

## SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement And Release of Claims, (hereinafter collectively referred to as “Agreement”), is made and entered into by and among CCD Black Diamond Partners LLC, the City of Black Diamond, the Black Diamond City Council, Erika Morgan, Pat Pepper, and Brian Weber (hereinafter collectively referred to as the “parties” to this Agreement).

### RECITALS

A. WHEREAS, Erika Morgan, and Brian Weber are former city councilmembers of the City of Black Diamond, and

B. WHEREAS, Pat Pepper is a current city councilmember of the City of Black Diamond as of the date of this Agreement; and

C. WHEREAS, CCD Black Diamond Partners LLC brought legal suit against Ms. Morgan, Ms. Pepper, and Mr. Weber (the “Individual Defendants”) for their alleged violations of the Open Public Meetings Act during their terms as city councilmembers; and

D. WHEREAS, CCD Black Diamond Partners LLC brought legal suit against the City of Black Diamond (the “City”) and Ms. Morgan, Ms. Pepper and Mr. Weber as a result of the alleged Open Public Meetings Act violations of Ms. Morgan, Ms. Pepper, and Mr. Weber; and

E. WHEREAS, the Individual Defendants brought cross claims against the City to have the City fund the defense of this matter; and

F. WHEREAS, the City brought cross claims against the Individual Defendants for contribution toward its defense costs and indemnification generally; and

G. WHEREAS, the King County Superior Court has determined by Order dated January 24, 2018, that Ms. Morgan attended four (4) meetings in violation of a provision of the OPMA applicable to her, that Ms. Pepper attended six (6) meetings in violation of a provision of

the OPMA applicable to her, and that Mr. Weber attended three (3) meetings in violation of a provision of the OPMA applicable to him; and

H. WHEREAS, the King County Superior Court has determined that Ms. Morgan, Ms. Pepper, and Mr. Weber attended a meeting with knowledge that the meeting was in violation of the Open Public Meetings Act; and

I. WHEREAS, the court imposed a penalty of \$500 each on Ms. Morgan, Ms. Pepper, and Mr. Weber; and

J. WHEREAS, the parties would like to resolve this dispute without further litigation; NOW, THEREFORE, the parties agree and covenant as follows:

IN CONSIDERATION of the mutual promises, covenants and undertakings set forth in this Agreement, the parties agree to the following terms and conditions for dismissal and release of claims as detailed below.

1. NO ADMISSION OF LIABILITY. It is understood and agreed that this Agreement is the compromise of disputed claims. The consideration given under the terms of this Agreement are not to be construed as an admission of liability on the part of the parties hereby released, and said parties deny liability and intend merely to avoid litigation and buy their peace.

2. PAYMENT TOWARD ATTORNEY FEES. The parties agree that the City shall pay attorney fees on behalf of Ms. Morgan, Ms. Pepper, and Mr. Weber in the amount of Fifty-eight thousand Dollars and 00/100 (\$58,000.00) (hereinafter referred to as "Settlement Funds") in consideration of the promises contained herein. The Settlement Funds shall be paid in the form of a check payable to Lighthouse Law Group PLLC totaling the amount of Fifty-eight thousand Dollars and 00/100 (\$58,000.00). Payment shall be made within thirty days of City Council approval of this Agreement.

3. TAX OBLIGATIONS. The City will show “Lighthouse Law Group PLLC” (EIN 27-3329060) as the recipient on any Form 1099 reflecting the payment of the Settlement Funds. Ms. Morgan, Ms. Pepper, and Mr. Weber agree that the City may pay the Settlement Funds directly to Lighthouse Law Group PLLC, and that the City has no obligations with respect to how such payment is allocated. To the extent that the City’s payment of the Settlement Funds to Lighthouse Law Group PLLC is determined by the IRS to be taxable as income to Ms. Morgan, Ms. Pepper, and Mr. Weber, they assume any such tax liability that may result from such determination, while reserving their rights to challenge any such determination by the IRS. (CCD Black Diamond Partners LLC, does not express an opinion or agreement or disagreement with this paragraph.)

4. PAYMENT OF OPEN PUBLIC MEETINGS ACT PENALTIES. Ms. Morgan, Ms. Pepper, and Mr. Weber agree they shall each pay the \$500 penalty imposed in the Court’s order dated January 24, 2018, within thirty days of the City Council approving this Agreement. Ms. Morgan, Ms. Pepper, and Mr. Weber may satisfy this obligation by contributing \$500 each to the Black Diamond Community Center. Ms. Morgan, Ms. Pepper and Mr. Weber shall each provide written verification of this \$500 payment in the form of receipt to CCD Black Diamond Partners LLC within the same thirty-day time period at the address provided below.

5. DISMISSAL OF CROSS CLAIMS. The City agrees that it will dismiss all cross claims against Ms. Morgan, Ms. Pepper, and Mr. Weber in King County Cause No. 16-2-29091-4 KNT with prejudice and without an order of attorney fees or costs. Ms. Morgan, Ms. Pepper, and Mr. Weber agree that they will dismiss all cross claims against the City in King County Cause No. 16-2-29091-4 KNT with prejudice and without an order of attorney fees or costs.

6. DISMISSAL OF KING COUNTY CAUSE NO. 16-2-29091-4 KNT. CCD Black Diamond Partners LLC agrees to dismiss all claims asserted in King County Cause No. 16-2-29091-4 KNT with prejudice and without an order of attorney fees or costs.

7. PETITION FOR STAY OF THIRD-PARTY INTERVENOR CLAIMS IN KING COUNTY CAUSE NO. 17-2-26654-0 KNT. CCD Black Diamond Partners LLC is presently the Intervenor and Third-Party Plaintiff in King County Cause No. 17-2-26654-0 KNT (the Rock Creek Bridge litigation), in which Ms. Morgan, Mr. Weber, Ms. Pepper, and the City of Black Diamond are all Third-Party Defendants. CCD Black Diamond Partners LLC, the City of Black Diamond, and Ms. Morgan, Ms. Pepper, and Mr. Weber all agree to petition the Court to stay the claims brought by Third-Party Intervenor against the Third-Party Defendants in the Rock Creek Bridge litigation until December 31, 2018, in the form of the Stipulation and Order attached herein as Exhibit A. The parties shall sign the Stipulation and return such signed Stipulation to CCD Black Diamond Partners LLC at the address provided below within five (5) days of the mutual execution of this Settlement Agreement. The parties acknowledge that a motion is currently pending to dismiss the main claims brought by the Black Diamond City Council against Mayor Carol Benson in the Rock Creek Bridge litigation.

8. MUTUAL RELEASE OF ALL CLAIMS AND HOLD HARMLESS AGREEMENT BETWEEN THE CITY AND MS. MORGAN, MS. PEPPER AND MR. WEBER. Erika Morgan, Pat Pepper, and Brian Weber, being of lawful age, and for the sole consideration provided in this Agreement, do hereby on behalf of themselves, their heirs, executors, administrators, successors and assigns, release all claims and potential claims against the City of Black Diamond, its agents, employees, officers, elected officials, consultants, and attorneys including any and all claims, actions, expenses, grievances, complaints, or requests for

indemnification or contribution<sup>1</sup>, whatsoever, and specifically including the civil rights claim that they could have asserted under 42 USC 1983, which they now have or which they could have brought or initiated, or which in any way arise out of or relate to their contact with and/or elected positions with the City of Black Diamond, which existed at any time up to the date of this Agreement. This release includes, but is not limited to, any and all claims asserted or that could have been asserted by Ms. Morgan, Ms. Pepper, and Mr. Weber in any federal, state or local court, commission, department, or agency.

In making this Agreement, it is understood and agreed that Ms. Morgan, Ms. Pepper, and Mr. Weber are relying wholly upon their judgment, belief and knowledge of the nature, extent, effect and duration of any alleged injuries and liability therefore (which injuries and liability the City expressly denies and does not admit), and that their Agreement is made without reliance upon any statement or representation of the party hereby released or its representatives.

In further consideration of the payment of the above sum, Ms. Morgan, Ms. Pepper and Mr. Weber agree to indemnify the City, and agree to hold the same harmless against any claim, suit, action or demand brought by Lighthouse Law Group PLLC and/or other who worked on their behalf for the expenses of their investigation, attorneys' fees and other costs relating to this litigation.

The City, for the sole consideration provided in this Agreement, likewise does hereby release all claims and potential claims against Ms. Morgan, Ms. Pepper, and Mr. Weber, including any and all claims, actions, expenses, grievances, complaints, or requests for indemnification or contribution, whatsoever, which it now has or which it could have brought or initiated or which in any way arises out of or relates to its contact with Ms. Morgan, Ms. Pepper, and Mr. Weber, in

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<sup>1</sup> This Agreement is not intended to affect Ms. Pepper's request to be reimbursed for her legal fees in connection with the action to recall her from office.

their individual or official capacities, or any other facts or circumstances which existed at any time up to the date of this Agreement. This release includes, but is not limited to, any and all claims asserted or that could have been asserted by the City in any federal, state or local court, commission, department, or agency.

In making this Agreement, it is understood and agreed that the City is relying wholly upon its judgment, belief and knowledge of the nature, extent, effect and duration of any alleged injuries and liability therefore (which injuries and liability Ms. Morgan, Ms. Pepper, and Mr. Weber expressly deny and do not admit), and that its Agreement is made without reliance upon any statement or representation of the parties hereby released or their representatives.

In further consideration of the promises made herein, the City agrees to indemnify Ms. Morgan, Ms. Pepper, and Mr. Weber, and agree to hold the same harmless against any claim, suit, action or demand brought for the expenses of its investigation, attorneys' fees and other costs relating to this litigation.

9. RELEASE OF CLAIMS AGAINST PLAINTIFF BY THE CITY AND MS. MORGAN, MS. PEPPER AND MR. WEBER.

Erika Morgan, Pat Pepper, and Brian Weber, being of lawful age, and for the sole consideration provided in this Agreement, do hereby on behalf of themselves, their heirs, executors, administrators, successors and assigns, release all claims and potential claims against the CCD Black Diamond Partners LLC, its agents, employees, officers, consultants, and attorneys including any and all claims, actions, expenses, grievances, complaints, or requests for indemnification, whatsoever, which they now have or which they could have brought or initiated, or which in any way arise out of or relate to their contact with and/or elected positions with the City of Black Diamond, or any other facts or circumstances which existed at any time up to the

date of this Agreement. This release includes, but is not limited to, any and all claims asserted or that could have been asserted by Ms. Morgan, Ms. Pepper, and Mr. Weber in any federal, state or local court, commission, department, or agency.

In making this Agreement, it is understood and agreed that Ms. Morgan, Ms. Pepper, and Mr. Weber are relying wholly upon their judgment, belief and knowledge of the nature, extent, effect and duration of any alleged injuries and liability therefore (which injuries and liability the City expressly denies and does not admit), and that their Agreement is made without reliance upon any statement or representation of the party hereby released or its representatives.

The City, for the sole consideration provided in this Agreement, likewise does hereby release all claims and potential claims against CCD Black Diamond Partners LLC, its agents, employees, officers, consultants, and attorneys including any and all claims, actions, expenses, grievances, complaints, or requests for indemnification or contribution, whatsoever, which they now have or which they could have brought or initiated, or which in any way arise out of or relate to any other facts or circumstances which existed at any time up to the date of this Agreement.

10. RELEASE OF CLAIMS BY CCD BLACK DIAMOND PARTNERS LLC. CCD Black Diamond Partners LLC, for the sole consideration provided in this Agreement, does hereby release all Open Public Meeting Act claims or potential Open Public Meeting Act claims known or unknown as of January 26, 2018, to date against the City of Black Diamond, its agents, employees, officers, consultants, attorneys, and elected officials including Ms. Morgan, Ms. Pepper, and Mr. Weber.

11. INDUCEMENTS. The parties acknowledge that no other person or entity, nor any agent or attorney of any person or entity, has made any promise, representation, or warranty whatsoever, express or implied, not contained in this written Agreement concerning the subject

matter hereof, to induce the parties to execute this Agreement. The parties further acknowledge that they have not executed this Agreement in reliance upon any such promise, representation or warranty not written herein.

12. VOLUNTARY EXECUTION. In executing this Agreement, the parties acknowledge that they have consulted with their duly licensed and competent attorneys, and that they have executed this Agreement after independent investigation, voluntarily without fraud, duress or undue influence, and they exclusively consent that this Agreement be given full force and effect according to each and every one of its express terms and provisions.

13. ENTIRE AGREEMENT. This Agreement contains the entire understanding between the parties and supersedes any prior understandings and agreements between the parties with respect to the subject matter hereof. There are no other representations, agreements, arrangements or understandings, verbal or written, between and among the parties relating to the subject matter of this Agreement.

14. SEVERABILITY. The provisions of this Agreement are severable, and if any part of it is found to be unlawful or unenforceable, the other provisions of this Agreement shall remain fully valid and enforceable to the maximum extent consistent with applicable law.

15. BINDING NATURE OF AGREEMENT. Except as otherwise herein provided, this Agreement shall be binding upon and inure to the benefit of the parties, their successors, heirs and assigns.

16. APPLICABLE LAW. This Agreement shall be construed and interpreted under the laws of the State of Washington, excluding its choice-of-law rules.



17. AUTHORITY TO SIGN. Each of the parties signing hereto warrants that it has the full authority to sign this Agreement binding their marital community, themselves, or the governmental entity upon and on behalf of said individual who is signing.

**THE BELOW PARTIES CERTIFY THAT THEY HAVE REVIEWED THIS SETTLEMENT AGREEMENT AND RELEASE, THAT THEY UNDERSTAND IT, AND THAT THEY AGREE TO BE LEGALLY BOUND BY ALL ITS TERMS.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Brian Ross, on behalf of CCD Black Diamond  
Partners LLC  
Address: 3025 112<sup>th</sup> Ave. NE, Suite 100  
Bellevue, WA 98004

Dated: \_\_\_\_\_

\_\_\_\_\_  
Mayor Carol Benson, on behalf of the City of Black  
Diamond and the Black Diamond City Council

Dated: \_\_\_\_\_

\_\_\_\_\_  
Erika Morgan, in her individual capacity

Dated: \_\_\_\_\_

\_\_\_\_\_  
Pat Pepper, in her individual capacity

Dated: \_\_\_\_\_

\_\_\_\_\_  
Brian Weber, in his individual capacity

Approved as to form:

\_\_\_\_\_  
David Linehan, City Attorney

WASHINGTON )

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I certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2018, Brian Ross on behalf of CCD Black Diamond Partners LLC, appeared personally before me, signed the above Settlement Agreement and Release, and acknowledged that it was signed freely and voluntarily.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public in and for  
the State of Washington  
residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

WASHINGTON )

County of )ss  
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I certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2018, Carol Benson on behalf of the City of Black Diamond, appeared personally before me, signed the above Settlement Agreement and Release, and acknowledged that it was signed freely and voluntarily.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public in and for  
the State of Washington  
residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

WASHINGTON )

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I certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2018, Erika Morgan appeared personally before me, signed the above Settlement Agreement and Release, and acknowledged that it was signed freely and voluntarily.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public in and for  
the State of Washington  
residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

WASHINGTON )

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I certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2018, Pat Pepper appeared personally before me, signed the above Settlement Agreement and Release, and acknowledged that it was signed freely and voluntarily.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public in and for  
the State of Washington  
residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

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I certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2018, Brian Weber appeared personally before me, signed the above Settlement Agreement and Release, and acknowledged that it was signed freely and voluntarily.

DATED: \_\_\_\_\_

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Name: \_\_\_\_\_  
Notary Public in and for  
the State of Washington  
residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

HONORABLE J. MICHAEL DÍAZ  
DATE: FEBRUARY \_\_, 2018  
WITHOUT ORAL ARGUMENT

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

CITY COUNCIL OF BLACK DIAMOND,

Plaintiff,

v.

CAROL BENSON,

Defendant.

NO. 17-2-26654-0 KNT

STIPULATED MOTION

**CLERK'S ACTION REQUIRED**

CCD BLACK DIAMOND PARTNERS LLC,  
a Delaware limited liability company,

Intervenor and Third  
Party Plaintiff,

v.

CITY OF BLACK DIAMOND; CITY  
COUNCIL OF BLACK DIAMOND; ERIKA  
MORGAN, an individual; PAT PEPPER an  
individual; and BRIAN WEBER, an  
individual,

Third Party Defendants.

**I. INTRODUCTION AND RELIEF REQUESTED**

The Parties, and their counsel, all signing below, have personal knowledge of the facts stated herein. The Parties stipulate and agree, and move this Court to confirm, that all proceedings related to the third party claims asserted by Intervenor and Third Party Plaintiff CCD Black Diamond Partners LLC (“Oakpointe”) against the City of Black Diamond (“City”), the City

STIPULATED MOTION- 1

CAIRNCROSS & HEMPELMANN, P.S.  
ATTORNEYS AT LAW  
524 2nd Ave, Suite 500  
Seattle, WA 98104  
office 206 587 0700 fax: 206 587 2308

1 Council of Black Diamond (“City Counsel”), and Erika Morgan, Pat Pepper, and Brian Weber  
2 (collectively, the “Third Party Defendants”) should be stayed until December 31, 2018, or until  
3 such earlier stipulated dismissal of the parties. Notwithstanding the foregoing, the Parties also  
4 request that any Party be permitted to move to dismiss its own claims alleged in the present  
5 litigation during the pendency of the requested stay.

## 6 II. STATEMENT OF FACTS

7 Oakpointe previously moved the Court to stay this litigation so that the newly-elected City  
8 Councilmembers would have an opportunity to determine whether or not to pursue the present  
9 litigation, and so that the Parties may pursue the opportunity to resolve the separate, but related,  
10 litigation alleging various Open Public Meetings Act violations committed by the Third Party  
11 Defendants Pat Pepper, Erika Morgan and Brian Weber, which litigation is pending in King  
12 County Superior Court Cause No. 16-2-29091-4 KNT (the “**OPMA Litigation**”). Dkt. 26. This  
13 Court granted the previous Motion to Stay this litigation on December 5, 2017, effective for 90  
14 days. Dkt. 52.

15 The Parties have been actively engaged in negotiations to resolve the present litigation and  
16 the OPMA Litigation. To this end, the Parties reached a Settlement Agreement with respect to the  
17 OPMA Litigation, and included as a term of that Settlement Agreement is the Parties’ agreement  
18 to request a stay of the present litigation with respect to any claims alleged by Oakpointe against  
19 the Third Party Defendants until December 31, 2018.

20 Prior to these settlement discussions, Plaintiff City Council of Black Diamond filed a  
21 Motion for Voluntary Dismissal on January 26, 2018, moving the Court to dismiss its action  
22 against Defendant Carol Benson, with prejudice. Dkt. 56. Nothing in this Stipulated Motion is  
23 intended to affect the Court’s entry of the City Council’s pending Motion for Voluntary Dismissal.  
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### III. ARGUMENT AND LEGAL AUTHORITY

Pursuant to Civil Rule 2A, the Parties request the Court to stay all proceedings regarding the remaining claims asserted by Intervenor/Third Party Plaintiff Oakpointe in the present litigation until December 31, 2018, or until such earlier stipulated dismissal of the parties. This Court has “inherent power to stay its proceedings where the interest of justice so requires.” *King v. Olympic Pipeline Co.*, 104 Wn. App. 338, 349, 16 P.3d 45 (2000). “[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Id.* (quoting *Landis v. North American Co.*, 229 U.S. 248, 254, 57 S. Ct. 163 (1936)). “A court’s determination on a motion to stay proceedings ... is discretionary and is reviewed only for abuse of discretion. A trial court abuses its discretion only if its ruling is manifestly unreasonable or is based upon untenable grounds or reasons.” *King*, 104 Wn. App. at 349.

The Parties are making great strides to resolve all of the claims in the present litigation as well as those claims alleged in the related OPMA Litigation. The Parties have reached a Settlement Agreement with respect to the OPMA Litigation and have mutually agreed that a condition of that settlement is the filing of a petition to the Court to stay Oakpointe’s remaining claims in the present litigation until December 31, 2018. The Parties anticipate that events transpiring between now and December 31, 2018, may reduce or eliminate Oakpointe’s interest in pursuing its claims against Third Party Defendants. The Parties, therefore, respectfully move the Court to implement the mutually agreed terms of settlement between the Parties and stay the present litigation until December 31, 2018.





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CARLSON, MCMAHON & SEALBY,  
PLLC

ERIKA MORGAN

Patrick McMahon, WSBA No. 18809  
E-mail: patm@carlson-mcmahon.org  
37 South Wenatchee Avenue, Suite F  
P.O. Box 2965  
Wenatchee, WA 98807-2965  
Telephone: (509) 662-6131  
Facsimile: (509) 663-0679  
Attorneys for Defendant Benson

Erika Morgan, Pro Se, Third Party Defendant

DATED this        day of                   , 2018, at  
\_\_\_\_\_, Washington:

DATED this        day of                   , 2018, at  
\_\_\_\_\_, Washington:

PAT PEPPER

BRIAN WEBER

Pat Pepper, Pro Se, Third Party Defendant

Brian Weber, Pro Se, Third Party Defendant

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**Certificate of Service**

I, Sara Webster, certify under penalty of perjury of the laws of the State of Washington that on \_\_\_\_\_, 2018, I caused a copy of the document to which this is attached to be served on the following individual(s) via electronic service:

*Counsel for Defendant Benson*

Patrick McMahon  
CARLSON, McMahon & Sealby, PLLC  
37 South Wenatchee Avenue, Suite F  
P.O. Box 2965  
Wenatchee, WA 98807-2965  
patm@carlson-mcmahon.org

*Counsel Plaintiff and Third-Party Defendant City of Black Diamond and City Council of Black Diamond*

David A. Linehan  
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*Pro Se Plaintiffs and Third Party Defendants*

Pat Pepper  
28934 229<sup>th</sup> Pl SE  
Black Diamond, WA 98010-1250  
ppepper@blackdiamondwa.gov

Erika Morgan  
33624 Abrams Ave.  
Black Diamond, WA 98010-7906

Brian Weber  
32510 McKay Lane  
Black Diamond, WA 98010-9726

1 DATED this day of , 2018, at Seattle, Washington.

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4 Sara Webster, Legal Assistant  
CAIRNCROSS & HEMPELMANN, P.S.  
5 524 Second Avenue, Suite 500  
Seattle, WA 98104-2323  
6 Telephone: (206) 254-4428  
Facsimile: (206) 587-2308  
7 E-mail: swebster@cairncross.com  
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STIPULATED MOTION- 7

CAIRNCROSS & HEMPELMANN, P.S.  
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524 2nd Ave, Suite 500  
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office 206 587 0700 fax: 206 587 2308