

Bastyr Campus Master Plan
05-106 Exhibit A
With proposed Revisions June 7, 2005
With further revisions June 14, 2005
And June 15, 2005
And June 17, 2005
And July 7, 2005
And July 13, 2005

DEVELOPMENT AGREEMENT

CITY OF KENMORE, WASHINGTON

and

BASTYR UNIVERSITY

July 13, 2005

DEVELOPMENT AGREEMENT

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EXHIBITS

- Exhibit A: Bastyr University Campus Master Plan, September 2003;
- Exhibit B: Bastyr University Campus Master Plan Draft EIS dated September 2004 and Final EIS dated December 2004;
- Exhibit C: City of Kenmore Ordinance **XXX** Bastyr University Planned Action Ordinance;
- Exhibit D: Bastyr University Campus Master Plan Phasing Plan, dated **X**;
- Exhibit E: City of Kenmore Municipal Code Title 18 Zoning, selected Chapters;
- Exhibit F: City of Kenmore Municipal Code Title 19 Planning Policies and Procedures, selected Chapters;
- Exhibit G: 1998 King County Surface Water Design Manual;
- Exhibit H: City of Kenmore Municipal Code Chapter 13.35;
- Exhibit I: City of Kenmore Surface Water Management Plan;
- Exhibit J: Surface Water Requirements Memorandum from Gregg Dohrn to Bob Sokol and Sandi Cutler, with attachments, dated April 14, 2005; and
- Exhibit K: Bastyr Public Safety Agreement, dated **xxx**.

DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is entered to as of the Effective Date between the City of Kenmore (“City” or “Kenmore”) and Bastyr University, a Washington non-profit corporation (“Bastyr” or “University”). The parties agree as follows.

SECTION 1. RECITALS AND FINDINGS

1.1 INTENT. This Agreement is for the purposes of setting forth the applicable development standards and other provisions, pursuant to RCW 36.70B.170.

1.2 CITY COMPREHENSIVE PLAN. The City of Kenmore incorporated in 1998. The City has adopted and is implementing a comprehensive land use plan in accordance with the provisions of the Washington State Growth Management Act, Chapter 36.70A RCW.

1.3 ST. THOMAS PROPERTY. The Corporation of the Catholic Bishop of Seattle (“Archdiocese”) owns fifty acres of property in the City known as the St. Thomas Property. The property has been leased and occupied by Bastyr University pursuant to a Master Lease Agreement (October 20, 1995).

1.4 SPECIAL STUDY AREA. The Kenmore Comprehensive Plan designated the St. Thomas Property as a special study area while Bastyr University, in conjunction with the City and the Archdiocese, prepared a master plan to guide future development of the property.

1.5 ACQUISITION OF PROPERTY. Bastyr and the Archdiocese have executed a sale and purchase agreement that is contingent upon the satisfactory completion of a master plan for the Bastyr University Campus on the St. Thomas Property.

1.6 INTERIM AGREEMENT. The City of Kenmore, the Archdiocese, and Bastyr executed an agreement dated April 9, 2001 that retains the existing residential zoning on the site but prohibits the submittal of any application for residential development on the St. Thomas Property during the master planning process.

1.7 CAMPUS MASTER PLAN. Bastyr University has prepared a Campus Master Plan, dated September 2003, which provides the overall vision for future development of its Kenmore Campus over the next 25 years. Implementation of the overall vision requires formal recognition of the campus master plan by the City and conformance to development regulations and other standards for the campus.

1.8 ENVIRONMENTAL PROCESS

1.8.1 As a part of the master planning process, the City and Bastyr mutually agreed that an environmental impact statement (“EIS”) would be prepared to evaluate any environmental impacts of the proposed master plan and reasonable alternatives. A Determination of Significance and Scoping Notice was issued by the City on June 24, 2003. This scoping notice identified the elements of the environment that would be addressed in the EIS and noted that a planned action ordinance and/or a development agreement may be prepared in accordance with the provisions of Washington State Law.

1.8.2 A non-project Draft EIS was prepared by the City for the proposed Master Plan and was made available for public review and comment on October 5, 2004.

1.8.3 During the public comment period, a public meeting on the proposed Master Plan and the draft EIS was sponsored by the City and Bastyr and held on the Bastyr Campus.

1.8.4 The Final EIS for the proposed Master Plan was issued by the City of Kenmore on December 1, 2004.

1.9 CURRENT USE AND ACTIVITY LEVELS

1.9.1 Upon approval, this Development Agreement will resolve any outstanding issues regarding the allowed and current activity levels on the Bastyr University Campus and will guide the implementation of the Campus Master Plan.

1.10 PLANNED ACTION. In addition to this Development Agreement, the City Council has passed a Planned Action Ordinance to further facilitate implementation of the Master Plan.

1.11 PUBLIC PRIVATE INSTITUTIONAL ZONE. The City Council has passed Ordinance No. ____ and Ordinance No. ____, which amend the City Comprehensive Plan and Zoning Code to recognize the Master Plan and EIS, as well as to implement a Public Private Institutional (PPI) zoning designation for the Bastyr site.

SECTION 2. DEFINITIONS

2.1 AGREEMENT. “Agreement” means this development agreement adopted pursuant to RCW 36.70.170 et seq and authorized by Resolution No. ____.

2.2 ARCHDIOCESE. “Archdiocese” means the Corporation of the Catholic Bishop of Seattle.

2.3 BASELINE
. “Baseline level of use” or “baseline population” means the 2003 Campus population of 1,274 students, faculty, and staff as found and referred to in the EIS.

2.4 BASTYR. “Bastyr” or “University” means Bastyr University.

2.5 CAMPUS MASTER PLAN. “Campus Master Plan” means the document dated September 2003 prepared for Bastyr University by MIG (Moore Iacofano Goltsman, Inc.) setting forth the long-term vision for development of the Kenmore Campus.

2.6 CAMPUS POPULATION. “Campus Population” means the number of faculty and staff working at Bastyr’s Kenmore campus plus the number of students taking classes at Bastyr’s Kenmore campus as documented in the EIS (see Tables 2.4.3-1 and 2.6.1-1 at Exhibit B).

2.7 CITY. “City” means the City of Kenmore, Washington.

2.8 COMPREHENSIVE PLAN. “Comprehensive Plan” means the City of Kenmore Comprehensive Plan adopted in March 2001, as amended by Ordinance No. 03-0177.

2.9 CONSTRUCTION ACTIVITIES
. “Construction Activities” includes, but is not limited to, clearing and grading to facilitate construction of structures.

2.10 DIRECTOR. “Director” means the Director of the City’s Department of Community Development.

2.11 EIS. “EIS” means the Bastyr University Master Plan Environmental Impact Statement composed of the Final EIS (December 2004) and Draft EIS (October 2004).

2.12 MINOR MODIFICATION. “Minor Modification” means a proposal that does not substantially change the nature or level of use and that would not require additional review under SEPA.

2.13 MAJOR MODIFICATION. “Major Modification” means a proposal that would result in a substantial change of use; substantially change the nature or level of an activity; likely cause a significant impact; or would trigger the need for additional review under SEPA.

2.14 PHASING PLAN.

. “Phasing Plan” means the projected build-out schedule for the Campus Master Plan as described in Exhibit D.

2.15 PLANNED ACTION ORDINANCE. “Planned Action Ordinance” means Ordinance No. ____ passed by the City Council pursuant to WAC 197-11-164 to further facilitate implementation of the Campus Master Plan in accordance with the provisions of this Development Agreement.

2.16 SEPA. “SEPA” means the Washington State Environmental Policy Act and regulations adopted thereunder.

2.17 SIGNIFICANT IMPACT. “Significant Impact” means that an impact; (a) can be meaningfully measured, detected, or evaluated; and (b) has a reasonable likelihood of more than a moderate adverse impact beyond the scope of those evaluated in the EIS on environmental quality when considering the context of setting, magnitude and duration of impact, and applicable regulations and mitigation measures.

SECTION 3. MASTER PLAN APPROVED

3.1 MASTER PLAN. Pursuant to Resolution No. ____, the City Council has approved this Development Agreement and by reference the Bastyr University Master Plan, consisting of the September 2003 Campus Master Plan, attached hereto as Exhibit A to this Development Agreement.

3.2 OTHER DOCUMENTS. The use and future development of the Bastyr University Campus shall be consistent with the provisions of the Campus Master Plan (Exhibit A); the Environmental Impact Statement (EIS) (Exhibit B); this Development Agreement; and, the provisions of a Planned Action Ordinance (Exhibit C), as approved by the Kenmore City Council. In the event of conflict between the mitigation of these documents, the order of priority for mitigation shall be (1) this Development Agreement, (2) the Planned Action Ordinance, (3) the EIS and (4) the Campus Master Plan.

3.3 CONCEPTUAL PLAN. The Master Plan is conceptual in nature and that Bastyr may make revisions to the campus layout and uses as described in Section 4 in order to realize the long-term vision for the campus.

3.4 DIRECTOR REVIEW. The Director shall determine whether proposed actions or development activities are consistent with the Campus Master Plan, the EIS, this Development Agreement, the Planned Action Ordinance, and related agreements and City approvals. Decisions of the Director shall be made in writing and mailed to Bastyr. Decisions of the

Director may be appealed to the City Hearing Examiner in the same manner as for a Type 2 decision (see Exhibit F).

SECTION 4. MASTER PLAN MODIFICATIONS

4.1 UNIVERSITY PROPOSALS. The University may propose, for City review and approval in accordance with this Section, modifications to the Campus Master Plan, including but not limited to changes in proposed uses, structures, designs, layouts, and mitigation as described in the EIS, this Development Agreement, and related agreements and City approvals. Any required modifications to the Campus Master Plan under this Development Agreement also shall be subject to City review and approval in accordance with this Section.

4.2 CLASSIFICATIONS. Proposed modifications shall be classified as either Minor Modifications or Major Modifications as defined in Section 2.12 and 2.13 of this Development Agreement.

4.3 PROCESS. The City shall process requests for modifications, as follows:

4.3.1 Minor Modifications shall be processed as a Type 1 decision.

4.3.2 Major Modifications shall be processed as a Type 2 decision.

4.3.3 Decisions made by the Director regarding the classification of any modification as a Major Modification shall be made in writing and mailed to Bastyr. Decisions of the Director may be appealed to the City Hearing Examiner in the same manner as for a Type 2 decision.

SECTION 5. APPLICABLE DEVELOPMENT REGULATIONS. Bastyr shall, in implementing the approved Campus Master Plan, comply with all applicable provisions of the Kenmore Municipal Code and ordinances unless otherwise specified in this Development Agreement. In addition, Bastyr shall comply with the provisions of all project-specific permits and City approvals for implementation of the Campus Master Plan development.

SECTION 6. VESTED RIGHTS

6.1 DEVELOPMENT REGULATIONS. Bastyr is hereby vested in the following development regulations through the horizon year specified in Exhibit D Phasing Plan or as set

forth below, provided that the University implements the approved Campus Master Plan in a timely manner as set forth in this Development Agreement.

6.1.1 The Campus Master Plan, this Development Agreement, the Planned Action Ordinance, and Comprehensive Plan and Zoning Code Amendments passed by the City Council to implement the Campus Master Plan shall replace all provisions of Title 18 of the City Code regarding allowed uses, densities, dimensions, design requirements, floor area ratios, landscaping, open space, recreation areas, affordable housing, special district overlays, and related issues unless otherwise set forth below, for the life of this Development Agreement.

6.1.2 The following provisions of Title 18 of the City Code as set forth in Exhibit E shall apply to Campus Master Plan development for the life of this Development Agreement:

- A. KMC Sections 18.30.050.C and 18.30.180 addressing height measurement and KMC 18.30.200 regarding sight distance requirements;
- B. Tree Management and Protection, Chapter 18.42;
- C. Environmentally Sensitive Areas, Chapter 18.55 as now in effect, provided however, that if the City Council adopts an Environmentally Sensitive Areas ordinance in substantially the form attached as Exhibit E-1 by XXXX, 2005 [note: choose any mutually acceptable date], then that Environmentally Sensitive Areas ordinance shall apply to Master Plan development for the life of the agreement;
- D. Communication Facilities, Chapter 18.60;
- E. Commercial Site Development, Chapter 18.90; and
- F. Decision Criteria, Chapter 18.105.

6.1.3 The provisions of Title 19 KMC, Planning Policies and Procedures, as set forth in Exhibit F shall apply to Campus Master Plan development for the life of this Development Agreement.

6.1.4 The provisions of the 1998 King County Surface Water Design Manual (KCSWDM), as adopted by the City of Kenmore and last amended by Ordinance No. 02-0132 (Exhibit G), codified at KMC Chapter 13.35 (Exhibit H), as supplemented by the City Surface

Water Management Plan (Exhibit I), and the Surface Water Requirements Memorandum dated April 14, 2005 (Exhibit J), shall apply to Campus Master Plan development.

6.2 LANDSCAPING AND SIGNS. Bastyr may submit for review and approval by the Director, a Campus Landscaping and/or Signage Plan that will set the landscaping and/or signage standards on the campus in accordance with the provisions of the approved Campus Master Plan for the life of this Development Agreement.

6.3 PUBLIC HEALTH AND SAFETY

. The interpretation and application of these vested rights shall not preclude the City from taking such actions that shall be necessary to protect the public health and safety.

6.4 VESTED RIGHTS DETERMINATIONS

6.4.1 The Director is authorized to make determinations on questions regarding vested rights and/or the applicability of the provisions of the City Code and ordinances.

6.4.2 Decisions of the Director shall be made in writing and mailed to Bastyr. Decisions of the Director may be appealed to the City Hearing Examiner in the same manner as for a Type 2 decision.

SECTION 7. PERMITTED USES. Permitted uses on the Bastyr University Campus include but are not limited to the following. When deciding whether a use not listed below is allowed, the Director shall consider whether the proposed use fits within the institutional context of the University; shall review the information and analysis in the Campus Master Plan and EIS; and, shall consider whether the proposed use serves the students, faculty, and other users of the University, or provides a service, facility or activity that supplements, supports or makes use of those provided by the University.

7.1 EDUCATIONAL FACILITIES: Including classrooms, administrative offices, conference rooms, libraries, laboratories, associated physical plant and related or accessory uses.

7.2 FOOD SERVICES: Including University-related eating and drinking places.

7.3 RETAIL USES: Including University bookstore; student supplies, sundries, groceries and miscellaneous retail; garden and plant sales.

7.4 RESEARCH CENTER: Including laboratories, for scientific research and development.

7.5 UNIVERSITY ENTERPRISE SPACE: Consisting of space for entrepreneurial and partnership activities of the University, primarily associated with publishing, consulting, and curriculum or content licensing activities.

7.6 RESIDENTIAL USES: Single and multiple-family dwellings, dormitories, and group quarters serving university students, faculty, employees, or others associated with the University; home occupations and accessory uses.

7.7 RECREATIONAL FACILITIES: Indoor and outdoor recreational facilities.

7.8 HEALTH SERVICES: Public or private health clinic; pharmacy; medical office/outpatient facilities; miscellaneous health services.

7.9 PRIVATE RESIDENTIAL CARE FACILITY: In-patient specialty care.

7.10 WELLNESS CENTER AND/OR CONFERENCE CENTER: A natural health education and treatment center including visitor housing and general conference facilities.

7.11 PARKING: Surface and structured parking areas.

7.12 PERSONAL AND COMMUNITY SERVICES: Religious facilities and activities, day care (child or adult), artist studios, performing arts venues, student union, and community hall.

7.13 UTILITIES AND MINOR COMMUNICATION FACILITIES: Including water, sewer, electrical, natural gas, and telephone systems; stormwater management facilities; wireless communication facilities; and similar systems.

7.14 OTHER PRIMARY, ACCESSORY, ASSOCIATED, OR INTERIM USES: Other primary or secondary uses (accessory, associated, or interim) determined by the Director to be consistent and compatible with the approved Campus Master Plan and EIS, may be allowed for defined time periods when impacts are within the scope of those disclosed in the EIS. This includes the ability of the University to lease out space in its facilities to private non-academic entities for consistent and compatible activities when those facilities are temporarily not needed to support the mission of the University.

SECTION 8. SITE DEVELOPMENT

8.1 COMMERCIAL SITE DEVELOPMENT PERMIT REQUIRED. Before initiating any site improvements or new construction activities, except for exempt tenant improvements, Bastyr University shall submit for City review and approval, a Commercial Site Development Permit

application. A Commercial Site Development Permit may be issued for any Phase, any part of Phase, or for more than one Phase of development in accordance with the provisions of the approved Phasing Plan.

8.2 CLINIC SITE DEVELOPMENT. Prior to initiating any construction activities as defined herein, Bastyr shall modify the Campus Master Plan to relocate the proposed clinic currently depicted on the Master Plan from the site on Juanita Dr. to a site within one of the buildings proposed for the main campus. The proposed modifications shall likewise reallocate the square footage for the clinic to the square footage of the building to which the clinic is relocated. This modification shall be reviewed as a minor modification pursuant to Section 4.3.1 of this Agreement.

8.3 LOW DENSITY HOUSING.

8.3.1 Prior to initiating any construction activities, Bastyr shall modify the Campus Master Plan to relocate clusters I and IV of the low density housing from the forested areas currently depicted on the Master Plan to other residential areas or buildings proposed for the Main Campus. This modification shall be reviewed as a minor modification pursuant to Section 4.3.1 of this Agreement.

8.4 GENERAL SITE DEVELOPMENT STANDARDS

8.4.1 The maximum number of dwelling units that shall be permitted on Campus is 326, provided that the traffic and parking impacts generated by the units shall not exceed the levels identified in the EIS. Bastyr may request modification of the maximum number of dwelling units in accordance with Section 4 of this Development Agreement.

8.4.2 The maximum height of all new buildings on campus shall not exceed 70 feet; provided, that Bastyr may request modification of the maximum building heights in accordance with the Section 4 of this Development Agreement.

8.5 CONSTRUCTION MANAGEMENT PLAN. Prior to initiating each Phase of construction, Bastyr shall prepare for City review and approval, a Construction Management Plan that will address traffic and pedestrian control, lane closures (if necessary), and measures to mitigate potential impacts to parking, transit, and/or access to the Campus or Saint Edward State Park during that phase of development.

8.6 PERMIT FEES. Bastyr shall pay City application fees in accordance with the City ordinances or fee schedules in effect at the time an application is submitted to the City, unless otherwise provided in this Development Agreement.

SECTION 9. PHASING PLAN. The Campus Master Plan shall be implemented in a timely manner in accordance with the provisions of the Phasing Plan attached as Exhibit D unless otherwise agreed to in writing by the parties to this Development Agreement. The University may propose modifications to the Phasing Plan in accordance with Section 4 of this Development Agreement to take into account the University's actual growth and development needs.

9.1.1 Failure by Bastyr to perform in a timely manner as defined below may result in the loss of vested rights, and/or the need to submit a revised Campus Master Plan and/or the need to prepare an additional environmental review.

9.1.2 For purposes of this Section, "perform in a timely manner" shall be defined as Bastyr applying for a Commercial Site Development Permit and the corresponding Building Permits for each phase of development in accordance with the provisions of the approved Phasing Plan, or the submittal and City approval of a revised Phasing Plan or a time extension.

9.1.3 The Director may grant one or more extensions of the time limits in the Phasing Plan or Commercial Site Development Permits, if the following findings are made:

A. Required Commercial Site Development or Building Permit applications have not been submitted or the permitted activities have not been completed due to causes beyond Bastyr's control, such as litigation, acts of God, unanticipated site conditions, or adverse market conditions;

B. Bastyr has shown a good faith effort to commence or complete the permitted activities within the time previously allotted;

C. Applicable conditions and mitigation remain appropriate to address impacts; provided, that the Director shall have the authority to establish additional conditions designed to address incremental changes in project impacts arising or occurring as a result of the time extension; and

D. The period of the extension is reasonable in light of the conditions warranting the extension and the incremental changes, if any, in project impacts.

9.1.4 Bastyr may accelerate elements of its Phasing Plan in accordance with the provisions of Section 4 of this Agreement, if it first implements all identified mitigation measures associated with those accelerated elements; provided, however, that any building component of the Campus Master Plan accelerated by more than 5 years shall first require City review and approval.

9.1.5 Prior to initiating any construction activities, Bastyr shall modify the Phasing Plan to enable Bastyr to make ballfields on the Campus available for use by youth

soccer, little league, and other recreational activities through 2008. Upon approval by the City of such modifications, Bastyr shall seek to enter into agreements with those organizations for such recreational uses through 2008.

9.1.6 The City shall contact Bastyr in writing prior to taking any action for Bastyr's failure to perform in a timely manner as defined herein, and shall afford Bastyr a reasonable opportunity in the discretion of the City to comply and/or to submit a request to revise the Phasing Plan. Approval of a revised Phasing Plan shall not be unreasonably withheld.

9.1.7 Any actions requested by Bastyr to modify the Phasing Plan shall be processed by the City as a Master Plan modification in accordance with the provisions of Section 4 of this Development Agreement.

SECTION 10. TRAFFIC AND TRANSPORTATION

10.1 GENERAL. The mitigation measures required to address traffic impacts associated with the implementation of the Campus Master Plan are based on the analysis in the EIS, including the *Summary of estimated growth in student and faculty/staff on-campus population* (Table 3.6.2-1), *Summary of trip generation rates* (Table 3.6.2-2), *Full build-out trip generation summary* (Table 3.6.2-3), and the *Trip generation summary of site development alternatives compared to Alternative 1* (Table 3.6.2-4) (Exhibit B). If the actual level of growth in on-campus population causes trip generation to exceed 574 PM peak hour trips or 5,740 daily trips, then the City shall determine whether additional traffic studies, environmental studies or review, and/or mitigation for future projects shall be required to meet the peak hour trip generation projections contained in the EIS or to mitigate peak hour trip levels beyond those identified in the EIS. The University agrees that on-site population of full-time faculty, staff, students, and on-campus housing residents shall not exceed 2,700 persons unless approved by the Director.

10.1.1 This Development Agreement shall serve as documentation of transportation and traffic concurrency for implementation of the approved Campus Master Plan. The City shall incorporate the trip generation and distribution analysis from the Campus Master Plan EIS into future city traffic modeling and analyses.

10.1.2 Except as provided above, no further traffic analysis beyond those noted in this Development Agreement, the EIS, and the Planned Action Ordinance, and no further mitigation measures beyond those stated in this Development Agreement, the EIS, and the Planned Action Ordinance, shall be required for development proposals found to be consistent with the approved Campus Master Plan and this Development Agreement, or for Minor Modifications to the Master Plan.

10.1.3 The trip generation estimates and concurrency guarantee shall remain in place unless modified through a Campus Master Plan modification or unless the University fails to make progress on build-out of the Campus Master Plan as described in the Phasing Plan or a revised Phasing Plan.

10.2 COMMUTE TRIP REDUCTION

10.2.1 Bastyr shall implement commute trip reduction measures such as facilitating carpooling; encouraging commuting by bicycle, on foot, or by vanpool; providing transit use incentives, subsidized transit passes, shuttle service to nearby transit facilities or Park-and Ride Lots; and/or initiating a Flex-Car or shared vehicle program. If these measures do not reduce trips to conform to the trip projections in the EIS the City shall determine whether additional commute trip reduction measures, traffic studies, environmental studies or review, and/or traffic mitigation shall be required in conjunction with the review of subsequent project specific proposals to achieve the peak hour trip projections in the EIS.

10.2.2 Commute trip reduction measures are also expected to reduce parking demand ratios over time. If these measures are unsuccessful and excess parking demand begins to adversely affect emergency vehicle access or neighboring properties, the City shall require Bastyr to take actions to ensure that all new development adequately provides for its associated parking. This may include, but is not limited to, conducting new parking studies, additional mitigation measures, limitations on trip generating activities, and/or the establishment of new parking standards necessary to meet the parking requirements identified in the EIS.

10.3 ROAD IMPROVEMENTS. In order to mitigate traffic impacts associated with previous and projected growth and development on Campus in accordance with the provisions of the approved Public Safety Agreement, the following road improvements shall be designed, constructed and installed by Bastyr and at no cost to the City:

10.3.1 Juanita Drive NE. Prior to occupancy of any Phase 1 or Phase 2 improvement that will result in a net increase in baseline campus population, a traffic signal at the intersection of Juanita Drive NE and NE 145th Street shall be designed and installed to at no cost to the City. Signal design and installation shall be subject to Director or designee review and approval and shall include left turn pockets for northbound traffic on Juanita Drive as well as for eastbound traffic on NE 145th St.

A. This improvement may be designed and constructed in conjunction with other improvements to NE 145th to improve access to the Campus.

B. Bastyr may, by approval of the Director or designee, make a cash payment to the City equivalent to the cost of designing and installing the signal improvements.

10.3.2 NE 145th Street. Prior to occupancy of any Phase 1 or Phase 2 improvement that will result in a net increase in campus population, the following improvements to NE 145th Street shall be designed and constructed at no cost to the City to accommodate Bastyr's projected increases in traffic, facilitate improved emergency vehicle access, and provide safe access for pedestrians and bicyclists. These improvements shall be designed and constructed, subject to approval of the Director or designee, consistent with the site access provisions of the EIS at Section 3.6.4:

A. NE 145th Street is a private road owned by the Washington State Parks Department and improvements to NE 145th shall be designed in consultation with the State Parks Department.

B. Final design of the NE 145th Street improvements shall be compatible with Bastyr's internal campus roadway system and may be modified, if approved by the Director or designee, from the initial design shown in the EIS (DEIS Figure 2.6.1-4) to reduce potential environmental impacts and improve emergency access.

10.3.3 Internal roads on the Bastyr Campus shall be considered private roads and driveways.

10.4 COST SHARING AGREEMENT. Bastyr and St. Edwards State Park share NE 145th as their primary access. In the event that improvements to St. Edwards State Park are proposed that would require access improvements to Juanita Drive, Bastyr is authorized to collect latecomers fees in accordance with the provisions of Washington State Law and City Ordinances, or otherwise execute an agreement(s) to share the costs of designing and constructing the road improvements specified above with other benefiting property owners. In addition, Bastyr is strongly encouraged to coordinate the design of required improvements to NE 145th Street and/or share the costs of improvements with the Washington State Parks Department.

10.5 TRAFFIC MITIGATION FEES. Bastyr shall, in accordance with the provisions of City ordinances in effect at the time that building permit applications are submitted to the City and deemed to be complete, make timely payment of traffic mitigation fees for new peak hour trips, provided that:

10.5.1 Within 120 days of the effective date of this Development Agreement,, Bastyr shall make a voluntary payment of \$141,000 to the City in lieu of any traffic mitigation fees that may have been required for the increases in campus population that have occurred since 1995, when King County approved Bastyr's use of the St. Thomas Property.

10.5.2 Bastyr may, subject to City review and approval, make alternative arrangements to pay prospective traffic mitigation fees in advance of receiving project specific

building permits, based on City ordinances in effect at the time that these advanced payments are made.

10.6 EMERGENCY AND SECONDARY ACCESS IMPROVEMENTS. Prior to occupancy of any Phase 1 or Phase 2 improvement that will result in a net increase in campus population, improved access to the campus for emergency vehicles in accordance with the Public Safety Agreement referenced in Section 11 of this Development Agreement shall be constructed and accessible. The improved access shall be installed at no cost to the City. Improvements shall be designed subject to approval of the Director or designee to mitigate concerns about congestion and other potential impairment of access on NE 145th Street in accordance with applicable provisions of the City Fire Code. The improved access shall be designed in consultation with Saint Edward State Park and may take into account potential environmental impacts, estimated project cost, and impact on the State Park. The State Park may contribute financially to support this improvement and/or Bastyr may seek a late-comers fee, in accordance with the provisions of Washington State Law and City Ordinances, or other contribution from the sponsor of any change in use or future improvements to the State Park facilities.

10.7 CITY INTENT. Traffic mitigation fees collected under this Agreement shall be expended in accordance with Washington state law. The City intends that traffic mitigation fees collected in accordance with the terms of this Development Agreement shall be used to mitigate impacts associated with the implementation of the Campus Master Plan.

10.7.1 In particular, the City intends to use the voluntary payment of \$141,000 identified in Paragraph 10.5.1 to finance the implementation of a pre-design study of the Juanita Drive Corridor. This study will include an identification and prioritization of potential improvements, preparation of planning level cost estimates, and a funding strategy to leverage to the greatest extent possible Federal, State, and Regional Grant funds that may be available. The study will also include a forecast of traffic volumes, an analysis of traffic collisions and safety factors, a level of service evaluation, and the identification of environmental issues that may affect the design and construction of improvements.

SECTION 11. PUBLIC SAFETY. The City, Bastyr University, and the Northshore Fire District have executed a separate Public Safety Agreement that sets forth requirements for emergency vehicle access and a campus safety plan (Exhibit K). This Public Safety Agreement may be enforced by the City independently of this Agreement in the course of subsequent development reviews and annual Fire District inspections.

SECTION 12. UTILITIES

12.1 SURFACE WATER MANAGEMENT. Prior to initiating any Phase 1 construction activity except for tenant improvements to existing buildings, Bastyr shall prepare and submit for approval of the Director or designee, a surface water management plan for the affected construction areas or drainage basin(s) on the campus in accordance with the provisions of the 1998 King County Surface Water Design Manual as adopted by the City (see chapter 13.35 KMC) and supplemented by the City of Kenmore Surface Water Management Plan, and the attached surface water memorandum, dated January 21, 2005 (Exhibit J), provided that:

12.1.1 The City has approved Bastyr's request for an adjustment to these standards for Flow Control and Natural Discharge Location, in accordance with the conditions of approval in the drainage memoranda attached as Exhibit J.

12.1.2 In conjunction with the initiation of any outdoor Phase 1 construction activities, Bastyr shall install and maintain temporary improvements, subject to City review, approval, and periodic monitoring, to control erosion and sedimentation associated with surface water from the non-permitted parking lots depicted in Figure 3.8.1-1 of the Final EIS (Exhibit B). For the purposes of this agreement, such surface water measures shall address the increase in impervious surfaces since 1995, when King County approved Bastyr's use of the St. Thomas Property.

SECTION 13. PARKS AND RECREATION

13.1 GENERAL. In accordance with the provisions of the City Code, Bastyr is exempt from any requirement to provide a children's play area on campus.

13.2 IMPACT FEES. Parks and recreation impacts shall be mitigated through payment of applicable parks impact fees for new on-site housing in effect at the time building permit applications are submitted and deemed to be complete.

13.2.1 Utilizing the fee schedule in effect at the time of the execution of this Development Agreement, it is estimated that Bastyr will pay the City over \$670,000 in parks mitigation fees.

13.2.2 Bastyr may, subject to approval of the Director or designee, make alternative arrangements to satisfy park impact fee requirements in advance of receiving project specific building permits.

SECTION 14. COORDINATION WITH WASHINGTON STATE PARKS DEPARTMENT. The implementation of the Campus Master Plan and any plans to improve St. Edwards State Park will require close coordination between Bastyr, the Washington State Parks Department, and the City. Nothing in this Development Agreement shall preclude further agreements between the parties to clarify or modify the provisions of this Development Agreement.

SECTION 15. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties and their successors, heirs, assigns, and personal representatives.

SECTION 16. APPLICABLE LAW

17.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Jurisdiction over and venue of any suit arising out of or related to this Agreement shall be exclusively in the state and federal courts of King County, Washington.

17.2 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.

SECTION 17. ATTORNEY'S FEES. In the event that any lawsuit is instituted by either party to this Development Agreement arising out of or pertaining to this Development Agreement, including any appeals and collateral actions relative to such lawsuit, the substantially prevailing party as determined by the court shall be entitled to recover its reasonable attorney's fees, expert witness fees, and all costs and expenses incurred relative to such lawsuit from the substantially non-prevailing party, in addition to such other relief as may be awarded.

SECTION 18. ENTIRE AGREEMENT. This Development Agreement contains the entire agreement between the parties with respect to this matter. It may not be modified except in a writing signed by the party against whom enforcement of the modification is sought.

SECTION 19. 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.

SECTION 20. SEVERABILITY. This Development Agreement is expressly made and entered into under the authority of RCW 36.70B.170 et seq. Should any court of competent jurisdiction find any provision of this Development Agreement to be invalid under RCW 36.70B or otherwise, the remainder of this Development Agreement shall remain in full force and effect.

SECTION 21. RECORDING. This Development Agreement shall be recorded in the King County Auditor's Office.

SECTION 22. RESERVATION OF CITY AUTHORITY. As required by RCW 36.70B.170(4), and notwithstanding any other term of this Development Agreement, Kenmore reserves the right to establish and impose new or different additional regulations to the extent required to address a serious threat to public health or safety.

SECTION 23. NOTICE. All correspondence and any notice required in this Development Agreement shall be delivered to the following parties:

City of Kenmore:

Attention: Mr. Bob Sokol
Director of Community Development
P.O. Box 82607
Kenmore, WA 98028
Email: bsokol@ci.kenmore.wa.us

Bastyr University:

Attention: Mr. Sheldon Haber
14500 Juanita Drive
Kenmore, WA 98028-4966
Email: SHaber@bastyr.edu

with a copy to:

Mr. Rod Kaseguma
Inslee, Best, Doezie & Ryder, P.S.
P.O. Box C-90016
Bellevue, WA 98009-9016
Email: RKaseguma@Insleebest.com

with a copy to:

Mr. Steve DiJulio
Foster Pepper & Shefelman PLLC
1111 Third Avenue, Suite 3400
Seattle, WA 98101
Email: dijup@foster.com

Whenever possible a copy of the notice will be sent to the parties to be notified by electronic mail on the date the notice is given. Notice may also be given by personal service on the party to be notified; by commercial overnight courier; or by U.S. Mail, postage prepaid. In the event that notice is given by personal service or by commercial courier, notice will be deemed to have been given upon the date that notice is actually delivered to the party to be notified. In the case of notice provided by U.S. Mail, notice will be deemed to have been given three days following the deposit of the notice in a United States mailbox.

*Bastyr Campus Master Plan
05-106 Exhibit A
With proposed Revisions June 7, 2005
With further revisions June 14, 2005
And June 15, 200
And June 17,2005
And July 7, 2005
And July 13, 2005*

SECTION 24. EXECUTION AND EFFECTIVE DATE

24.1 EFFECTIVE DATE. The Effective Date of this Development Agreement is _____.

24.2 EXECUTION. The following representatives of the parties are authorized to, and do hereby, execute on behalf of the party so indicated.

BASTYR UNIVERSITY

CITY OF KENMORE

By: _____
Its: _____

Stephen L. Anderson
City Manager

ATTEST/AUTHENTICATED

Lynn Batchelor, City Clerk

APPROVED AS TO FORM

Rod Kaseguma, City Attorney