set forth in John Nelson's Last Will and Testament and the above-referenced Executrix Deed; provided, however, that the Strawberry Plant Property shall be used for public park purposes; and provided, further, that the park to be dedicated upon the John Nelson Park Property, as set forth in the Real Estate Exchange Agreement, shall continue to be called the "John Nelson Park".

This Consent is binding and is given by me of my own free will. I am over the age of twenty one (21) years and am competent to give the consent set forth herein. This Consent may be recorded at the discretion of the City of Bainbridge Island, Washington or its successors, heirs and assigns.

DATED this _____ day of _____, 2004, in Yarrow Point, King County, Washington.

_____
Erik S. Lund

STATE OF WASHINGTON)
) ss
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that Erik S. Lund is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: _____

_____

NAME: _____
(Print Name)
Notary Public in and for the State of Washington.
Commission Expires: _____

EXHIBIT E

Access Easement

AFTER RECORDING RETURN TO:
City of Bainbridge Island, Washington
Attn: City Administrator
280 Madison Avenue North
Bainbridge Island, Washington 98110

EMERGENCY VEHICLE ACCESS EASEMENT

Grantor(s):	City of Bainbridge Island, Washington, a municipal corporation
Grantee(s):	Island Seniors Community, LLC, a Washington limited liability company
Short Legal Description:	[Complete legal description on p. __]
Assessor's Property Tax Parcel/Account Number(s):	262502-2-052-2008
Reference Number(s) of Documents Assigned or Released:	

THIS EMERGENCY VEHICLE ACCESS EASEMENT (this "Easement") is made and entered into this ___ day of _____, 2004, by and between the CITY OF BAINBRIDGE ISLAND, WASHINGTON, a municipal corporation (the "City") and ISLAND SENIORS COMMUNITY, a Washington limited liability company ("ISC"):

Recitals

A. The City is the owner of certain real property located in Bainbridge Island, Kitsap County, Washington, as legally described on **Exhibit A**, attached hereto and incorporated by this reference (the "Property").

B. The City and ISC have entered into a Real Property Exchange Agreement, dated _____, 2004 (the "Agreement"), whereby the City has agreed to exchange the Property

for certain real property owned by ISC and commonly called the "Strawberry Plant" (the "Strawberry Plant Property").

C. In consideration of the mutual covenants set forth in the Agreement, the City has agreed to grant to ISC an access easement across the Property, for emergency vehicle access and fire lane purposes only, subject to the terms and conditions set forth herein.

NOW, THEREFORE, the parties hereto agree as follows:

1. Grant of Emergency Vehicle Access Easement. For and in valuable consideration, receipt of which is hereby acknowledged, the City grants to ISC, and ISC accepts from the City, a non-exclusive, permanent right, privilege, authority and easement over, in, along, across, and through that portion of the Property depicted and described on **Exhibit B**, attached hereto and incorporated by this reference (the "Easement Area") for the purpose of emergency vehicle ingress and egress only.

2. Reservation of Rights. The City reserves the right to use the Easement Area for any purpose not inconsistent with the right of ingress and egress herein granted, *provided*, the City shall not construct or maintain any building or other structure nor permit any obstruction on or in the Easement Area which would interfere with the exercise of the right of ingress and egress herein granted, including ingress to and from the Easement Area.

3. Use of Easement: This easement is to be used solely to provide emergency vehicle access, and for training purposes incident thereto, by the City of Bainbridge Island or Kitsap County or the State of Washington, or any agency, subdivision, municipal corporation or instrumentality thereof, for emergency ingress and egress to and from the adjoining real property described more particularly on **Exhibit C** hereto (the "Benefited Property").

4. Improvements by ISC: ISC shall be solely responsible for ensuring that the Easement Area is maintained in a manner which allows for safe and suitable passage for the purposes contemplated herein. ISC may reasonably improve, maintain and repair the Easement Area to facilitate the use contemplated herein; provided, that all such improvements shall be limited to the Easement Area. ISC shall be solely responsible for all costs associated with the use and/or improvement of the Easement Area by ISC.

5. Indemnification. ISC shall indemnify, defend and hold the City, its agents, officials, and employees harmless from and against any and all loss, claim, damage and liability relating from use of the Easement Area by ISC and/or ISC's invitees, licensees, guests or agents, or from ISC's performance and/or omissions under this Agreement, except for liability caused by the gross negligence or intentional misconduct of the City or any of its agents, contractors and/or employees.

6. Termination. This Easement shall be permanent and run with the land, except that it shall expire upon the recordation of a deed for the Property in ISC's favor, as provided for in the Real Property Exchange Agreement;- provided, however, that ISC shall be obligated

to continue the use of the Easement Area for the uses described in Paragraph 3 above as a permanent use for the benefit of the Benefited Property described herein.

7. Assignment. This Easement shall not be assigned without the express written consent of the City.

8. Default. If the City determines that ISC is in violation of this Easement, the City shall deliver written notice to ISC of such violation and demand corrective action sufficient to cure the violation and, where the violation involves damage to the Easement Area, to restore the portion of the Easement Area so damaged. . In addition, the City may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or by reason of injury to the Easement Area, to require the restoration of the Easement Area to the conditions that existed before the injury, and to pursue any other remedies provided in this Agreement or available at law or in equity.

9. Notices. All notices, demands, consents, approvals and other communications which are required or allowed to be given by either party to the other hereunder shall be in writing and shall be either (i) hand delivered to the other party; (ii) sent by United States regular mail, postage prepaid, return receipt requested; or (iii) delivered by a duly licensed and reliable professional same-day or overnight courier, all addressed to the appropriate party at its address set forth below, or at such other address as such party shall have last designated by notice to the other. Notices, demands, consents, approvals and other communications shall be deemed given when delivered or three days after mailing to the following addresses:

To the City:	To ISC:
Attn: City Administrator 280 Madison Avenue North Bainbridge Island, Washington 98110	Attn: _____ _____ _____

10. Attorney's Fees. If either party fails to perform any of its obligations under this Easement or if a dispute arises concerning the meaning or interpretation of any provision of this Easement, the party not prevailing in the dispute will pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights under this Easement, including without limitation, court costs and reasonable attorney's fees, whether incurred at the pre-trial, trial or appeals level and including arbitration fees, if any.

11. Time of the Essence. Time is of the essence of this Agreement and of all acts required to be done and performed by the parties hereto.

12. Waiver. Neither the City's nor ISC's waiver of the breach of any covenant under this Easement will be construed as a waiver of the breach of any other covenants or as a waiver of a subsequent breach of the same covenant.

The parties have executed this Easement as of the date first written above.

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

By _____
Its _____

ISC:
Island Seniors Community, LLC, a
Washington limited liability company:

By _____
Its _____

STATE OF WASHINGTON)
) ss
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that Darlene Kordonowy is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument, and acknowledged it as the mayor of City of Bainbridge Island, Washington to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

DATED: _____

_____

NAME: _____
(Print Name)
Notary Public in and for the State of Washington.
Commission Expires: _____

STATE OF WASHINGTON)
) ss
COUNTY OF KITSAP)

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 as the _____ on behalf of Island Seniors Community, a Washington limited liability company, pursuant to the provisions of the Limited Liability Company Agreement of said company, and acknowledged it to

be the free and voluntary act of said company for the uses and purposes mentioned in the instrument.

DATED: _____

_____

NAME: _____
(Print Name)
Notary Public in and for the State of Washington.
Commission Expires: _____