

**SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT is made and entered into effective the 15<sup>TH</sup> day of OCTOBER, 2019, by and between the City of Sammamish, a Washington municipal corporation ("City"), and Brixton Homes LLC, a Washington Limited Liability Company ("Brixton Homes"), collectively referred to as "the Parties."

**RECITALS**

WHEREAS, Brixton Homes submitted a short plat application for the Augenstein Short Subdivision (PSHP2016-00529) on December 12, 2016 (the "Project"), for the properties located at 723 212<sup>th</sup> Ave SE, Tax Parcel Number 3225069286 (subsequently subdivided and assigned new addresses and parcel numbers) ("the Property");

WHEREAS, Brixton Homes and the Project's engineer submitted a request for a variation from the then-effective Interim Public Works Standards on May 19, 2017 ("ROW Variation Request"), in connection with certain work to be performed within the SE 7<sup>th</sup> Street Right of Way adjacent to the Project. The request was to place the required sidewalk and planter strip in an easement on the south side of the existing right of way to try to retain some of the significant trees along the north side of SE 7<sup>th</sup> Street;

WHEREAS, the City approved the variation on June 20, 2017 and issued a Right of Way Permit (ROW18-02445) on July 19, 2018 ("ROW Variation Approval");

WHEREAS, in October 2018 the Project's contractor began demolition and removal of existing asphalt paving, grub, and duff material within the right of way in preparation for the required roadway improvements;

WHEREAS, the asphalt demolition and grubbing work impacted the root areas of several trees along the northern portion of the right of way within the profile of the future road improvements;

WHEREAS, the Project's engineer contacted the City and provided the Project arborist's risk assessment and recommendations regarding the potentially impacted right-of-way trees, which included removal of several of the trees;

WHEREAS, the City engaged Davey Resource Group for an arborist evaluation and report regarding the right of way trees;

WHEREAS, the City delivered a Notice and Order to Abate Civil Code Violation ("NOV") No. CVC2019-00004 on April 10, 2019;

WHEREAS, the NOV asserted the following violations:

1. SMC 14A.01.010, Public Works Standards Adopted.
2. SMC 19A.09.180 Violations and Enforcement.
3. SMC 21A.37.210 Development Standards – Tree Approval Required.
4. SMC 21A.37.220 Evaluation Required.
5. SMC 21A.37.270 Tree Protection Standards.

WHEREAS, the NOV asserted Civil Penalties pursuant to SMC 23.100.010 for Unlawful Tree Removal or Damages;

WHEREAS, Brixton Homes has appealed the NOV to the Hearing Examiner asserting, among other things, removal of a significant tree in a public easement or public right-of-way is exempt from obtaining approval under Chapter 21A.37 SMC, the ROW Variation Request called for reevaluation of the subject trees after completion of the roadway work, and the NOV stated inapplicable and inappropriate penalties; and

WHEREAS, the Parties now desire to conclude, settle, and resolve all claims related to the NOVs issued in case number CVC2019-00004.

### AGREEMENT

In consideration of the mutual promises and agreements contained herein, the Parties hereby agree as follows:

1. Dismissal of Administrative Appeals. As consideration for this settlement, Brixton Homes shall formally withdraw its appeal in case number CVC2019-00004, now pending before the Sammamish Hearing Examiner within ten (10) days of execution of this Agreement.

2. Civil Penalty Payment to the City. In full and complete settlement of case number CVC2019-00004, Brixton Homes shall cause to be paid to the City the sum of Ninety Five Thousand, Two Hundred Fifty Dollars (\$95,250.00). Said payment shall be made in full within ten (10) business days of final execution of this Agreement by the Parties.

3. Release of Notice and Order by City. The City shall formally release the NOV issued under case numbers CVC2019-00004 within ten (10) business days of receipt of payment pursuant to Paragraph 2 of this Agreement.

4. Required Corrective Actions.

a. Tree Removal. Brixton Homes shall remove the seven trees identified as numbers 6, 7, 8, 9, 10, 14, and 15 within 30 days after receipt of a Right of Way Use Permit amendment authorizing removal of said trees.

b. Tree Replacement and Restoration Plan Required.

i. Brixton Homes shall cause the removed trees to be replaced in compliance with the tree replacement standards required pursuant to SMC 21A.37.280.

ii. Brixton Homes shall obtain a professional landscape plan ("Plan") designed to mitigate the loss of trees within the City's ROW by restoring all or parts of the forest landscape and its associated benefits in the area impacted. The plan shall be submitted to the City for review and approval before the work is authorized to proceed. At a minimum, any approved Plan shall:

i. Be prepared by a licensed architect;

ii. Comply with the stated purpose of SMC 21A.37.200;

iii. Include the replanting of trees in the public right of way within the area impacted by tree damage in conformance with the prescriptive replanting ratios set forth in SMC 21A.37.280 for tree replacement; and including other native plantings in the form of groundcovers and shrubs appropriate to restore the full spectrum of the character of the forest landscape screening function provided by the damaged trees.;

iv. Utilize plant materials which complement the natural character of the Pacific Northwest, and which are adaptable to the climatic, topographic, and hydrologic characteristics of the site;

v. Improve upon the existing physical conditions of the Property, establishing a vision of natural vegetated character;

vi. Show locations of planted trees, initial size, location and name of plant materials to be installed, and utilizes a planting density sufficient that the ground will be covered within three years;

vii. Include adequate irrigation;

- viii. Include provision for soil amendment;
  - ix. Identify that landscaped areas shall be covered and maintained with at least two inches of organic mulch to minimize evaporation; and
  - x. A Financial Guarantee pursuant to SMC 27A.20.070 shall be required for a period of two years after the planting or transplanting of the trees or other landscaping to insure proper installation, establishment and maintenance.
- iii. Obtain the required City-issued permits, including but not limited to ROW Permit, before installing the Plan.
  - iv. Install the Plan, pursuant to the requisite City-issued permits, within six (6) months of the execution of this Agreement by all Parties.

5. Failure to Meet Deadlines. If required corrective actions are not completed on or before the deadlines set forth in Paragraph 4 of this Agreement, the following additional penalties shall accrue until corrective actions are complete:

- a. \$100 per day for days 1-15 from the deadline;
- b. \$250 per day for days 16-31 from the deadline; and
- c. \$500 per day for days 31+ from the deadline (up to \$50,000 maximum).

6. Inspection for Compliance. The City may inspect the Properties as necessary to determine compliance with this Agreement.

7. Compliance with Laws. Brixton Homes shall be responsible for complying with any and all local, state and federal requirements not specifically addressed herein.

8. Waiver. Brixton Homes voluntarily surrenders all rights to an administrative or judicial hearing regarding the code violation case that is the subject of this Agreement or the required corrective actions set forth herein. This Agreement is a final, binding agreement and its contents are not subject to appeal.

9. Failure to Comply. If the City determines that the obligations specified in this Agreement are not met, the City may impose any remedy authorized by SMC Title 23, including but not limited to:

- a. Assessment of civil penalties as established by resolution or otherwise identified in the NOVs;
- b. Abatement of the violation;
- c. Assessment of all costs and expenses incurred by the City to pursue code enforcement and to abate the violation, including legal and incidental expenses;

and

d. Suspension, revocation, or limitation of a permit.

10. Building Permit Conditions Still Apply. This Agreement does not impact any outstanding permits related to the Properties.

11. No Admission. This Agreement is not an admission of liability or wrongdoing by any party.

12. Assignment. No Party may assign its rights or obligations under this Agreement without the written consent of the other, which shall not be unreasonably withheld.

13. Successors and Assigns. This Agreement shall be binding on the Parties and their respective heirs, executors, administrators, successors, and assigns.

14. Entire Agreement. This Agreement represents the complete agreement between the Parties with respect to the subject matter hereof. Any prior written or oral representations or agreements to the contrary are of no effect.

15. Amendments. This Agreement may not be amended or modified except by a writing, signed by the Parties to be bound thereby, or signed by their respective attorneys as authorized.

16. Governing Law, Fees, Costs. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration or other proceeding is instituted to enforce any term of this Agreement, the Parties specifically understand and agree that venue shall be exclusively in King County, Washington. The prevailing party in any such action shall be entitled to its attorneys' fees and costs of suit, including expert witness fees.


17. Authority. The persons executing this Agreement on behalf of the respective Parties hereby represent and warrant that they are authorized to enter into this Settlement Agreement on the terms and conditions herein stated.

18. Full Understanding; Independent Counsel. The Parties each acknowledge, represent and agree that they have read this Agreement; that they fully understand the terms thereof; and that they have been fully advised by their independent legal counsel or have had the opportunity to be so advised in connection with the terms of this Agreement. The Parties have had an equal opportunity to participate in the preparation this Agreement.

19. Severability. Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the Parties, who agree that the Agreement shall be

reformed to replace such stricken provision or part with a valid and enforceable provision that comes as close as reasonably possible to expressing the intent of the stricken provision.

BRIXTON HOMES LLC  
By: Brixton Associates, Inc., its Manager

By:   
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Ronald Boscola, Authorized Agent

Date: 10-15-19

CITY OF SAMMAMISH

By:   
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Rick Rudometkin, City Manager

Date: 10-15-19