

OPR 2009-0657
cr: ORD C-34469
* C-34257

DEVELOPMENT AGREEMENT KXLY

This Development Agreement (this "Agreement") is entered into by and between the CITY OF SPOKANE, a Washington Municipal Corporation (the "City") and SPOKANE RADIO INC., a subsidiary of Spokane Television Inc., a Washington corporation, as "KXLY" (collectively "Owners"), as may be referred to collectively as "Parties."

RECITALS

A. **WHEREAS**, Owners own that certain real property which is located south of the Palouse Highway and east of Regal Street in the Southgate neighborhood of the City of Spokane, Washington, which is more fully described in Exhibit "A", attached hereto and incorporated by reference herein (hereafter the "Property"); and,

B. **WHEREAS**, the Owners, filed an application with the City of Spokane to change the Comprehensive Plan land use map designations for the Property from "Residential 4-10" to "CC Core (District Center)" (hereinafter "District Center") and the zoning map's corresponding designation from "RSF" to "CC2-DC," City Planning Department File No. Z2005-114-LU (collectively, "the KXLY Amendment"); and,

C. **WHEREAS**, on June 9, 2008, the City Council conducted a public hearing on the Black Amendment and others concurrently, including amendment applications pertaining to two large tracts of land in the immediate vicinity of the Property; and,

D. **WHEREAS**, on June 30, 2008, the City Council approved Ordinance C34256 (the Black Amendment), Ordinance C34261 (Richey Amendment) and Ordinance C34257 (KXLY Amendment), each of which were to become effective upon the execution of a Development Agreement that includes certain design and development principles that were in large part agreed to between the Owners and the representatives of the Southgate Neighborhood Council at various meetings and workshops to address their concerns about the nature of development otherwise allowed in the CC2-DC zone; and,

E. **WHEREAS**, following submittal of the KXLY Amendment application, the City Transportation Department, in connection with its review of the Project pursuant to SEPA and the GMA's concurrency and capital facilities planning requirements, requested the Owner to prepare and submit a Corridor Capacity Impact Analysis which would identify off-site transportation impacts together with suitable mitigation for any such impacts; and,

F. **WHEREAS**, based upon the findings of the Corridor Capacity Impact Analysis submitted to and reviewed by the City Transportation Department in 2007 with a final study dated April 24, 2008, the City determined that the City's capital facilities plan includes adequate planned transportation capacity to accommodate the transportation impacts of the Project and the City and Owner agreed that the Owner would pay one thousand and fifty-seven dollars and ninety five cents (\$1057.95) per net new PM peak hour trip towards such projects, which, more

specifically, represents \$946.95 per PM peak hour trip toward transportation projects identified in the City's Six-Year Comprehensive Street Program (funded or unfunded) and located within the South¹ Service Area (as identified in preliminary service area maps relating to the City's contemplation of implementing transportation impact fees as authorized pursuant to RCW 82.02.050 through .090) and \$111.00 per PM peak hour trip toward appropriate traffic mitigation projects, which could include the Ray Street cross-over; and,

G. **WHEREAS**, the City issued a Mitigated Determination of Nonsignificance (MDNS) on August 16, 2007, which requires the Owner to pay one thousand and fifty-seven dollars and ninety five cents (\$1057.95) per net new PM peak hour trip ("SEPA Impact Fee"); and,

H. **WHEREAS**, the City has adopted a Growth Management Act Impact Fee ordinance ("GMA Impact Fees"), which is contemplated to go into effect some time after October of 2009; and,

I. **WHEREAS**, the parties acknowledge that RCW 82.02.100 expressly provides that a person required to pay a fee pursuant to SEPA for system improvements shall not be required to pay an impact fee under RCW 82.02.050 through 82.02.090 for those same improvements, but does not foreclose payment of impact fees collected to address other impacts; and,

J. **WHEREAS**, the City is a Washington Municipal Corporation with land use planning and permitting authority over all land within its corporate limits and has the authority to enter into Development Agreements pursuant to RCW 36.70B.170(1), which provides:

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

Further, the legislative findings supporting the enactment of this section state:

The legislature finds that the lack of certainty in the approval of development projects can result in a waste of public and private resources escalate housing costs for consumers and discourage the commitment to comprehensive planning which would make maximum efficient use of resources at the least economic cost to the public. Assurance to a development project applicant that upon government approval the project may proceed in accordance with existing policies and

¹ The draft GMA Impact Fee Ordinance, at the time the SEPA Impact Fee was imposed in August of 2007, designated a Southeast Area and a Southwest Area, which was subsequently combined into the South Area.

regulations, and subject to conditions of approval, all as set forth in a development agreement, will strengthen the public planning process, encourage private participation and comprehensive planning, and reduce the economic costs of development. Further, the lack of public facilities and services is a serious impediment to development of new housing and commercial uses. Project applicants and local governments may include provisions and agreements whereby applicants are reimbursed over time for financing public facilities. It is the intent of the legislature by RCW 36.70B.170 through 36.70B.210 to allow local governments and owners and developers of real property to enter into development agreements.

K. **WHEREAS**, it is the intent of the City and Owners that this Development Agreement comply with the provisions of RCW 36.70B.170(3) and (4); and,

L. **WHEREAS**, the City has promulgated regulations for Development Agreements in Spokane Municipal Code (SMC) 11.19.870 and this Agreement is prepared in accordance with those provisions; and,

M. **WHEREAS**, the City and the Owners desire to enter into this Development Agreement to formally incorporate the conditions enunciated in Ordinance C34256 as development standards applicable to the Property; and

N. **WHEREAS**, the City, Owners and the Southgate Neighborhood Council, through its governing body, have negotiated and reached agreement on the terms of this Agreement which will resolve issues, claims and appeals in the pending appeal filed before the Eastern Washington Growth Management Hearings Board, under GMHB Case No. 08-1-0014; and,

O. **WHEREAS**, the City, Owners, Southgate Neighborhood Council and the other named Petitioners in GMHB Case No. 08-1-0014 have executed a separate Settlement Agreement, in connection with such appeal; and

P. **WHEREAS**, this Agreement will provide increased predictability to the Owners, the Southgate Neighborhood Council, and the City for the future development of the Property.

NOW, THEREFORE, based on the foregoing Recitals, the parties agree as follows:

AGREEMENT

1. **Development Agreement:** This Agreement is a Development Agreement to be implemented in accordance with SMC 11.19.870 and RCW 36.70B.170 through RCW 36.70B.210. It shall become a contract between the Owners, their successors and assigns, and the City upon the effective date of the City's approval by ordinance following a public hearing as provided for in SMC 11.19.870 and RCW 36.70B.170.

2. **Effective Date and Duration of Agreement:** This Agreement shall take effect immediately upon the effective date of the ordinance approving it and execution by all parties, provided that any time periods specified in this Agreement shall be tolled pending final resolution of any appeal of any city, state or federal land use decisions necessary to commence or complete development on the Property consistent with this Agreement ("**Effective Date**"). Unless terminated earlier as provided herein, this Agreement shall expire ten (10) years after its Effective Date (hereinafter, "**Term**").

3. **Zoning Designation and Development Standards:**

3.1 Pursuant to City Ordinance C34257, upon the Effective Date this Agreement shall put into effect the City of Spokane Comprehensive Plan land use map designation of "CC Core (District Center)" and the zoning map's corresponding designation of "CC2-DC" to the Property ("Land Use Approval").

3.2 Pursuant to RCW 36.70B.180, the development standards set forth in this Agreement shall govern during the Term of this Agreement. Any permit or approval issued by the City after execution of this Agreement must be consistent with the terms of this Agreement.

3.3 For the purposes of this Agreement, "**General Development Standards**" shall mean the presently adopted ordinances of the City of Spokane that are in effect on the Effective Date of this Agreement and applicable to properties within the "CC2-DC" zone which include, but are not limited to, the permitted uses of land, the density, design and intensity of use, and the division of property. **Amendments made from time to time by the City to the General Development Standards shall apply to the Property, provided such amendments are applicable city-wide to all properties within the CC2-DC zone.**

3.4 In consideration of Owners' commitment to develop the Property as limited by this Agreement, and the desire by the City and the Owners for predictable development standards, except as specifically provided and limited herein, the Owners shall have a vested right, during the Term of this Agreement, to develop, construct and repair the Property in accordance with the General Development Standards, as defined herein; provided such General Development Standards do not conflict with the matters set forth in Section 3.4 through 3.5 and sections 5, 6 and 7 of this Agreement. Following the expiration or lawful termination of this Agreement, all land use applications affecting the Property shall be governed by the land use designations and regulations in effect for the Property at the time such application are filed with the City. Except as may be specifically set forth herein, nothing in this Agreement shall be construed as a waiver of any conditions of development approval.

3.5 Pursuant to RCW 36.70B.170, the City reserves the right to impose new or different regulations to the extent required by a serious threat to public health and safety.

3.6 Notwithstanding any other provision of this Agreement, the following shall apply to the development of the Property:

3.6.1 Regulations, which are strictly procedural and not substantive, relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.

3.6.2 Regulations, other than land use and zoning standards addressed in Paragraph 3.3 above, governing construction standards and specifications, in effect at the time of permit submittal typically enforced, administered and interpreted by the City of Spokane.

3.6.3 Regulations which the City, and Owners mutually agree, by written consent, can be applied to development of the Property.

4. **Stormwater Pilot Project:** The City may designate the Property and its surrounds, as within a Storm Water Pilot Project Area that is intended to promote creative and innovative solutions for stormwater management within the Moran Prairie Special Drainage District. If a regional stormwater detention facility (such as the area commonly known as the Hazel's Creek Project or other appropriate area) is developed and operated by the City or other governmental entity, and if said facility is capable of accommodating the stormwater management needs of the Property, any plan for development of the Property shall be designed to integrate with such regional facility, if cost effective in the opinion of Owners. Owners shall endeavor to implement Low Impact Development (LID) measures in any development of the property. To the extent allowed by the City's Stormwater Guidelines, such measures shall be considered by the City in regard to any stormwater requirements at the Property. Any development of the Property that occurs prior to the development of such regional stormwater facility shall comply with the City's Stormwater Guidelines and such pre-existing development shall not be required to "retrofit" and connect to the regional stormwater facility. The City and Owners specifically acknowledge and agree that designation of the Property as within a Storm Water Pilot Project Area shall not be construed as a taking of private property for a public or private use.

5. **Integrated Site Plan:** An integrated site plan, containing the elements in this subsection, shall be completed prior to the issuance of a building permit. The following elements shall apply to the Integrated Site Plan which shall include the Property and the properties included in Ordinance C34261 ("Richey") and Ordinances C34256 ("Black") and C34257 ("KXLY"), hereinafter the "Integrated Properties".

5.1 Pedestrian Connections: The Property shall contain dedicated pedestrian and bicycle connections ("path") which are designed to allow pedestrians and bicycles to access and move around and through the Integrated Properties with connection to the surrounding neighborhood. When feasible, such path shall connect to existing publicly accessible trails, sidewalks or other pathways that are adjacent and contiguous to the Integrated Properties.

5.2 Tree Preservation: Any plan for development of the Property shall provide for the preservation of trees, by leaving in place, a minimum of 10% of all Ponderosa Pine trees.

- 5.3 Design Theme: The Integrated Properties shall be developed with a consistent design theme utilizing, for example, similar or complementary construction materials, architectural characteristics, streetscapes, open spaces, fixtures, and landscaping. All buildings shall provide architectural treatment of interest on those façades visible from the street, such as color, texture, glazing, material differentiation or any other mechanism designed to lessen the impact of building mass when viewed from the street.
- 5.4 Community Plaza: A community plaza shall be designated that serves as a central gathering place on one of the Integrated Properties and, if not located on the Property, Owners shall provide satisfactory evidence of the Owners' contractual and financial commitment to participate in the development of the community plaza.
- 5.5 Viewscape: The Owners shall determine and map view corridors that allows persons on the property from common or public areas to view Mt. Spokane and Browne's Mountain. Owners shall consult with the City's Planning Service staff and designated representative of the Southgate Neighborhood Council in scoping and determining view corridors. The identified views corridors shall be protected by site and architectural design strategies, if necessary, such as, co-location of important view corridors with public spaces between buildings and with public gathering space(s). In the event of a conflict between this element and elements 5.2, 5.4, 5.6, 7.2 or 7.4, this provision shall yield to those element(s).
- 5.6 Long-Term Development of Urban District. The intent of the parties is to design and develop urban features that will facilitate integration of the Property (and surrounding area) into an urban district with a unified character that promotes pedestrian and vehicular circulation, without conflict, encourages opportunities for mixed use development and enhances the natural and built aesthetics in the area. In order to enhance connectivity and facilitate future urban development, driveways through the property shall be designed where ever possible, to facilitate connections to the properties identified in Recital D, above. Curbing shall be used to define the parking lot area, such as perimeter curbing and main drive aisles. Driveway entrance(s) and interior landscaping features will also be curbed.
6. **Review of Integrated Site Plan**: The City of Spokane Design Review Committee ("the Committee") shall evaluate the Integrated Site Plan and make a recommendation to the Planning Director whether it is consistent with Section 5. The Mayor shall designate a City resident from the Southgate Neighborhood to serve as a non-voting liaison to the Design Review Committee. The Committee shall seek comments from the Southgate Neighborhood Council as input to its decision process; such comments shall be submitted at least five (5) days prior to the Committee's consideration. The Planning Director will review the Committee's recommendations and issue an administrative determination related to the Integrated Site Plan and its compliance with Section 5. The Planning Director's decision may be appealed pursuant to SMC 17G.060.020 as a Type I decision.

At least twenty (20) days prior to the Committee's consideration, the Owners shall provide a copy of the proposed Integrated Site Plan to the Southgate Neighborhood Council for its review and comment. Owners shall specify a date, time and place to meet with representative(s) of the Southgate Neighborhood Council, with no less than five (5) days notice, for the purpose of discussing the proposed Integrated Site Plan and to hear the Council's comments and suggestions which must be related to the scope of this Agreement. Owners shall, in good faith, consider the Council's comments and will at such meeting, or at the design review meeting, state the basis for rejecting any such comments and/or suggestions.

7. Building Permit Review: All buildings proposed for development on the Property shall be subject to the City of Spokane Design Review process and shall comply with the following elements:

7.1 Urban Design. The building and improvements shall be consistent with the Integrated Site Plan.

7.2 Building Treatment: The allowed one large-format retail building on the Property shall orient the building with the narrow side toward the So. Palouse Highway or toward South Regal Street, whichever is closer to the proposed large format retail building and shall promote intervening retail between the large format store and the street. In addition, the siting and design of the large format retail building shall employ site planning strategies that enhance and enliven public spaces on the Property or in the vicinity. The preferred, but not required, configuration of any retail building is multi-story. All buildings shall provide architectural treatment of interest on those façades visible from the street, such as color, texture, glazing, material differentiation or any other mechanism designed to lessen the impact of building mass when viewed from the street.

7.3 Square Footage Limitation: Any plan for development of the Property shall include no more than one large format store up to a maximum of 105,000 square feet. No other single commercial building on the Property shall exceed 55,000 square feet.

7.4 Design Standards: Any plan for development of the Property shall comply with the design standards (but not including any square footage limitations) applicable to properties in the City's CC1 zone in effect on the date of this Agreement, which standards are dated August 11, 2002, and are titled "Initial Design Standards and Guidelines for Centers and Corridors," which are attached hereto as Exhibit "B" and incorporated herein by this reference.

8. Transportation Fees:

8.1. Mitigation of Off-Site Transportation Impacts. The Owners agree to pay under RCW 43.21C, a SEPA Impact Fee of \$1,057.95 per net new PM peak hour trip, in accordance with the Mitigated Determination of Nonsignificance issued on August 16, 2007. The parties acknowledge that RCW 82.02.100 expressly provides that a person

required to pay a fee pursuant to SEPA for system improvements shall not be required to pay an impact fee under RCW 82.02.050 through 82.02.090 for those same improvements,

8.1.1 Allocation of SEPA Impact Fees. For purposes of RCW 82.02.100, said SEPA Impact Fees shall be applied towards system improvements identified in the capital facilities element of the City's Comprehensive Plan (including its Six Year Street Plan) intended to provide capacity for new growth and development in the City's South Service Area (as identified in preliminary service area maps relating to the City's contemplation of implementing transportation impact fees as authorized pursuant to RCW 82.02.050 through .090).

8.1.2 Time of Payment. The Owners shall pay the SEPA Impact Fee for the new trips generated by individual phases/stages of project development prior to the issuance of a certificate of occupancy, less any credit(s) provided for in Section 8.4. Prior to issuance of a building permit, Owners shall enter into a binding agreement to pay the SEPA Impact Fee associated with such building permit, which agreement may be recorded in the official records of Spokane County as a lien against the property binding on subsequent owners' of the Property. The Owners shall, at the time of submission of an application for a building permit, provide an estimate of the SEPA Impact Fees. The Owners shall also be entitled to a reduction in the SEPA Impact Fees if the Owners are required to dedicate land or construct an improvement, as provided for in Section 8.3.

8.2. Determination of New Trips. The most current Institute of Transportation Engineers (ITE) Trip Generation Manual and Trip General Handbook will be used to determine the number of net new PM peak trips generated by each land use proposed for the Project.

8.3 Credit for Dedication of Land or Construction of Improvements. Owners shall be entitled to a credit for the value of any dedication of land for, improvement to, or new construction of any system improvements provided by Owners, to facilities that are identified in the City of Spokane Six Year Comprehensive Street Program or that are required by the City as a condition of approving any development activity on the Property. Any such credit(s) shall be calculated as follows.

8.3.1 Determination of Credit for Dedications. For each request for a credit for a dedication of land, if appropriate, the City shall select an appraiser or Owners may select an appraiser acceptable to the City. The appraiser shall be a Washington State Certified Appraiser or a person with other equivalent certification and shall not have a fiduciary or personal interest in the property being appraised. A description of the appraiser's certification shall be included with the appraisal, and the appraiser shall certify that he/she does not have a fiduciary or personal interest in the property being appraised.

The appraiser shall be directed to determine the total value of the dedicated land or improvement provided by the Owner on an individual case-by-case basis.

8.3.2 Payment for the Appraiser for Dedications. Owners shall be solely responsible for any costs and expenses associated with obtaining such appraisals.

8.3.3 Determination of Credit for Improvements. If the City requires Owners, as a condition of development approval, and if Owners thereafter improve or construct a system improvement or facility or portion thereof identified in the City's Six Year Comprehensive Street Program, the Owners shall receive a credit for the value based on actual cost incurred by the Owners. The entity completing the work on such improvements or facilities shall provide a sworn declaration, submitted under the penalty of perjury, setting forth the dollar amount of actual cost of completing said work, together with copies of all invoices and receipts supporting the total actual cost indicated in the declaration.

8.3.4 Award of Credit for SEPA Impact Fees. After receiving the appraisal for a dedication of land or sworn declaration setting forth the dollar amount of actual cost for improvements, and where consistent with the requirements of this section, the City shall provide the Owners with a letter or certificate setting forth the dollar amount of the credit, the reason for the credit, the legal description of the site donated (if a dedication), and the legal description or other adequate description of the project or development to which the credit may be applied. The Owners must sign and date a duplicate copy of such letter or certificate indicating its agreement to the terms of the letter or certificate, and return such signed document to the City before the SEPA Impact Fee credit will be awarded. The credit must be used within seventy-two (72) months of the award of the credit.

8.3.5 Time to Request Credit. Any claim for credit must be made prior to the issuance of a certificate of occupancy or within 30 days of completion of improvements or dedication of land. In no event shall the credit exceed the amount of SEPA Impact Fees that may be payable by the Owners for the proposed development activity.

No credit shall be given for project improvements, as defined under RCW 82.02.090(6). ("Project improvements" mean site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project, and are not system improvements. No improvement or facility included in a capital facilities plan approved by the governing body of the county, city, or town shall be considered a project improvement.).

8.4 Requirements for Improvements

8.4.1 Conformity with Applicable Standards. No credit shall be given unless all improvements or facilities have been constructed in accordance with record drawings and approved plans on file at the City's Department of Engineering Services, and in conformity with the City's Design Standards. Any improvements or facilities shall be constructed in accordance with adopted City standards and including those related to warranties, performance guarantees, and indemnification of the City.

8.4.2. Warranty of Improvements. In the event the improvement for which the Owners is requesting a credit is not completed prior to the issuance of a certificate of occupancy, the Owners shall execute a City of Spokane Project Agreement and Performance/Warranty Guarantee and shall provide security acceptable to the City to guarantee Owners' obligations under said Project Agreement.

8.5 Geographic limitation on use of SEPA Impact Fee. The City shall use the payment of the SEPA Impact Fee for improvements identified in the capital facilities element of the City's Comprehensive Plan, including its Six Year Street Program (funded or unfunded) located in the South Service Area of the City of Spokane.

8.6 Project Analysis and Improvements. Payment of the SEPA Impact Fees required hereunder shall not relieve Owners of Owners' obligations under state and local laws and regulations to perform such studies and mitigate such impacts as are identified in such studies relating to any development activity on the Property; provided however, the parties acknowledge that RCW 82.02.100 expressly provides that a person required to pay a fee pursuant to SEPA for system improvements shall not be required to pay an impact fee under RCW 82.02.050 through 82.02.090 for those same improvements. At the time of building permit application, if required under the Spokane Municipal Code, the City will require the Owners to perform an Operational Study and Analysis of adjacent intersections to identify transportation impacts attributable to the land use identified in the building permit application, identify appropriate mitigation and design access and frontage improvements to mitigate any impacts.

9. Miscellaneous:

9.1 Effect of Delay. In addition to any specific provisions of this Agreement, performance by either party of its obligations hereunder shall be excused during any period of delay caused at any time before termination or expiration of this Agreement by reason of acts of God or civil commotion, riots, strikes, picketing, or other labor disputes, national shortages of materials or supplies, or damage to work in process by reason of fire, floods, earthquake, or other casualties or any other cause beyond the reasonable control of the delaying party. Further, if any City approvals required hereunder shall be unreasonably delayed beyond the normal time period through no fault of Owners or their assigns, the term of this Agreement shall be extended by a period equal to the time of the delay.

9.2 Non-Waiver. Failure by either party at any time to require performance by the other party of any of the provisions hereof shall in no way affect the parties' rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this non-waiver clause.

9.3 Covenants Run with the Land. During the term of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law. Each covenant to do or refrain from doing some act on the Property hereunder, (a) is for the benefit of such properties and is a burden upon the Property, (b) runs with the Property, and (c) is binding upon each successive owner during its ownership of Property or any portion thereof, and each person having any interest therein derived in any manner through any owner of the property or any portion thereof, and shall benefit such party and the Property hereunder, and each other person succeeding to an interest in such Property.

9.4 Relationship of Parties. It is understood and agreed by the parties hereto that the contractual relationship created between the parties hereunder is that Owners are an independent contractor and not an agent of City. Nothing contained herein or in any document executed in connection herewith shall be construed as making City and Owner joint venturers or partners. Owners shall defend, indemnify and hold City and its officers and employees harmless from and shall process and defend at its own expense all claims, demand or lawsuits for damages arising in whole or in part from the Land Use Approval and this Agreement.

9.5 Amendments. Pursuant to SMC 11.19.880, this Agreement may only be amended in writing signed by the City and the Owners, after opportunity for public review and comment and approval by the City Council.

9.6 Recordation of Agreement. This Agreement and any amendment or termination to it shall be recorded with the Spokane County Auditor.

9.7 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable by a court of competent jurisdiction the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement or the rights and obligations of the parties have been materially altered or abridged.

9.8 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of Washington. If

any portion of the Spokane Municipal Code is deemed to be inconsistent with any provisions of this Agreement, the provisions of this Agreement shall prevail.

9.9 Assignment.

9.9.1 The parties acknowledge that development of the Property may involve sale, conveyance, or assignment of all or portions of the Property to third parties, who will own, develop and/or occupy portions of the Property and buildings thereon. Subject to Paragraph 9.3 above, Owners shall have the right from time to time to assign or transfer all or any portion of its respective interests, rights, or obligations under this Agreement or in the Property to other parties acquiring an interest or estate in all or any portion of the Property, including a transfer of all interests through foreclosure (judicial or nonjudicial) or by deed in lieu of foreclosure. Consent by the City shall not be required for any assignment or transfer of rights pursuant to this Agreement.

9.9.2 In any such transfer or assignment, the transferee or assignee shall agree in writing to assume the obligations herein pertaining to the Property transferred or assigned, and shall thereafter be entitled to all interests and rights and be subject to all obligations under this Agreement, and Owners who have so transferred or assigned its rights, shall be thereupon be deemed released of liability under this Agreement for the property transferred or assigned, whether or not such release is expressly stated in such transfer or assignment; provided, however, that such Owners shall remain liable for any breach that occurred prior to the transfer or assignment of rights to another party and for those portions of the Property still owned by such Owners; and, provided further, nothing in this Paragraph 9.9.2 shall be construed as limiting the effect of Paragraph 9.3 of this Agreement in the event of such transfer or assignment.

9.10 No Third Party Beneficiary. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement, except as otherwise contemplated under RCW 36.70B.170 through .200.

9.11 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and shall constitute one and the same instrument. All Exhibits hereto are hereby incorporated by specific reference into this Agreement, and their terms are made a part of this Agreement as though fully recited herein.

9.12 Voluntary Agreement. The Parties hereby represent and acknowledge that this Agreement is given and executed voluntarily and is not based upon any representation by any of the Parties to another Party as to the merits, legal liability, or value of any claims of the Parties or any matters related thereto.

9.13 Conflicts. No officer, employee or agent of the City who exercises any function or responsibilities in connection with the authorization, permitting, or approval of the Development, nor any member of the immediate family of any such officer, employee or agent, shall have any personal financial interest, direct or indirect, in this Agreement, either

in fact or in appearance. The Owner shall comply with all state conflict of interest laws, statutes and regulations as they shall apply to all parties and beneficiaries under this Agreement, as well as to officers, employees or agents of the City.

9.14 Authority. The undersigned covenant and represent that they are fully authorized to enter into and to execute this Agreement.

9.15 Termination. This Agreement shall be deemed terminated and of no further effect upon the entry of a final judgment (and the exhaustion of all appeals setting aside such final judgment), voiding or annulling the Land Use Approval or the ordinance approving this Agreement. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder.

9.16 Non-Enforcement not Waiver. Failure by any one of the parties to enforce this entire Agreement or any provision of it with regard to any provision contained herein shall not be construed as a waiver by that party of any right to do so.

9.17 Settlement Agreement. The Parties have entered into a Settlement Agreement in connection with an appeal filed by the Southgate Neighborhood Council *et al* with the Eastern Washington Growth Management Hearing Broad (Case No. 08-1-0014). A copy of the agreement is attached hereto as **Exhibit "C"** and incorporated by reference into this Agreement. The Parties acknowledge that arguments against the standing of the Southgate Neighborhood Council have been waived for the limited purposes expressed in said Settlement Agreement.



CITY OF SPOKANE, WASHINGTON

By (person signing) Thomas E. Danek, Jr.
Title City Administrator
City of Spokane

Attest:

Terrri Pfister
City Clerk

Approved as to form:

Jane
Assistant City Attorney

OWNERS

SPOKANE RADIO, INC.



KXLY

By: Stephen R. Herling
Its: EXECUTIVE VICE PRESIDENT

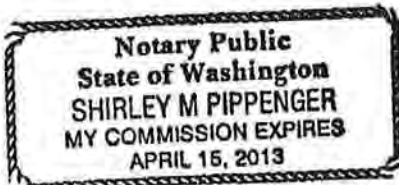
By: Stephen R. Herling
Its: EXECUTIVE VICE PRESIDENT

DATE: November 23, 2009
I HEREBY CERTIFY THIS IS A TRUE AND ACCURATE COPY OF THE ORIGINAL WHICH IS ON FILE IN THE OFFICE OF THE CITY CLERK.
Terrri Pfister
CITY CLERK, TERRI PFISTER

STATE OF WASHINGTON)
)
COUNTY OF SPOKANE)

On this 28th day of October, 2009, before me, a Notary Public in and for said State, personally appeared Thomas E. DaneK, Jr. & Terri L. Pfister, City Administrator & City Clerk of the City of Spokane, Washington, personally known to me to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same freely and voluntarily in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

DATED this 28th day of October, 2009.



Shirley M. Pippenger
Print Name: Shirley M. Pippenger
NOTARY PUBLIC in and for the State of
Washington, Residing at: Spokane
My commission expires: 04/15/2013

STATE OF WASHINGTON)
)
COUNTY OF SPOKANE)

On this 21st day of AUGUST, 2009, before me, a Notary Public in and for said State, personally appeared STEPHEN R. HERLING, EXECUTIVE VICE PRESIDENT of SPOKANE RADIO, INC., personally known to me to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same freely and voluntarily in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

DATED this 21st day of August, 2009.



Heather M. Hamlin
Print Name: Heather M. Hamlin
NOTARY PUBLIC in and for the State of
Washington, Residing at: Spokane WA
My commission expires: 2/11/2013