

CLARK COUNTY STAFF REPORT

DEPARTMENT: Community Development

DATE: July 18, 2017

REQUESTED ACTION: Approve modification of developer's agreement

___ Consent X Hearing ___ County Manager

BACKGROUND

Clark County and Green Prairie, LLC entered into a developer's agreement on April 24, 2007, regarding property in what became the Bowyer Marketplace development. The DA was executed and the duration of it was for ten (10) years. Terms of the agreement included transportation improvements, TIF rates, and concurrency, to name the key provisions.

During the ten (10) year term, the developer made the transportation improvement commitments, however due to the economic recession, was unable realize full build-out of the development under the other terms of the DA. The developer has requested an extension of the DA for another five (5) years in order to realize the unfortunate and lost development opportunity.

COUNCIL POLICY IMPLICATIONS

Clark County has extended various development deadlines, via resolution, and developer agreements in response the effects of the recession. In this particular case, extending the Green Prairie, LLC developer's agreement would be consistent with the Council's policy to provide the opportunity for the full build-out of previously approved development, especially to those which have delivered on specific commitments.

ADMINISTRATIVE POLICY IMPLICATIONS

Approving the extension will trigger some staff monitoring of the balance of the development against the terms of the DA.

COMMUNITY OUTREACH

N/A

BUDGET IMPLICATIONS

YES	NO	
	X	Action falls within existing budget capacity.
		Action falls within existing budget capacity but requires a change of purpose within existing appropriation
		Additional budget capacity is necessary and will be requested at the next supplemental. If YES, please complete the budget impact statement. If YES, this action will be referred to the county council with a recommendation from the county manager.

BUDGET DETAILS

Local Fund Dollar Amount	
Grant Fund Dollar Amount	
Account	
Company Name	

DISTRIBUTION:

Board staff will post all staff reports to The Grid. <http://www.clark.wa.gov/thegrid/>

Martin Snell
Community Development Director

APPROVED:
CLARK COUNTY, WASHINGTON
BOARD OF COUNTY COUNCILORS

DATE: 7-18-17
SR# _____

APPROVED: _____
Jim Rumpeltes, Interim County Manager

DATE: _____

BUDGET IMPACT ATTACHMENT

Part I: Narrative Explanation

I. A – Explanation of what the request does that has fiscal impact and the assumptions for developing revenue and costing information

Part II: Estimated Revenues

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	GF	Total	GF	Total	GF	Total
Total						

II. A – Describe the type of revenue (grant, fees, etc.)

Part III: Estimated Expenditures

III. A – Expenditures summed up

Fund #/Title	FTE's	Current Biennium		Next Biennium		Second Biennium	
		GF	Total	GF	Total	GF	Total
Total							

III. B – Expenditure by object category

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	GF	Total	GF	Total	GF	Total
Salary/Benefits						
Contractual						
Supplies						
Travel						
Other controllables						
Capital Outlays						
Inter-fund Transfers						
Debt Service						
Total						

MODIFICATION OF DEVELOPER'S AGREEMENT

BETWEEN CLARK COUNTY AND GREEN PRAIRIE, LLC

THIS AGREEMENT, entered into this 18th day of July, 2017 between Clark County, hereinafter referred to as the County and Green Prairie, LLC hereinafter referred to as the "Developer".

WITNESSETH:

WHEREAS, the parties entered into a contractual agreement on April 24, 2007(See attached Exhibit "A"), and

WHEREAS, the parties have agreed to modify this agreement as follows:

- a) Extending the term of the agreement five years,
- b) Continuing the traffic impact fee at the rate of \$384.00 per trip plus a surplus of \$12.00 per trip for the five year period, and
- c) Concurrency approval remains in effect for an additional five years.

NOW, THEREFORE, in consideration of payments, covenants, and agreements, hereinafter mentioned, to be made and performed by the parties hereto, the parties covenant and agree as follows:

I. MODIFICATIONS:

The County and the City hereby agree to the following modification of the original contract:

- a) Extending the term of the agreement five years,
- b) Continuing the traffic impact fee at the rate of \$384.00 per trip plus a surplus of \$12.00 per trip for the five year period, and
- c) Concurrency approval remains in effect for an additional five years.

II. REASONS FOR MODIFICATIONS:

- A. Due to the recession, it has taken the Developer longer to lease the balance of the site than originally anticipated.
- B. Except as modified above all existing terms and conditions remain in full force and effect.

III. ENTIRE CONTRACT

The parties agree that this contract is the complete expression of the terms hereto and any oral representations or understanding not

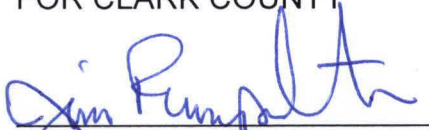
incorporated herein are excluded. Further, any modification of this contract shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination.

Both parties recognize that time is of the essence in the performance of the provisions of this contract.

The parties also agree that the forgiveness of the non-compliance of any provision of this contract does not constitute a waiver of the provisions of this contract.


IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first hereinabove written.

FOR CLARK COUNTY



Acting County Manager

APPROVED AS TO FORM



Deputy Prosecuting Attorney

For CONTRACTOR:

Signature

Date:

Title

EXHIBIT "A"

4379380 AGR

RecFee - \$54.00 Pages: 15 - CLARK COUNTY COMMISSIONERS
Clark County, WA 09/27/2007 12:17



15

RETURN ADDRESS

Clark County
Commissioners

Please print neatly or type information

Document Title(s)

Development Agreement C07-71 Green Prairie

Reference Numbers(s) of related documents:

4316619 AGR re record added tax parcel #

Additional Reference #'s on page ____

Grantor(s) (Last, First and Middle Initial)

Clark County

Additional grantors on page ____

Grantee(s) (Last, First and Middle Initial)

Public

Additional grantees on page ____

Legal Description (abbreviated form: i.e. lot, block plat or section, township, range, quarter/quarter)

attached 27-3-2E

Additional legal is on page ____

Assessor's Property Tax Parcel/Account Number

198088-000 198089-000

Additional parcel #'s on page ____

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

Signature of Requesting Party

14

4316619 AGR

RecFee - \$45.00 Pages: 14 - COMMISSIONERS
Clark County WA 04/30/2007 08:42

RETURN ADDRESS

Clark County
Commissioners

Please print neatly or type information

Document Title(s)

Development Agreement CP 07-71 Green Prairie

Reference Number(s) of related documents:

2007-04-10

Additional Reference #'s on page ____

Grantor(s) (Last, First and Middle Initial)

Clark County

Additional grantors on page ____

Grantee(s) (Last, First and Middle Initial)

Public

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Signature of Requesting Party

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CP 07-71

REC 4-24-07
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**DEVELOPMENT AGREEMENT FOR
REMOVAL OF URBAN HOLDING DESIGNATION
BY AND BETWEEN CLARK COUNTY
AND DEVELOPERS**

THIS DEVELOPMENT AGREEMENT is made and entered into by and between Clark County, a political subdivision of the state of Washington, hereinafter the "County," and Green Prairie, LLC, hereinafter referred to as the "Developer."

RECITALS

WHEREAS, the Developer owns or controls those certain parcel or parcels of real property ("the Property") which are located within the County's present Urban Growth Boundary, and whose legal descriptions are more fully described in the attached Exhibit "A", which is incorporated by reference herein; and,

WHEREAS, the County is a Washington political subdivision with land use planning and permitting authority, including zoning and implementation of the Comprehensive Plan; and,

WHEREAS, the Washington State Legislature has authorized the execution of a Development Agreement between a local government and a person having ownership or control of real property within its jurisdiction (RCW 36.70B.170(1)); and

WHEREAS, a Development Agreement may set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement; all 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

1 mitigation of the development of the real property for the duration specified
2 in the agreement. A development agreement shall be consistent with
3 applicable development regulations adopted by a local government planning
4 under chapter 36.70A RCW;

5
6 And,

7
8 WHEREAS, the legislative findings supporting the enactment of this section
9 provide:

10
11 The legislature finds that the lack of certainty in the approval of development
12 projects can result in a waste of public and private resources, escalate housing
13 costs for consumers and discourage the commitment to comprehensive
14 planning which would make maximum efficient use of resources at the least
15 economic cost to the public. Assurance to a development project applicant
16 that upon government approval the project may proceed in accordance with
17 existing policies and regulations, and subject to conditions of approval, all as
18 set forth in a development agreement, will strengthen the public planning
19 process, encourage private participation and comprehensive planning, and
20 reduce the economic costs of development. Further, the lack of public
21 facilities and services is a serious impediment to development of new housing
22 and commercial uses. Project applicants and local governments may include
23 provisions and agreements whereby applicants are reimbursed over time for
24 financing public facilities. It is the intent of the legislature by RCW
25 36.70B.170 through 36.70B.210 to allow local governments and owners and
26 developers of real property to enter into development agreements;

27
28 And,

29
30 WHEREAS, for the purposes of this Development Agreement, "development
31 standards" includes, but is not limited to, all of the standards listed in RCW
32 36.70B.170(3); and

33
34 WHEREAS, the County has held several workshops and hearings on the
35 substantive issues contained with this Development Agreement and have provided
36 notice of and held a public hearing on this Development Agreement; and

37
38 WHEREAS, the Property is currently subject to the County's Urban Holding
39 designation; and

40
41 WHEREAS, pursuant to the County's Comprehensive Plan criteria, the
42 parties wish to establish and memorialize that such criteria has been satisfied or shall
43 be satisfied under the provisions of this Agreement.

DEVELOPMENT AGREEMENT - 2

VANDOC5:50073919.1

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NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. Development Agreement.

This Agreement is a Development Agreement to be implemented in accordance with RCW 36.70B.170 through RCW 36.70B.210. It shall become a contract between the Developer and the County upon the County's approval by ordinance or resolution following a public hearing as provided for in RCW 36.70B.170.

Section 2. Definitions.

As used in this Development Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section.

- a) "Adopting Resolution" means the Resolution which approves this Development Agreement, as authorized by RCW 36.70B.200 and provides for removal of the Urban Holding Overlay Zone.
- b) "Effective Date" means the effective date established by the Adopting Resolution.

Section 3. Removal of Urban Holding Overlay Zone.

In reliance upon the provisions of this Agreement as well as upon other findings, the County has enacted an adopting resolution providing for removal of the Urban Holding Overlay Zone from the Property and other properties in the northern Orchards area.

Section 4. Payment of Traffic Impact Fee.

In consideration of the County's removal of the Urban Holding Overlay Zone, the following TIF payment process shall apply to the Developers projects on the Property:

- a. Within (60) days of receiving Preliminary Plat or Preliminary Site Plan approval, unless there is an appeal filed, the Developer shall pay to the County fifty percent (50%) of the approved project's Transportation Impact Fees. If there in an appeal filed the Developer shall pay to the County fifty percent (50%) of the approved project's Transportation Impact Fees within fifteen (15) days of the resolution of the appeal.
- b. At the time the Final Plat is ready to record, or the Final Site Plan is ready for approval, the Developer shall pay the remaining balance, (fifty percent (50%)), of the Traffic Impact Fees attributable to the approved Preliminary Plat or Site Plan.

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- c. The parties understand that the County is in the process of amending the Transportation Impact Fee currently imposed in the Orchards TIF District. The parties acknowledge that it is impossible to currently predict, with exact certainty, the amount of increase that will soon occur to the Orchards TIF. Therefore, the parties agree that if, at the time identified in either Section 4.a. or 4.b. above, the County has not adopted a new TIF rate for the Orchards TIF District, then the amount that shall be paid by the Developer shall be three hundred eighty-four dollars (\$384.00) per average daily trip (ADT).

- d. In the event that the County has amended the TIF rate for the Orchards District prior to the times specified in Section 4.a. or 4.b. above, then the TIF rate applicable to the Developer's project or the Property shall be the amended rate; provided, however, that in no event shall the TIF imposed upon a project developed on the Property during the pendency of this Agreement exceed three hundred eighty-four dollars (\$384.00) per ADT.

- e. If the County amends the Orchards TIF rate after the Developer has paid any portion of its TIF obligation under Section 4.a. or 4.b. above and such adopted rate is lower than three hundred eighty-four (\$384.00) per ADT, then the County shall refund to the Developer, within thirty (30) days of such adoption, the difference between the amount which would have been paid had the County's newly adopted TIF rate been in effect at the time of the Developers payment to the County under Section 4.a. or 4.b. above, and the amount actually paid by the Developer. The obligation to make a refund under this Section 4(e) shall terminate if the County adopts a new TIF rate for the Orchards TIF district by April 1, 2008 which is at or above \$384.00.

- f. In the event that the County has not adopted a new TIF rate for the Orchards TIF district by April 1, 2008, then the TIF rate applicable to Developer's project on the Property shall be the rate in effect on the effective date of this Agreement. If the County has not adopted a new TIF rate for the Orchards TIF District by April 1, 2008, then the County shall, prior to May 1, 2008, refund any TIF amounts paid by Developer under the provisions of this Agreement that are in excess of the amount of TIF that would have been owed if the TIF rate attributable to the Developer's project was calculated at the rate in effect upon the effective date of this Agreement.

1 g. In consideration of the County accelerating the delivery schedule for
2 the capacity improvements at the three (3) intersections identified in
3 Section 7 of this Development Agreement; and, in addition to the TIF
4 payments applicable to the Property as described in Sections 4(a)-(f)
5 of this Agreement, the Developer shall pay to the County an
6 additional twelve dollars (\$12) per average daily driveway trip. This
7 additional twelve dollar (\$12) charge shall be added to the TIF
8 otherwise due and paid at the time of the first TIF payment under sub-
9 section 4(b). This amount shall not be subject to the reduction or
10 refund provisions of Sections 4(a)-(f).
11

12 This payment shall be made to the County within sixty (60) days of
13 receiving Preliminary Plat or Preliminary Site Plan approval. If an
14 appeal is filed, payment shall be made within fifteen (15) days of the
15 resolution of the appeal. This payment shall not be refundable and is
16 not subject to an annual inflation update.
17

18 h. The parties further understand that by execution of this Agreement,
19 the Developer is not waiving any right to participate in, or object, to
20 the future Orchards TIF district amendment process; or to object to or
21 appeal any amendment of the Orchards TIF district rate or
22 methodology of calculating the TIF rate.
23

24 **Section 5. Minimum Total Amount.**

25 The parties agree that before a Final Plat may be recorded by the County for any
26 property within the Urban Holding area, the County shall have received TIF
27 payments from developments within the Urban Holding area of at least two million
28 dollars (\$2,000,000.00), hereinafter, the "Necessary Minimum".
29

30 The County shall process final engineering plans and applications for Final Plat in
31 the ordinary course. Once the County has approved a Final Plat or Final Site Plan
32 and it is ready for recording, the Developer shall pay to the County the amount owed
33 under Section 4.b. above. If at the time of such payment the County has received the
34 Necessary Minimum, or more, from projects in the Urban Holding area, then the
35 County shall record the Developer's Final Plat. If the County has not yet received
36 the Necessary Minimum, or more, from projects within the Urban Holding area, then
37 the County shall hold the Developers payment under Section 4.b. until such time as
38 the County has received the Necessary Minimum, at which time the County may
39 expend the payment. If the County has not received the Necessary Minimum within
40 one year after the Developer receives Preliminary Plat Approval and all applicable
41 appeal times have expired, then the Developer may apply to the County for a refund
42 of all payments made under the provisions of the Agreement. If such application is
43 made by the Developer, then the County shall, within thirty (30) days of such

1 application, refund all payments made under the provisions of this agreement, except
2 for those payments provided for under Section 4g. In the event that a refund is
3 made, the approvals of the Developer's applications shall not be invalidated by the
4 fact of the refund. In the event that urban services become available in the future
5 that allow the Developer's project to proceed final plat or final approval of the site
6 plan, the Developer shall pay to the County the lesser of the amount of the TIF he
7 was obligated to pay pursuant to the Agreement or the TIF amount based on the then
8 current Orchards TIF district rate prior to the recording of the plat or final site plan
9 approval.

10
11 If the Developer's project on the property is denied a critical permit from a federal,
12 state or local agency, the Developer may request and receive a refund of the cash
13 payment, until the Necessary Minimum amount of two million dollars (\$2,000,000)
14 is reached. If the Necessary Minimum is reached before such request is made, then
15 the County may elect to refund the cash payment.

16
17 **Section 6. Necessary Minimum Payment Option.**
18 If at any time during the term of this Agreement, the County has not yet received the
19 Necessary Minimum, but the Developer wishes to record its Final Plat, the
20 Developer shall be entitled to pay to the County the difference between what the
21 County has collected and the Necessary Minimum. The difference paid by the
22 Developer under this Section shall be reimbursed to the Developer by a cash refund
23 by the County from other Urban Holding projects (when received by the County
24 after the Developers payment under this Paragraph).

25
26 **Section 7. Construction Completion.**
27 Until fully funded, the payments made under Section 4.a. or 4.b. of this Agreement
28 or Section 6 shall be applied to the design, Right of Way acquisition and construction
29 of transportation improvements, at the intersections of 119th Street / 72nd Avenue,
30 119th Street / SR 503, and 99th Street / SR 503. The County shall exercise best
31 efforts to complete construction of these improvements as quickly as reasonably
32 possible, including scheduling the work for completion within six (6) years.

33
34 **Section 8. School Facilities.**
35 Based upon assertion by the Battle Ground School District that adequate provisions
36 for schools in the Urban Holding area can be made with existing funding sources,
37 plus the implementation of the following provisions, the County and the Developer
38 agree as follows:

- 39
40 a. Beginning at the execution of this development agreement, the
41 Developer shall pay School Impact Fees (SIF's) based upon the 2008
42 rate of \$8,290 for single family residential and \$2,471 for multi-
43 family residential. After December 31, 2008, the SIF rate applicable

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to the Property shall be that rate which is in effect at the time the Property receives preliminary plat approval or preliminary site plan approval.

b. Within fifteen (15) days of the approval of the first Final Plat on the Property or the approval of any phase of a Final Site Plan upon the Property, the Developer shall advance pay to the County on behalf of the Battle Ground School District sixteen percent (16%) of the total approved project's anticipated SIF based upon the approved Preliminary Plat or Preliminary Site Plan. All SIF's advanced under this sub-section shall be credited to Developer's account such that no additional SIF shall be paid to the County by the Developer for the first sixteen percent (16%) of the building permits applied for by the Developer upon the Property. After all pre-paid SIF's have been applied to building permits, the full rate in Section 8(a) shall be charged to subsequent building permits. Interest accrued in SIF funds shall be accrued to the benefit of the Developer. The total number of lots calculated shall be adjusted if there are modifications to the Plat through County approval of engineering plans.

c. No permit to construct a building on the Property shall be accepted by the County until the payment described in Section 8(b) has been made. No building permits shall be applied for until after Final Plat or Final Site Plan approval of each project, except for proposed model dwelling units.

d. The County shall hold the funds paid under Section 8(b) above until the Battle Ground School District has demonstrated to the County that the District has identified a suitable site for a school to serve students located within the current Urban Holding area; and that the site has been formally approved for acquisition by the Battle Ground School Board. Failure of the District to identify and approve a suitable site by May 1, 2008, will result in the County refunding the sixteen percent (16%) payment made under Section 8(b) above to the Developers, which have paid that amount under this Agreement, provided that refunds shall not be made for lots that have been issued building permits. Interest on the funds held under this sub-section shall also be refunded to the Developer, unless a suitable site is identified and approved as required by this sub-section before May 1, 2008.

1 **Section 9. Conditional and Final Concurrency Approval.**

2 Upon execution of this Agreement, the Developer shall be deemed to have
3 concurrency approval for the intersections identified in Section 7 above. No
4 additional transportation conditions of any kind related to these intersections may be
5 imposed upon the Developer as conditions of any land use approval. Fulfillment of
6 the terms of this Agreement shall be a condition of any Preliminary Plat approval or
7 Site Plan approval of Developer's project upon the Property.

8
9 **Section 10. Annexation.**

10 a. The Developer agrees that prior to recording a Final Plat or receiving a
11 Final Site Plan Approval, it shall record a covenant on the Property
12 indicating that the owner or any subsequent owner of the Property shall
13 support annexation to a city.

14
15 b. This agreement shall be binding on a city that assumes jurisdiction
16 through incorporation or annexation of the area covering the property
17 covered by the development agreement, pursuant to RCW 36.70B.190.
18 In the event the property is annexed to a city and the county has not
19 issued bonds to pay for the transportation improvements, the unexpended
20 funds dedicated to improvement of transportation facilities in the annexed
21 area, and any work-product generated with these funds prior to
22 annexation, shall be transferred to the city and shall be used for the
23 improvement of facilities identified in this agreement, as necessary to
24 support development of the property. In the event that the county has
25 issued bonds to pay for the transportation improvements, the city shall not
26 assume the obligation to construct the improvements and the county shall
27 not transfer the unexpended funds unless otherwise agreed to by an
28 interlocal agreement entered into between the city and the county.

29
30 **Section 11. Term of Agreement.**

31 This Agreement shall commence upon the Effective Date, and shall continue in force
32 for a period of ten (10) years by mutual agreement of the parties.

33
34 **Section 12. Land Use Applications and Vesting.**

35 As provided for in RCW 36.70B.190, during the term of this Agreement, the
36 development standards provided for in this Agreement shall not be subject to
37 unilateral amendment, or amendment to zoning ordinances, development standards,
38 or regulations, or a new zoning ordinance or development standard or regulation
39 adopted after the effective date of this Agreement. Pursuant to RCW 36.70B.170,
40 the County reserves the right to impose new or different regulations to the extent
41 required by a serious threat to public health and safety.

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1 **Section 13. Minor Modifications.**

2 Minor modifications to the provisions of this Agreement or the exhibits attached
3 hereto that are mutually agreed upon by the Parties may be allowed administratively
4 without the necessity of a public hearing.

5
6 **Section 14. Further Discretionary Actions.**

7 Nothing in this Agreement shall be construed to limit the authority or the obligation
8 of the County to process any land use approvals, including preliminary plat, PUD,
9 CUP, Site Plan Review or Building Permit under the processes established by the
10 County; provided however, that such process shall not impose conditions
11 inconsistent with the provisions of this Agreement.

12
13 **Section 15. Remedies.**

14 Should a disagreement arise between the County and the Developer regarding the
15 interpretation and application of this Agreement, the parties agree to attempt to
16 resolve the disagreement by first meeting and conferring. If mediation proves
17 unsuccessful the disagreement may be resolved by judicial action filed in the Clark
18 County Superior Court.

19
20 **Section 16. Performance.**

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

25
26 **Section 17. Venue.**

27 This Agreement shall be construed in accordance with and, governed by, the laws of
28 the State of Washington. The parties agree to venue in the Superior Court for Clark
29 County, State of Washington, to resolve any disputes that may arise under this
30 Agreement.

31
32 **Section 18. Notices.**

33 All notices, demands, consents, approval or other communications which are
34 required or desired to be given by either party to the other hereunder will be in
35 writing and will be hand-delivered or sent by United States Mail, addressed to the
36 appropriate party at its address as set forth, or at such other address as the party will
37 have last designated by notice to the other. Notices, demands, consents, approvals,
38 and other communications will be deemed given when delivered two (2) days after
39 mailing.

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1 Notices to the County: The Board of County Commissioners
2 Clark County Public Service Center
3 1300 Franklin Street
4 6th Floor
5 Vancouver, WA 98660

6
7 With copies to: Chief Civil Deputy Prosecuting Attorney
8 1013 Franklin Street, 4th Floor
9 Post Office Box 5000
10 Vancouver, WA 98666

11
12 Notice to Developer: Green Prairie, LLC
13 Attn: George Killian, Managing Member
14 500 East Broadway, Suite 110
15 Vancouver, WA 98660

16
17 With copies to: Stephen W. Horenstein
18 Miller Nash LLP
19 Post Office Box 694
20 Vancouver, WA 98666-0694

21
22 **Section 19. Severability.**

23 If any portion of this Agreement shall be invalid or unenforceable to any extent, the
24 validity of the remaining provisions shall not be affected thereby.

25
26 **Section 20. Inconsistencies.**

27 If any provisions of the Clark County Code or the Developer's future land use
28 approvals are deemed inconsistent with the provisions of this Agreement, the
29 provisions of this Agreement shall prevail.

30
31 **Section 21. Binding on Successors and Recording.**

32 This Agreement shall run with the land and be binding upon and inure to the benefit
33 of the Developer(s), the parties, and their respective heirs, successors and assigns.
34 This Agreement shall be recorded against the real property indicated on Exhibit "A"
35 with the Clark County Auditor.

36
37 **Section 22. Assignment.**

38 Any Developer may sell or otherwise lawfully dispose of any portion of the Property
39 or its right to develop the Property to another person who, unless otherwise released
40 by all parties, shall be subject to the applicable provisions of this Agreement and
41 entitled to all rights provided for herein. Further, the rights and obligations provided
42 for in this Agreement may be assigned or otherwise transferred.

43

1 **Section 23. Recitals.**
2 Each of the recitals contained herein are intended to be, and are incorporated as,
3 covenants between the parties and shall be so construed.
4

5 **Section 24. Amendments.**
6 This Agreement may only be amended by mutual agreement of the parties.
7

8 **Section 25. No Third-Party Beneficiaries.**
9 This Agreement represents the entire Agreement between the Developer and the
10 County with regard to development of the Property and all prior agreements oral or
11 written are superseded hereby. This Agreement is for the benefit of the County in its
12 duty to provide for public health, safety and welfare and for the Developer. No
13 rights or obligations are intended or created by this Agreement for entities or persons
14 other than the parties to this Agreement.
15

16 IN WITNESS WHEREOF, the parties hereto have caused this Development
17 Agreement to be executed as of the dates set forth below:
18

19 **CLARK COUNTY**

20
21
22 By *Steve Stua*
23 *4-24-07*

24 ATTEST:

25
26 By *Louie Richards*
27 _____, County Clerk *of board.*
28

29 APPROVED AS TO FORM:

30
31
32 By *E. B. A.*
33 Rich Lowry, County Attorney
34

35 **DEVELOPER(S)**

36 GREEN PRAIRIE, LLC

37
38
39 *George H. Killian*
40
41 By: George Killian
42 Its: Managing Member
43

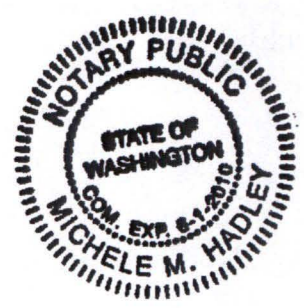


1 State of Washington)
2) ss.
3 County of Clark)
4

5 I certify that I know or have satisfactory evidence that George Killian
6 is the person who appeared before me, and said person acknowledged that he signed
7 this instrument, on oath stated that he was authorized to execute the instrument and
8 acknowledged it as the Managing Member of Green Prairie, LLC to be the free and
9 voluntary act of such party for the uses and purposes mentioned in the instrument.

10 Dated: 4/23, 2007.
11

12
13 Michele M Hadley
14 Notary Public for Washington



15
16 Michele M Hadley
17 (Printed or Stamped Name of Notary)
18 Residing at Portland, OR
19 My appointment expires: June 1, 2010
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EXHIBIT 'A'

DESCRIPTION:

PARCEL I

The Southeast quarter of the Southwest quarter of the Southwest quarter of Section 27, Township 3 North, Range 2 East of the Willamette Meridian, Clark County, Washington, excepting portions lying within NE 119th Street and within SR 503 (NE 117th Avenue).

EXCEPT that portion taken by the State of Washington by Superior Court 88-2-01189.7, records of Clark County, Washington.

PARCEL II

The South half of the Southwest quarter of the Southwest quarter of Section 27, Township 3 North, Range 2 East of the Willamette Meridian, Clark County, Washington.

EXCEPT the East 660 feet thereof and portions lying within NE 119th Street.

MEMORANDUM

To: Marty Snell
c: Chris Horne

From: Steve Horenstein,

Re: Green Prairie, LLC – Development Agreement and Final Site Plan Approval

Date: May 1, 2017

Marty, this is further to our request to extend (now reactivate) the Green Prairie LLC Development Agreement (“DA”) for Killian’s WinCo Shopping Center located at 119th State Route 503 (“SR 503”). As you know, this shopping center opened just as the Great Recession got underway. Fortunately, WinCo was a committed tenant at that time. Lance has been slowly filling the pads with tenants and is in discussions with the Fort Vancouver Regional Library to donate a pad for their use as a library branch. Four pads remain to be developed along with the Arco station that is in for permitting.

We are in discussions with you about the impact of the fee waiver elimination on the Arco project on one of the pads. . *Please understand that for future projects on the remaining pads, we have no expectation that the fee waiver remains available.* That is not what this is about. Our reasons for extending the DA involve the more typical reasons that primarily include vesting and traffic capacity.

Below is a summary of the primary points in the April 2007 Development Agreement for Removal of Urban Holding Designation by and Between Clark County and Developers (“Agreement”) to which Clark County (“County”) and Green Prairie, LLC (“Developer”) are parties.

Section 4. Traffic Impact Fees Payment Process.

1. Section 4.a. Within 60 days after Preliminary Plat or Preliminary Site Plan Approval (“Preliminary Approval”), assuming no appeal is filed, Developer is to pay County 50% of the project’s Transportation Impact Fees (“TIFs”). COMPLETE
2. Section 4.a. If there is an appeal of the Preliminary Plat, Developer is to pay County 50% of the TIFs within 15 days after resolution of the appeal. NO APPEAL WAS FILED

3. Section 4.b. When Final Plat is to be recorded, Developer is to pay the remaining 50% balance of the TIFs. COMPLETE
4. Section 4.c. If, at the times described in Paragraphs 1 and 2 above, County has not adopted a new TIF rate, then Developer is to pay \$384.00 per average daily trip (“ADT”)
5. Section 4.d. If the County amends the TIF rate prior to the times described in Paragraph 1 and 2 above, the TIF rate to be paid by Developer shall be revised accordingly but, in no event shall Developer pay County more than \$384.00 per ADT.
6. Section 4.e. If the County amends the TIF rate after Developer has paid any portion of its TIFs and the amended TIF rate is less than \$384.00 per ADT, County will refund the difference to Developer within 30 days after the amended rate is adopted; provided, however, County shall not be obligated to pay a refund if County adopts a new TIF rate by April 1, 2008 which is at or above \$384.00.
7. Section 4.f. If County did not adopt a new TIF rate by April 1, 2008, then Developer’s TIF rate shall remain at the rate in effect on the Effective Date of the Agreement.
8. Section 4.f. If County did not adopt a new TIF rate by April 1, 2008, then before May 1, 2008, County will refund any TIF payments received from Developer which were more than the amount that would have been owed if the Developer had paid TIFs at the rate in effect on the Effective Date of the Agreement.
9. Section 4.g. In addition to TIF payments, Developer is to pay County an additional \$12.00 per average daily driveway trip (“ADDT”). The ADDT payments are added to the TIF payments when the latter was due. The ADDT payments are not subject to reduction or refund or to an annual inflation update.

WE WOULD REQUEST THAT THE TIF AND ADDT RATES OF \$384.00 + \$12 REMAIN IN PLACE FOR DEVELOPMENT OF THE REMAINING PADS. THESE RATES WERE NEGOTIATED AS PART OF THE DEVELOPER’S OVERALL OBLIGATIONS FOR PUBLIC IMPROVEMENTS.

Section 6. Necessary Minimum Payment Option

If County does not receive the Necessary Minimum during the term of the Agreement and Developer wishes to record a Final Plat, Developer is entitled to pay the difference between what County has collected and the Necessary Minimum (“Differential Payment”). This Differential Payment is to be reimbursed to Developer by County from other Urban Holding projects. NO LONGER APPLICABLE

Section 7. Construction Completion

Until fully funded, Developer's TIF payments or Differential Payment will be applied to design, right of way acquisition and construction of transportation improvements at the following intersections: 119th Street/72nd Avenue, 119th Street/SR 503, and 99th Street/SR 503. County is to use best efforts to complete construction within 6 years. HAVE THE IMPROVEMENTS OTHER THAN THOSE GREEN PRAIRIE WAS RESPONSIBLE FOR BEEN COMPLETED?

Section 8. School Facilities – Battle Ground School District

Section 9. Conditional and Final Concurrency Approval

Upon Agreement's execution, Developer is deemed to have concurrency approval for the intersections described in Section 7. No additional intersection related conditions can be imposed.

WE WOULD WANT CONCURRENCY APPROVAL TO CONTINUE FOR THE REMAINING PADS IN THE EXTENDED DA.

Section 10. Annexation

1. Section 10.a. Prior to recording Final Plat or receiving Final Approval, Developer will record a covenant on the Property to establish any owner's approval for annexation to a city.
2. Section 10.b. If the Property is annexed to a city and County has not issued bonds to pay for the transportation improvements, unexpended funds and any work-product generated with those funds prior to annexation will be transferred to the city and used per the Agreement.
3. Section 10.b. If the County has issued bonds, the city shall not assume the obligation to construct the improvements and County shall not transfer unexpended funds unless otherwise agreed with the city.

IF AN ANNEXATION COVENANT HAS NOT YET BEEN EXECUTED, THE DEVELOPER IS WILLING TO DO SO.

Section 11. Term of Agreement

The Agreement commences on the Effective Date and runs for 10 years.

WE REQUEST AN ADDITIONAL 5 YEARS FOR THE EXTENSION PERIOD

Section 12. Land Use Applications and Vesting

During the term of the Agreement, development standards included in the Agreement are not subject to unilateral amendment, or amendment to zoning ordinances, development standards, or regulations, or new zoning ordinances or development standards or regulations adopted after the Effective Date subject, however, to County's right to impose new regulations required by a serious public health or safety threat.

May 1, 2017

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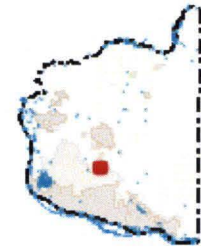
WE WOULD WANT VESTING TO CONTINUE IN THE DEVELOPMENT AGREEMENT FOR A 5 YEAR EXTENSION TERM. THIS WILL ALLOW THE REMAINING PADS TO DEVELOP UNDER THE SAME RULES THAT APPLIED TO THE REST OF THE SHOPPING CENTER.

It is important to understand that the developer constructed significant transportation improvements on both SR 503 and 119th street including building an entirely new access point for Prairie High School on 119th that allowed WSDOT to close Prairie's access on SR503. Also, all of the on-site infrastructure has been completed except for minor work on the undeveloped pads.


We would like to revisit an extension for the development Agreement.



Green Prairie LLC DA



Legend

-  Taxlots
- ImageOrto
 -  Red: Red
 -  Green: Green
 -  Blue: Blue
-  Cities Boundaries
-  Urban Growth Boundaries

Notes:

1: 9,035



1,505.9 0 752.93 1,505.9Feet

WGS_1984_Web_Mercator_Auxiliary_Sphere
Clark County, WA. GIS - <http://gis.clark.wa.gov>

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