DEVELOPMENT SERVICES DEPARTMENT
ENVIRONMENTAL COORDINATOR
450 110th Ave NE., P.O. BOX 90012
BELLEVUE, WA 98009-9012

OPTIONAL DETERMINATION OF NON-SIGNIFICANCE (DNS) NOTICE MATERIALS

The attached materials are being sent to you pursuant to the requirements for the Optional DNS Process (WAC 197-11-355). A DNS on the attached proposal is likely. This may be the only opportunity to comment on environmental impacts of the proposal. Mitigation measures from standard codes will apply. Project review may require mitigation regardless of whether an EIS is prepared. A copy of the subsequent threshold determination for this proposal may be obtained upon request.

File No.	09-113249 LM
Project Name/Address:	The Spring District 1227 124th Avenue NE
Planner:	Toni Pratt
Phone Number:	(425) 452-5374

Minimum Comment Period: May 28, 2009

Materials included in this Notice:

- [x] Blue Bulletin
- [x] Checklist
- [x] Vicinity Map
- [ ] Plans
- [ ] Other:

Tony Pratt
5/11/09

CITY OF BELLEVUE
ENVIRONMENTAL CHECKLIST
(Integrated SEPA/GMA Process)

A. BACKGROUND INFORMATION

PROPOSAL TITLE: WR - SRI 120th LLC Development Agreement.

PROPERTY OWNERS' NAME: WR – SRI 120th LLC

PROPOSAL LOCATION (street address and nearest cross street or intersection as well as a legal description if available): WR – SRI 120th LLC owns a thirty-six acre parcel within the Bel-Red corridor, known as The Spring District, in the City of Bellevue. WR – SRI 120th LLC's property generally include the area within the corridor bounded by 120th Ave NE on the west, 124th Ave NE to the east, NE 12th Street to the south and NE 16th Street to the north. The affected geographic area is located in Section 28, Township 25, Range 05.

PROPONENT'S NAME: Wright Runstad & Company, WR – SRI 120th LLC

CONTACT PERSON'S NAME: Cindy Edens, c/o Wright Runstad & Company

CONTACT PERSON'S ADDRESS: WR – SRI 120th LLC
1201 3rd Avenue, Suite 2700
Seattle WA 98101

CONTACT PERSON'S PHONE: (206) 447-9000

BRIEF DESCRIPTION OF THE PROPOSAL'S SCOPE AND NATURE:

1. **General description:** The City's adoption of a Development Agreement, which is described in Attachment A, entitled *Development Agreement Draft (May 8, 2009).* No physical development is contemplated at this time or as a part of the "Proposal" addressed in this Environmental Checklist.

2. **Site acreage:** Approximately thirty-six (36) acres

3. **Number of dwelling units/buildings to be demolished:** N/A

4. **Number of dwelling units/buildings to be constructed:** N/A

5. **Square footage of buildings to be demolished:** N/A

T.P.

6. **Square footage of buildings to be constructed:** The proposal is not for specific development projects. Development will be consistent with the terms of the Development Agreement and applicable City of Bellevue Comprehensive Plan policies and development regulations.

7. **Quantity of earth movement (in cubic yards):** The proposal is for a Development Agreement. Actual development in the area will be subject to review at the time a proposal for development is made and must comply with all policies, development regulations and City codes applicable to construction in the Bel-Red corridor at the time the approval is issued or the application is vested.

8. **Proposed land use:** Future development will comply with the proposed Bel-Red zoning regulations. Related to Master Development Plan or Design Review application approval.

9. **Design features, including building height, number of stories and proposed exterior materials:** N/A

10. **Other:** N/A

Proposed timing or schedule (including phasing, if applicable):
Development Agreement adoption and recording by end of July 2009

Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.

If the Development Agreement is adopted, future development on the WR-SRI 120th LLC property will be consistent with the terms of the Development Agreement and other applicable City of Bellevue Comprehensive Plan policies and development regulations. A Master Development Plan will be required to develop the property as indicated in the Development Agreement

List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.

In addition to this SEPA checklist and the City's anticipated SEPA threshold determination, an EIS for the BROTS Interlocal Agreement was completed in May 1999, which contained assumptions for future land use to forecast year 2012 within the Bel-Red Corridor. In addition, an FEIS for the Bel-Red Corridor Project was issued by the City of Bellevue in July 2007 and an FEIS addenda was issued on February 12, 2009. WR – SRI 120th LLC requests the City of Bellevue to incorporate these studies by reference (per WAC 197-11-635) into the threshold decision for this Proposal.

The above referenced documents can be reviewed and obtained at the City of Bellevue, in person at the City's Service First/Reception desk, or viewed online at http://www.~~ci.bellevue.wa.us~~/bel-red_intro.htm.
bellevuewa.gov

T.P.

Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain. List dates applied for and file numbers, if known.

WR-SRI 120th LLC is not aware of any other pending government approvals or other proposals that would affect this property.

List any government approvals or permits that will be needed for your proposal, if known. If permits have been applied for, list application date and file numbers, if known.

Adoption of the Development Agreement by the City Council, pursuant to RCW 36.70B.170-200.

B. Environmental Elements

No discussion of the individual Environmental Elements is required for GMA actions per WAC 197-11-235.3.b.

C. SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS (do not use this sheet for project actions)

SUMMARY

Project Summary: This proposal is limited to the City's adoption of a Development Agreement with WR-SRI 120th LLC regarding vesting, catalyst project Master Development Plan review, concurrency review, incentive bonus fees, and existing uses. No physical development is contemplated or proposed at this time or as a part of the Proposal addressed in this Environmental Checklist. Future development proposals, including a Master Development Plan, will be subject to applicable regulations and Comprehensive Plan policies as identified in the Development Agreement (or as in effect at the time of application if not addressed by the Development Agreement). The Development Agreement is expected to be substantially consistent with the Development Agreement Draft (May 8, 2009) appended as Attachment A and incorporated by reference into this checklist

Environmental Summary per WAC 197-11-235(3)(b):
State the proposal's objectives: To ensure that the redevelopment of the WR-SRI 120th LLC property is consistent with the City's long-term vision for the Bel-Red Corridor.

Specify the purpose and need to which the proposal is responding: WR-SRI 120th LLC controls a large property in the City's Bel-Red Corridor. It is in the City's interest to ensure that the future redevelopment of this property will be consistent with City standards.

State the major conclusions, significant areas of controversy and uncertainty: The terms of the proposed Development Agreement are set forth in Attachment A. No areas of controversy or uncertainty are anticipated beyond those that generally accompany the design and approval of a large development project.

T.P.

State the issues to be resolved, including the environmental choices to be made among alternative courses of action: Alternative courses of action include: the no action alternative, which entails not negotiating a Development Agreement. A second alternative is to not negotiate a Development Agreement, but approve future development. Under the no action alternative, the property could develop under City of Bellevue zoning and development standards. The proposed Development Agreement alternative provides certainty about the development standards that will apply to the future development of property.

State the impacts of the proposal, including any significant adverse impacts that cannot be mitigated: The proposal is a nonproject action to execute a Development Agreement governing certain aspects of development. Other than as modified through the Development Agreement, all City codes and regulations will apply to future development. Specific development proposals will be subject to project level environmental review. There are no anticipated significant adverse environmental impacts from the current proposal.

Describe any proposed mitigation measures and their effectiveness: No specific development is being approved with this proposal. No significant environmental impacts have been identified, therefore no mitigation measures are proposed. Future development under the provisions of the regulation will be subject to SEPA review, as well as to the City's existing comprehensive plan policies and development regulations.

1. **How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?**

The proposed Development Agreement will not increase the potential impacts to water, air and earth resources or noise production.

Proposed measures to avoid or reduce such increases are: N/A

2. **How would the proposal be likely to affect plants, animals, fish or marine life?**

The proposed Development Agreement will not increase the potential impacts to plants and animals. The property is an existing industrial site.

Proposed measures to protect or conserve plants, animals, fish or marine life are: N/A

3. **How would the proposal be likely to deplete energy or natural resources?**

No adverse impacts to energy or natural resources are anticipated.

Proposed measures to project or conserve energy and natural resources are: N/A

4. **How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?**

T.P.

The proposal is not anticipated to affect or use environmentally sensitive areas or areas designated for government protection. The property currently contains former Safeway warehouses and storage buildings. Some potential steep slopes may exist on site and will be addressed in the future in the course of any site-specific development proposal.

Proposed measures to protect such resources or to avoid or reduce impacts are: N/A

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

The proposal is not within the shoreline area. The area is currently zoned for dense mixed-use development including commercial office, multi-family residential, and neighborhood retail space. The proposal is consistent with the area zoning.

Proposed measures to avoid or reduce shoreline and land use impacts are: N/A

6. How would the proposal be likely to increase demands on transportation or public services and utilities?

No demands on transportation or public services and utilities are anticipated from the Development Agreement. Any future impacts from a site-specific development proposal will be addressed consistent with the City's comprehensive plan policies and development regulations.

Proposed measures to reduce or respond to such demand(s) are: N/A

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

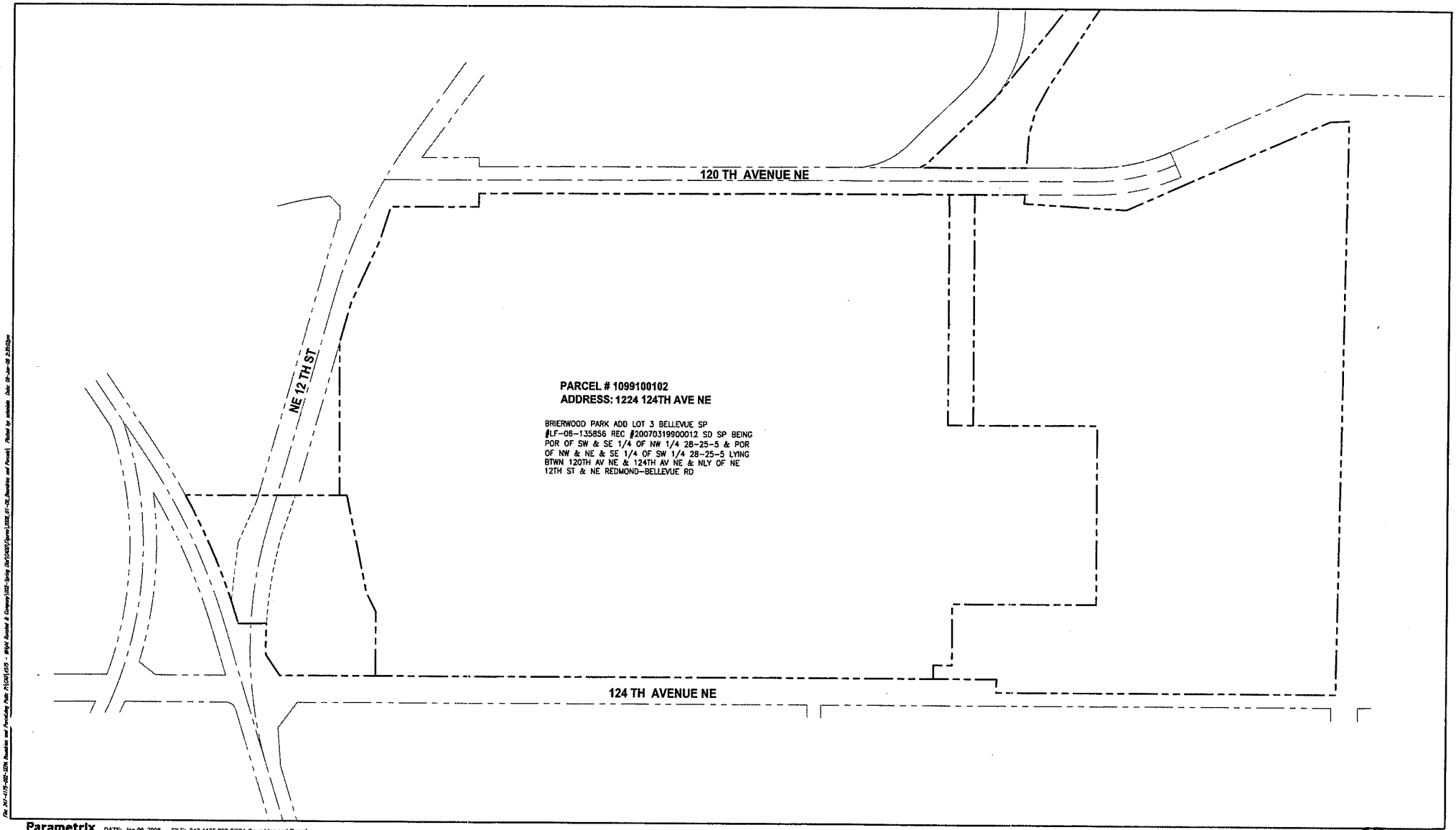
No conflicts are known or anticipated.

D. The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature Cindy Chen

Date Submitted 5/08/09

T.P.



Parametrix DATE: Jan 09, 2008 FILE: 247-4175-002-SEPA Boundries and Parcel

N

SCALE IN FEET
0 100' 200'

RECEIVED
MAY 08 2008
PERMIT PROCESSING

Council Review Draft

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement" or "Development Agreement") is entered into as of the effective date, by and between the **CITY OF BELLEVUE**, a Washington municipal corporation ("City") and **WR-SRI 120th LLC**, a limited liability company.

RECITALS

A. Intent. This Development Agreement is for the purposes of setting forth the applicable development standards and other provisions related to the development described herein, and is adopted pursuant to the authority provided in RCW 36.70B.170 *et seq.*

B. The City Council, in Ordinance XXXX, adopted the Bel-Red Subarea Plan establishing a vision for conversion of the historic pattern of light-industrial land use to office, retail and residential development at densities supportive of high capacity transit. The Bel-Red Subarea Plan is implemented through a package of Land Use Code regulations, adopted in Ordinances XXXX and XXXX, and an area-wide rezone of the Subarea, adopted in Ordinance XXXX.

C. WR-SRI 120th LLC ("Owner"), owns a 36.01 acre parcel, King County Parcel No.1099100102 (the "Property") located in a Bel-Red Sub-Area office/residential development node zoned BR-OR-1 and BR-OR-2, as legally described on Exhibit A attached hereto and incorporated herein. This site is within one of the areas identified for concentrated development in a Bel-Red Subarea "node." The Owner proposes to develop what it has named "The Spring District" ("TSD") as a Catalyst Project under LUC 20.25D.035 of the City's Bel-Red Subarea provisions aimed at promoting urban revitalization through timely initial redevelopment. To be considered a Catalyst Project, TSD must be submitted as a phased master development plan ("MDP") for approval and permitting purposes by the later of 18 months after the Federal Transit Authority issues a Record of Decision on the Sound Transit East Link Project or December 31, 2011. A mixed-use urban community, The Spring District will include office, residential, and retail components. The Owner proposes to include in The Spring District other major public amenities, such as open spaces, and pedestrian plazas.

D. The Spring District proposal has the potential to embody many of the principles and vision for the corridor articulated by the Bel-Red Steering Committee in its September 2007 Bel-Red Corridor Project Final Report and the City Council in adopting the Bel- Red Subarea Plan and implementing Bel-Red development regulations. The City Comprehensive Plan puts an emphasis on dense nodal development in order to promote energy efficiency and reduce reliance on cars.

E. While the Owner believes that a market will come to exist in the next several years for both commercial and multifamily development at the Bel-Red project site, the transitional nature of the Bel-Red Corridor, coupled with the scope and duration of TSD, introduces significant additional risk and uncertainty. The Owner must make a large up-front capital investment in project design and planning in order to prepare an MDP under LUC Part 20.30V and

subsequent development applications. Over its full term, the Owner projects the development will cost well in excess of $1 Billion. Accordingly, and in order to proceed, the Owner needs to have a high level of certainty regarding regulatory approvals and project costs over an extended period of time, particularly given the lengthy approval and development process for Sound Transit's East Link Project.

F. The City has issued the Bel-Red Corridor EIS and Addenda (collectively referred to as "EIS"). The EIS analyzes at a programmatic level the impacts of substantial new office, residential, and retail development throughout the Bel-Red corridor. The EIS also assesses the impacts of significant office development in two development nodes within the corridor, including the area in and around the Property.

G. The City and the Owner acknowledge the importance of developing TSD as a mixed-use neighborhood with significant residential development. To that end, the City and the Owner recognize that the involvement of a residential developer may help in creating a successful project under this Development Agreement.

H. Development of TSD will meet key objectives of the City embodied in the Comprehensive Plan, the Bel-Red Subarea Plan, the Land Use Code, and other existing city regulations. Specifically, the development of TSD will provide many benefits to the City and the public including, but not limited to, 1) encouraging further redevelopment of the Bel-Red Subarea by providing a central neighborhood and absorbing the substantial risk of being a Catalyst developer in the Sub-Area; 2) enhancing public improvements and infrastructure in an underutilized and underdeveloped area of the city; 3) strengthening the city's economic base with a variety of long-term jobs and near- and long-term construction jobs; and 4) generating substantial City revenues in the form of fees, increased property tax base, and sales tax generation. The City Council therefore finds significant public benefit results from execution of this Development Agreement including, among other things: 1) providing certainty to encourage the required substantial private investment in the planning and development of TSD in years earlier than may otherwise occur; 2) securing orderly development and progressive fiscal benefits for public services, improvements, and facilities planning in the city; 3) ensuring development of certain public amenities in early phases of TSD; 4) providing greater certainty surrounding the timing and amount of residential development in TSD, recognizing that the viability of significant residential development relies on high capacity transit service through the area; and 5) fulfilling and implementing adopted City plans, goals, policies and objectives, including, among others, those embodied in the City's Bel-Red Subarea Plan.

I. The Development Agreement component of the Legislature's 1995 Regulatory Reform legislation provides a flexible tool with which the City can enter into agreements with property owners for a variety of purposes, broadly authorized in the statute. The legislative finding to this state law, RCW 36.70B. 170-200, emphasizes the challenges posed by lack of predictability in the permitting of development projects: "*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 use of resources at the least economic cost to the public....*".

J. A Development Agreement can commit the City for the duration of the Development Agreement to vesting review procedures and standards for implementing decisions, phasing, mitigation measures, development conditions, permitted uses, residential and commercial intensities and "any other appropriate development requirement or procedure."

NOW, THEREFORE, in consideration of the mutual agreements contained herein, as well as other valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the City and WR-SRI 120th LLC hereby agree as follows:

AGREEMENT

A. Spring District Development Components.

1. **Must Meet Catalyst Project Criteria.** In order to be eligible for the modifications to the Land Use Code and other regulations described in this Agreement, Owner must submit an MDP within the time frame required for "catalyst projects" as set forth in the Land Use Code, and such MDP shall demonstrate that the development proposed meets the definition of catalyst project set forth in LUC Section 20.25D.035.

2. **Minimum Contents of MDP.** Owner agrees to include in its application for an MDP development across the Property with a minimum average FAR of 2.5, which shall include the Residentially-restricted Property (as defined in Section H.) In addition, the first phase of any MDP approved under this Agreement shall include development of a public mini-park a minimum of one acre in size (designated as project M3 in the Bel-Red Parks and Open Space Project List in the Comprehensive Plan) and an activated park or recreation space of at least 30,000 contiguous square feet.

B. Development Standards and Vesting Period.

1. **Master Development Plan Application.** As of the Effective Date of this Agreement, until issuance of the MDP approval consistent with the minimum requirements of Section A above, the provisions of this Agreement, and the Governing Regulations specified in Section C below, shall apply to and govern and vest the review and approval, including associated State Environmental Policy Act (SEPA) review, of the MDP application.

2. **Subsequent Land Use Review.** If the MDP application is approved, then such approval shall be vested for a period of fifteen (15) years from the date of the final decision (as defined in Section 20.35.045 of the LUC) on the MDP (the "Vesting Period"). During the Vesting Period and subject to Section T, the City shall not impose any modification of or new or additional Governing Regulations on the MDP or any Land Use Code approvals required for TSD consistent with this Agreement and the MDP. To the extent that neither this Agreement nor the Governing Regulations specified below address a certain subject, element or condition of the Project, then the Project shall be governed by the City's then-existing code.

3. **Approvals Eligible for Extended Vesting.** The Vesting Period shall only apply to Catalyst Projects on the Property, as defined in LUC 20.25D.035, and associated applications, decisions, and permits. Associated applications, decisions, and permits include those submitted

with or during a Catalyst Project MDP application and those related applications submitted subsequent to Catalyst Project MDP approval. All other projects, development, and uses on the Property shall be governed without the benefit of this Development Agreement except as indicated in Section E, below.

C. Governing Regulations.

1. **Designation of Governing Regulations.** Except as specified otherwise herein, the existing city development regulations that govern development of the Property and shall be considered vested pursuant to the provisions of this Agreement, include and are limited to the following as they exist on the Effective Date of this Agreement (collectively, the "Governing Regulations"):

- Title 20 – Land Use Code (except process-related provisions, including Part 20.30 and Part 20.35)
- Title 21 – Comprehensive Plan to the extent applied to TSD through the provisions of the LUC

The Parties agree that SEPA applies to permits that will be issued during the Vesting Period. The City shall not exercise its substantive SEPA authority to impose conditions on Land Use Code approvals issued during the Vesting Period in a manner that is inconsistent with the Governing Regulations.

Subject to Section T, these Governing Regulations shall be applied to the Property and TSD during the Vesting Period, except as indicated below.

Except as otherwise specifically provided herein, Owners shall comply with all city ordinances, regulations, development standards and policies in effect at the time of application or issuance of an approval, as the case may be.

2. **Revised Governing Regulations After Sound Transit Operational.** On or after the date Sound Transit's East Link Project or other high-capacity transit operating within a dedicated transit-only right-of-way begins regularly scheduled passenger-carrying service to a transit station within the Property, any application for design review or other required Process II permit under the LUC on the Property shall be subject to the following code provisions (or substitute code sections specifically designated as such by city ordinance) as they exist on the date of issuance of the design review or other Process II decision: LUC 20.25D.030.C (Design Review), LUC 20.25D.110 (Landscape Development), LUC 20.25D.120 (Parking/Circulation), LUC 20.25D.130 (Bel-Red Development Standards), LUC 20.25D.140 (Bel-Red Street Development Standards), LUC 20.25D.150 (Design Guidelines) (collectively referred to as the "Revised Governing Regulations").

3. **Revisions to the Master Development Plan.** Owner acknowledges that it may be required to modify the MDP in order to remain consistent with the Revised Governing Regulations. Review of such modification shall be based on the Governing Regulations and Revised Governing Regulations. Notwithstanding the provisions of Land Use Code Section 20.30V.160, any other modification, revision or amendment proposed to the MDP during the

Vesting Period shall be reviewed against the Governing Regulations and Revised Governing Regulations, so long as the proposed modification, revision or amendment is consistent with the general scope, purpose and intent of this Agreement and the original MDP.

Approval of any modification or revision to the MDP shall not extend the expiration date of the Vesting Period.

D. No Approval of Project-related Actions

The Owner has not made any development proposal relating to The Spring District, and plans to do so consistent with the Catalyst Project provisions of Chapter 20.25D and other applicable provisions of the Bellevue Land Use Code. The execution of this Development Agreement does not, in and of itself, permit any development at this time.

Nothing in this Agreement shall be interpreted to limit the exercise by City of its regulatory powers with respect to any development proposal on the Property, including The Spring District MDP or other regulatory matters in accordance with applicable law. Nor shall this Agreement be interpreted as: a) a determination as to the consistency of The Spring District MDP with applicable plans, codes and ordinances, b) an agreement or commitment to approve any or all development on the Property, nor c) any commitment whatsoever by City with respect to any future City discretionary decisions that may be required for development of the Property. A permit or approval issued by the City after the execution of this Development Agreement shall be consistent with this Development Agreement.

E. Proportional Compliance.

Any proportional compliance requirements in LUC 20.25D.060.G that would otherwise apply to the Property as a result of application of the Existing Development provisions of LUC 20.25D.060.G shall be deferred from the period of the Effective Date of this Agreement through a final decision on the MDP, so long as the MDP is applied for within the timeframe established for catalyst projects in LUC Section 20.25D.035.A. Any deferred proportional compliance obligation shall be waived if the MDP is approved by the City. If Owner fails to apply for the MDP within the required timeframe under this Agreement, or if the MDP is denied, then the proportional compliance obligations deferred under this Section D shall become immediately due and Owner shall apply for any necessary permits or approvals to perform such proportional compliance with 60 days of expiration of the timeframe or issuance of the denial. Notwithstanding any provision in the associated permits to the contrary, work to complete the proportional compliance obligation shall be completed within 180 days of issuance of the required permits or approvals, unless extended by the City to accommodate any conditions or restrictions on timing of the work.

F. FAR Amenity Bonus System.

1. **Adjustment of Tier 1 Fee-in-lieu Rate.** For a Catalyst Project on the Property, the Owner may choose to comply with the LUC 20.25D.090 requirements for Tier 1 amenities by paying a fee-in-lieu at a rate of $3.75 for each square foot of floor area for the first 750,000 square feet of development under the MDP, and by paying a fee-in-lieu rate of $4.00 for each

square foot of floor area above 750,000 square feet. In the alternative, this Development Agreement provision shall not bar the Owner, at its choice, from utilizing the LUC 20.25D.090 standards as of the Effective Date to provide required amenities.

2. **Amenity Rate for Certain Required Open Space.** Owner may receive credit towards required amenities for the mini-park and activated park or recreation space required to be included in Phase 1 of the MDP under Section A above as provided in this Section F.

a) Mini-Park: Owner shall receive credit towards required amenities for dedication of the M-3 mini-park at the bonus rate set forth in 20.25D.090.C.7 Tier 1b.2 (Park Dedication) and/or Tier 1b.3 (Park Improvements).

b) Other Activated Park or Recreation Space: Owner may receive credit towards required amenities for the activated green space as follows:

- at the Tier 2 bonus rate so long as it is developed according to the design criteria set forth in 20.25D.090.C.7 Tier 2.12 (Active Recreation Area); or
- at the Tier 1b bonus rate set forth in 20.25D.090.C.7 Tier 1b.2 (Park Dedication) if the entire area is dedicated to the City, and it meets the design criteria 2 through 4 in that section; and/or
- at the Tier 1b bonus rate set forth in 20.25D.090.C.7 Tier 1b.3 (Park Improvements) if improvements are made according to the design criteria 1 through 5 set forth in such section.

Unless the activated park or recreation space meets one of the provisions above, it shall not receive credit towards required amenities.

3. **Eligibility for Other City Credits, Bonuses or Offsets**. Notwithstanding any provision of city code to the contrary, any public infrastructure required as a condition of approving the MDP that meets the criteria of LUC 20.25D.035.A.3.a through c shall not be eligible for and shall not earn any of the credits, bonuses, or offsets described in LUC 20.25D.035.A.3.d through f.

G. Concurrency.

The Bellevue Traffic Standards Code, Chapter 14.10 BCC, allows a development agreement to adjust the timing of traffic concurrency analysis and the expiration date of concurrency approval. The City and the Owner agree to the amended analysis time and concurrency expiration date specified below.

1. **Timing of Concurrency Analysis and Determination.** For purposes of approving the MDP, the concurrency analysis pursuant to Chapter 14.10 BCC (the Traffic Standards Code or TSC) shall not be required at the time of the master development plan application. Owner acknowledges that approval of the MDP is not a guarantee, assurance, acknowledgement or statement of any kind about whether all or any part of the development

included in the MDP would satisfy the requirements of Chapter 14.10 BCC, with or without mitigation. Owner acknowledges that approval of the MDP does not limit the City's ability to require compliance with Chapter 14.10 BCC, as modified in this Agreement, which compliance may include denial or conditioning of phases of the MDP. For purposes of compliance with the TSC, the required concurrency analysis and determination shall be conducted on each phase of the MDP, which analysis and determination shall be made at the time of application for the first design review or other required Process II approval for development within such phase.

2. **Vesting of Concurrency Approval.** The concurrency approval issued for each phase shall expire five years from the date of issuance of the Land Use Code approval with which it was issued, provided that such five year period shall be extended consistent with the provisions of BCC 14.10.040.F.1; and further provided that in no event may development consisting of more than 1,000,000 square feet of commercial development be vested at any given time. For purposes of this Paragraph, hotels shall not be considered commercial development.

H. Catalyst Project Residential Requirements and Delay Penalty.

1. **Designation of Residentially-restricted Property.** The master development plan must designate at least 5.8 acres within the MDP for residential use and associated required ground floor commercial or retail uses, exempt ground floor retail and exempt childcare or nonprofit space (as described in LUC Section 20.25D.090). Such area shall be designated as the "Residentially-restricted Property." The MDP shall further establish a requirement that a minimum of 784,000 square feet of residential development, exclusive of the associated uses described above, be developed within the Residentially-restricted Property. A covenant restricting use shall be recorded against the property and run with the land.

2. **Required Timing of Development.** The Residentially-restricted Property shall be developed with residential uses in an amount proportional to the amount of project limit area developed with commercial uses on the Property by no later than the date that Sound Transit's East Link Project or other high-capacity transit operating within a dedicated transit-only right-of-way begins regularly scheduled passenger-carrying service to a transit station within the Property. For purposes of determining compliance with this Section H, "developed with" residential or commercial use means that such development shall be constructed or underway with an issued building permit.

3. **Sale of Residentially-restricted Property.** It is acknowledged that Owner intends to sell the Residentially-restricted Property to a third party. In order to avoid the penalty described in Paragraph 4 below, any sale of Residentially-restricted Property must be to an unrelated third party, and must be closed at least three years prior to Sound Transit's East Link Project or other high-capacity transit operating within a dedicated transit-only right-of-way beginning regularly scheduled passenger-carrying service to a transit station within the Property. Owner acknowledges that additional approvals, including subdivision or binding site plan approvals, may be required in order to create a parcel or parcels of residentially-restricted property for sale to third parties.

4. **Penalty for Failure to Develop Residentially-restricted Property.** A penalty for delay in developing the Residentially-restricted Property by the time set forth in Paragraph 2

above shall be imposed at the time of any application for any approval of further commercial development on the Property if both of the following conditions are satisfied on or after the date that Sound Transit's East Link Project or other high-capacity transit operating within a dedicated transit-only right-of-way begins regularly scheduled passenger-carrying service to a transit station within the Property:

a) WR-SRI 120th LLC is the fee owner of any portion of the Residentially-restricted Property. For purposes of this Development Agreement, WR-SRI 120th LLC will be considered the fee owner of the Property if the fee owner of the Property is an entity related to Shorenstein Properties LLC or Wright Runstad & Company or subsidiaries or affiliates; or if WR-SRI 120th LLC is not the fee owner, the sale of the Residentially-restricted Property was not closed at least three years prior to Sound Transit's East Link Project or other high-capacity transit operating within a dedicated transit-only right-of-way beginning regularly scheduled passenger-carrying service to a transit station within the Property.

b) That portion of the Residentially-restricted Property that is proportional to the amount of project limit area developed with commercial uses is not developed with a residential use.

Penalty to be applied if both of the two above conditions are met: The next application for design review on the Property must include a proposal to develop that portion of Residentially-restricted Property necessary to be proportional to the total of: a) the amount of commercial development developed on the Property; and b) the amount of commercial development proposed in any active building permit on the Property.

I. Term, Amendment, and Termination

This Development Agreement shall go into effect on the date it is executed by the Owner and the City ("Effective Date"). This Development Agreement shall be effective until the later of 18 months after the Federal Transit Authority issues a Record of Decision on the Sound Transit East Link Project or December 31, 2011; provided that the term shall automatically be extended for an additional two years (or such different period agreed to by the parties as a negotiated permit review timeline) so long as an MDP consistent with this Agreement is filed prior to expiration and is diligently pursued by Owner; and further provided that the term of the Development Agreement shall be automatically extended for the effective life of any MDP approved consistent with this Agreement. Upon expiration of such period, as may be extended above, this Development Agreement shall automatically terminate.

Other than as set forth in Section T, no amendment to this Development Agreement shall be effective unless approved by both parties in writing.

J. Binding Effect; Assignability.

This Development Agreement shall bind and inure to the benefit of the Parties hereto and their respective successors, heirs, legatees, representatives, receivers, trustees, successors, transferees and assigns. Prior to submittal of an MDP consistent with this Agreement, Owner may not

assign its interest or obligations under this Agreement without the City's prior written consent, which shall not be unreasonably withheld. If an MDP consistent with this Development Agreement is submitted, Owner may assign its interest and obligations under this Agreement without the City's consent. Notwithstanding the foregoing, Owner may assign its interest and obligations hereunder to an affiliate or related entity owned, controlled by or under common control with Owner without necessity of City's consent but only following delivery of written notice of such assignment, together with such documents as are reasonably necessary to confirm the relationship between Owner and such affiliated entity.

K. Representations and Warranties.

Each signatory to this Development Agreement represents and warrants that he or she has full power and authority to execute and deliver this Development Agreement on behalf of the Party for which he or she is signing, and that he or she will defend and hold harmless the other Parties and signatories from any claim that he or she was not fully authorized to execute this Development Agreement on behalf of the person or entity for whom he or she signed. Upon proper execution and delivery, this Development Agreement will have been duly entered into by the Parties, will constitute as against each Party a valid, legal and binding obligation that shall run with the land, and will be enforceable against each Party in accordance with the terms herein.

L. Specific Performance and Enforcement.

The Parties specifically agree that damages are not an adequate remedy for breach of this Development Agreement and that the Parties are entitled to compel specific performance of all material terms of this Development Agreement by any Party in default hereof. All terms and provisions of this Development Agreement are material. Nothing in this Agreement modifies the City's ability to pursue its otherwise applicable enforcement provisions for violations of any permits issued for TSD.

M. Governing Law and Venue.

This Development Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Jurisdiction over and venue for any action arising out of or relating to this Development Agreement shall be exclusively in the state and federal courts of King County, Washington. In the event of any apparent conflicts between the provisions of the city code or ordinances and this Development Agreement, this Development Agreement shall prevail.

N. Full Understanding.

The Parties each acknowledge, represent and agree that they have read this Development Agreement; that they fully understand the terms thereof; that they have had the opportunity to be fully advised by their legal counsel and any other advisors with respect thereto; and that they are executing this Development Agreement after sufficient review and understanding of its contents.

O. Counterparts; Facsimile Signatures.

This Agreement may be executed in more than one counterpart, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. Facsimile signatures on this Agreement shall constitute original signatures of the Parties.

P. Attorneys' Fees.

Should it be necessary for any Party to this Development Agreement to initiate legal proceedings to adjudicate any issues arising hereunder, the Party or Parties to such legal proceedings who substantially prevail shall be entitled to reimbursement of their attorneys' fees, costs, expenses, and disbursements (including the fees and expenses of expert and fact witnesses) reasonably incurred or made by the substantially prevailing Parties in preparing to participate in mediation or arbitration, to bring suit, during suit, on appeal, on petition for review, and in enforcing any judgment or award, from the other Party or Parties.

Q. Waiver.

The waiver by a party of a breach of any provision of this Development Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach by that party. No waiver shall be valid unless in writing and signed by the party against whom enforcement of the waiver is sought.

R. Severability.

This Development Agreement is expressly made and entered into under the authority of RCW 36.70B.170 *et seq.* This Development Agreement does not violate any federal or state statute, rule, regulation or common law known; but any provision which is found to be invalid or in violation of any statute, rule, regulation or common law shall be considered null and void, with the remaining provisions remaining in full force and effect.

S. Equal Opportunity to Participate in Drafting.

The Parties have participated and had an equal opportunity to participate in the drafting of this Development Agreement. No ambiguity shall be construed against any Party based upon a claim that the Party drafted the ambiguous language.

T. Reservation of City Authority.

As required by RCW 36.70B.170(4) and notwithstanding any other term of this Development Agreement, the City reserves the right to establish and impose new or different additional regulations to the extent required to address a serious threat to public health and safety.

U. Notice.

All correspondence and any notice required in this Development Agreement shall be delivered to the following parties:

City of Bellevue

Attention: Ms. Carol Helland
Land Use Director
450 110th Avenue NE
PO Box 90012
Bellevue, WA 98009
Email: chelland@bellevuewa.gov

with a copy to:
Lori Riordan, City Attorney
450 110th Avenue NE
PO Box 90012
Bellevue, WA 98009
Email: LRiordan@bellevuewa.gov

WR-SRI 120th LLC
c/o Shorenstein Realty Services
Attention: Mr. Todd Sklar
235 Montgomery Street,16th Floor
San Francisco, CA 94104
Email: tsklar@shorenstein.com

c/o Wright Runstad & Company
Attention: Mr. Greg Johnson
1201 Third Avenue
Suite 2700
Seattle, WA 98101
Email: gjohnson@wrightrunstad.com

with a copy to:
Mr. Tayloe Washburn
Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, WA 98101
Email: washt@foster.com

V. Final and Complete Agreement.

This Development Agreement constitutes the final and complete expression of the Parties on the development standards governing the Owner's development of the Property. This Development Agreement may not be modified, interpreted, amended, waived or revoked orally, but only by a writing signed by all Parties. This Development Agreement supersedes and replaces all prior agreements, discussions and representations on all subjects discussed herein, without limitation. No Party is entering into this Development Agreement in reliance on any oral or written promises, inducements, representations, understandings, interpretations or agreements other than those contained in this Development Agreement.

W. Recording Required.

This Agreement shall be recorded with King County at Owner's expense.

X. Execution and Effective Date.

The Effective Date of this Agreement is the date on which it is executed by the City and Owner representatives. The following representatives of the Parties are authorized to, and do hereby, execute on behalf of the party so indicated.

CITY OF BELLEVUE

_____
Grant S. Degginger, Mayor

ATTEST/AUTHENTICATED

_____
Myrna L. Basich, City Clerk

APPROVED AS TO FORM

_____
Lori M. Riordan

WR-SRI 120TH LLC

By:_____
Its:_____

WR-SRI 120TH LLC

By:_____
Its:_____