

When Recorded, Return to:

Randall B. Printz
Landerholm, Memovich, Lansverk
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ABOVE SPACE RESERVED FOR RECORDING INFORMATION

DEVELOPMENT AGREEMENT

This Development Agreement (this “Agreement”) is entered into by and between CLARK COUNTY, a political subdivision of the State of Washington (the “County”) and MILL CREEK JV LLC, WILFRED N ZILKE FAMILY TRUST, WILFORD ZILKE AND MARJORIE ZIELKE, husband and wife, GARY WEBB TRUST, BIRCHWOOD FARMS LLC, (collectively referred to as “Holt”, or the “Developer,” which terms also include any successor in interest to the Property during the term of this Agreement).

RECITALS

- A. WHEREAS**, the County has land use planning and permitting authority over unincorporated lands within its boundaries, and
- B. WHEREAS**, Holt, owns or controls certain parcels of real property in unincorporated Clark County Washington with the following tax identification numbers: 181466000, 181548000, 181580000, 181581000, 181701000, and 181702000, and which are more particularly described in Exhibit A and incorporated by reference herein (together, the “Property”); and,
- C. WHEREAS**, the Property is subject to a comprehensive plan overlay designation of Urban Holding (UH), and a zoning overlay designation of Urban Holding-10 (UH-10), with underlying plan and zoning designations of Urban Low Density Residential (UL), and Single Family Residential (R1-5), respectively; and
- D. WHEREAS**, Holt and the County would like to further plan for the development of the Property with a unique and innovative design and a wide range of residential densities, advance funding for transportation improvements, predictable infrastructure and regulations, and parks, trails and open spaces; and,

E. WHEREAS, This Agreement addresses the Comprehensive Plan criteria to lift the UH overlay from the Property and includes the Developer's agreement to satisfy the criteria. The County's approval of this Agreement represents the County Council's determination for the Property that the completion of localized critical links and intersection improvements are reasonably funded. In order for Developer to facilitate the items identified in this Agreement, Developer desires to obtain removal of the UH overlay designation and zoning from the Property so that development may occur thereon. In this regard, the removal of the UH overlay from the Property via a County ordinance will be processed concurrently with the approval of this Agreement; and,

F. WHEREAS, Holt and the County want to enable the Property to develop in a manner consistent with the Master Plan attached hereto as Exhibit B and incorporated by reference herein; and under the land use and development standards currently applicable to the Property (unless otherwise provided for in the Master Plan) and to allow for substantial environmental review to occur prior to development of the Property, including analysis of transportation impacts, recognizing that the State Environmental Policy Act encourages advanced environmental review and discourages piecemeal review; and,

G. WHEREAS, the County has the authority to enter into Development Agreements pursuant to RCW 36.70B.170 which provides, in part:

The Legislature finds that the lack of certainty of the approval of development projects can result in a waste of public and private resources escalate housing costs for consumers and discourage the commitment to comprehensive planning which would make maximum efficient use of resources at the least economic cost to the public. Assurance to a development project applicant that upon government approval the project may proceed in accordance with existing policies and regulations, and subject to conditions of approval, all is set forth in a development agreement, will strengthen the public planning process, encourage private participation and comprehensive planning, and reduce the economic cost of development; and,

H. WHEREAS, for purposes of this Agreement, "Development Standards" includes, but is not limited to all of the standards listed in RCW 36.70B.170(3) and,

I. WHEREAS, the County and Holt wish to provide long-term predictability to both Holt and the County on various development issues through the implementation of this Agreement and its attendant Master Plan; and,

J. WHEREAS, Holt, the County, and others have collaborated over a number of years through a public-private partnership, to facilitate the implementation of the Comprehensive Plan through the improvement of transportation infrastructure in the area of the 179th Street interchange with Interstate 5 ("179th Interchange Area"). This is an area which faces challenges to development and to fully implementing the Comprehensive Plan, because of congestion and a lack of capacity on existing local roadways and intersections, lack of access to underdeveloped properties, and resulting traffic safety problems. Each Party has dedicated significant resources

to planning for that area, which provides a gateway to development of currently underutilized land in the 179th Interchange Area. It is necessary for the Parties to complete certain planning efforts in the area, so that public and private funding will be available to complete the needed infrastructure, and that development of the infrastructure can go forward. Completion of certain intersections and other transportation links in the area will further implement the Comprehensive Plan and allow certain properties to develop, thereby generating further resources for more transportation improvements, and addressing the continuing harm to the public because of the problems and challenges listed above. This Agreement will document the completion of planning relevant to the subject property, Holt's contributions to the completion of certain infrastructure in the area, and the County's assurances that Holt may proceed as set forth herein.

K. WHEREAS, Holt's traffic engineer has prepared trip generation and distribution information based upon the expected development of the Property in accordance with the Master Plan (Exhibit B), and a copy of the trip generation estimates is attached hereto and incorporated herein as Exhibit E; and

L. WHEREAS, this Agreement addresses the Comprehensive Plan criteria to remove the UH plan and zoning overlays from the Property and includes Holt's agreement to satisfy the criteria through the construction of or reasonable funding of the mitigation measures, including the critical links and intersections, identified in Exhibit D.

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

1. Development Agreement; Effective Date.

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 Holt and the County upon the later of (1) the date ten days after the day of the County's approval by ordinance or resolution following a public hearing as provided for in RCW 36.70B.170, or (2) the date on which a fully executed version is recorded with the County Auditor (the "Effective Date").

2. Duration of Agreement

- a.** This Agreement shall take effect upon the Effective Date and shall terminate ten years thereafter; provided that, the ten-year period of effectiveness specified in this Agreement shall be tolled pending any appeals of this Agreement or of any county, state or federal land use decisions entitling Holt to commence or complete development of the Property.
- b.** In recognition of the need for the Clark County Council ("Council") to make a formal determination that the improvements needed to create transportation capacity sufficient to accommodate the trips generated by the Master Plan, including the critical links and intersections as provided for in the Comprehensive Plan, are reasonably funded; and in recognition that removal of the current Urban Holding

overlays must occur before development of the Property may occur; and recognizing that at the time this matter comes before the Council the final funding package for the critical links and intersections may not yet be adopted, the Parties agree that the County shall remove the Urban Holding designations from the Property upon the effective date of the Council's adoption of an ordinance determining that the improvements needed to create transportation capacity sufficient to accommodate the trips generated by the Master Plan, including the critical links and intersections in the 179th Interchange Area, are reasonably funded within six years, as required by the Comprehensive Plan; provided, however, that the County has no obligation to adopt such an ordinance.

3. Vesting

- a.** Except as set forth in Section 3.b, below, any land use application submitted with respect to the Property during the term of this Agreement, shall be vested to the zoning and land use regulations applicable to the Property on the Effective Date.
- b.** Section 3.a, above, does not apply to the following applications for development permits:
 - i.** Subject to Section 3.b.iv, below, an application for development of the Property that would generate more trips than indicated in Section 7 of this Agreement is governed by zoning and land use regulations and any other Development Standards in accordance with the Clark County Code in effect when the fully complete application is submitted;
 - ii.** Subject to Section 3.b.iv, below, an application for a building permit is governed by the state or local building codes in effect when a fully complete application for a building permit is submitted;
 - iii.** A critical area review in connection with a development application must be done in conjunction with that application and all applicable critical area regulations in effect when the fully complete application is submitted govern the application;
 - iv.** An application for development is subject to stormwater regulations pursuant to the National Pollution Discharge Elimination System under the Federal Clean Water Act and Washington State law (NPDES) that are in effect at the time specified by the NPDES Phase I Municipal Stormwater Permit ("Stormwater Permit") issued to Clark County, if any, or at the date of final engineering approval by the County.
- c.** Any land use approvals granted under the pendency of this Agreement shall expire on the dates provided for in the applicable development regulations of the County in effect at the time of this Agreement, or at the expiration of this Agreement, whichever date occurs later in time; except that approvals governed by the regulations described

by section 3.b above shall expire on the dates provided for in the regulations in effect at the times set forth in section 3.b, or at the date specified in the Stormwater Permit, if applicable. Pursuant to RCW 36.70B.170(4), the County reserves the authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

4. Conceptual Master Plan

- a.** Attached as Exhibit B and incorporated by reference herein, is a master plan for the Property (the “Master Plan”). A detailed demonstration of how the Master Plan satisfies certain criteria provided for in CCC 40.520.080 is attached hereto as Exhibit C. The design of the Master Plan is unique and innovative through its “front loading” of transportation mitigation, its blending and transitioning of density both within and outside of the Property, its provisions for trails and open space (in excess of 15% of the Property area) and the trails’ and open space’s relationship to, protection of and integration with existing critical areas on the Property. The Master Plan provides for a variety of housing types and lot sizes. The Master Plan will provide the Parties with predictability regarding certain aspects of the future development of the Property, including access locations on to public streets and any associated offsite improvements related to transportation. The County finds and agrees that the Master Plan satisfies the provisions of CCC 40.520.080.C.4.d and CCC 40.520.080.D.1-.3; provided that Holt must submit architectural plans that are acceptable to the County pursuant to CCC 40.510.050-1.9.c(2)(m) in conjunction with an application for PUD approval as set forth in subsection (b).
- b.** Holt shall submit an application for a PUD that complies with the PUD ordinance’s application requirements. Holt’s application for preliminary plat approval and PUD approval may be filed and the County will process such applications upon execution of this Agreement. No public hearing or decision shall be made on any applications until the County removes the Urban Holding designation from the Property. Concurrently with the County’s review of any preliminary plat applications and PUD applications, Holt may submit engineering plans to the County and the County shall review those plans in its normal course.
- c.** If a preliminary plat is approved with design or conditions that are different from the concurrently submitted and reviewed final engineering plans, then Holt shall resubmit engineering plans that conform to the preliminary plat approvals. Any costs associated with such changes shall be the responsibility of Holt. While the County agrees to allow concurrent review of land use applications and final engineering, nothing herein shall be construed to require the County to provide expedited review that is different from the county’s usual timelines for an application for land use or engineering review.
- d.** No final engineering approval shall be granted until the Urban Holding designation has been removed from the Property and a preliminary plat application has been

approved. The application shall be processed as a Type III land use application and reviewed by the County. The application shall be substantially similar to the Master Plan. Any aspects of a land use application relating to the Property that are not substantially similar to the Master Plan shall be reviewed under the applicable regulations as if no Master Plan had been approved. Architectural submittals under CCC 40.510.050-1.9.c(2)(m) shall be submitted and reviewed in conjunction with the application for a PUD. Any approval criteria not addressed and found satisfied in this Agreement shall be addressed during the PUD application and decision process.

- e. Except as set forth in Section 3, above, future development of the Property is subject to the applicable provisions of the Clark County Code as of the Effective Date, and must be generally consistent with the Master Plan.

5. Effect on Fees or Charges

As provided for in RCW 36.70B.180, and except for those development standards described in Section 3.b, above, during the term of this Agreement, the development standards to which the Property is subject pursuant to this Agreement shall not be subject to unilateral amendment, or amendment to zoning ordinances, development standards, or regulations, or a new zoning ordinance or development standard or regulation adopted after the Effective Date. Provided, however, that the vesting granted by this Agreement shall not apply to impact fees, taxes, or permit application fees, which shall be determined or calculated consistent with the County's provisions applicable on the date such fee, charge or tax is triggered. As provided for in Ch. 36.70B RCW, the County reserves the right to impose new standards or changes in development regulations to the extent required by a serious threat to public health and safety.

6. SEPA

Pursuant to the State Environmental Policy Act (SEPA), piecemeal environmental review is to be discouraged. As such, the Parties wish for SEPA review to be accomplished as part of the Agreement for as many of the Property's potential adverse environmental impacts as can be reasonably analyzed, based upon current information contained within the SEPA checklist submitted with this Agreement, including, but not limited to, the traffic study, GIS data as to the general presence of wetlands on some portions of the Property and off site storm water impacts. This review is done under the Consolidated Review provisions of SEPA. The SEPA checklist attendant with this Agreement identifies various potential adverse impacts including transportation, parks, wetlands sewer, water and storm water. The Checklist also identifies a variety of technical reports or information that provides a basis for the proposed mitigation or partial mitigation of these impacts. It is the intent of this Agreement and its attendant SEPA process, to have the County issue a Threshold Determination (as that term is utilized in RCW 43.21C) on the identified conceptually

proposed impacts of the development of the Property. Uses and impacts that are identified at future stages of the development, i.e., preliminary plat approval or PUD approval, that have been previously analyzed through this or other SEPA processes, shall not be re-analyzed as long as the future identified adverse impacts are substantially similar to and of the same or less intensity as those previously analyzed under this or other SEPA processes. Any probable significant adverse environmental impacts of the Property's future proposed development that have not been analyzed under the SEPA process attendant with this Agreement or previously through some other lawful SEPA process, shall be undertaken at the time of such future development.

7. Transportation

Kittelson and Associates Transportation Engineers and the County have analyzed the transportation impacts of the full development (based upon the Master Plan in Exhibit B) of the Property as identified in the traffic study. Based upon the Master Plan, the Property at full development will increase the existing number of PM peak hour trips on the transportation system by 657 PM peak hour and 6346 average daily trips. Based upon Kittelson's and the County's analysis, the future development of the Property shall be conditioned upon the construction of, or the reasonable funding within six years of, the critical links and intersections provided for in the Comprehensive Plan and the other mitigation measures provided for in Exhibit D, which is attached hereto and incorporated by reference herein. The Property shall be vested during the term of this Agreement with 657 PM peak hour, 498 AM peak hour and 6346 average daily trips and no additional off site transportation mitigation or analysis will be required during the term of this Agreement; provided, however, that in the event Holt proposes uses or intensities of uses that would cause the total number of PM Peak or Average Daily trips to exceed the number of trips analyzed as part of this Agreement, then the County may require, and Holt shall provide, additional transportation analysis and lawful mitigation for those increased trips. The transportation vesting provided for in this Section shall be subject to the mitigation measures and the timing provided for in Exhibit D. Some of the transportation improvements may be on the County's Transportation Capital Facility Plan. Holt or successor in interest to the Property, upon construction of such qualifying transportation improvement, shall be eligible to apply for Transportation Impact Fee Credits, but only if such improvements are eligible for Credits under the County's applicable Capital Facilities Plan and Transportation Impact Fee programs.

8. Advance Payment Of TIF/Surcharge

- a. To increase the County's ability to fund and construct certain transportation improvements in the area which will provide systemic benefits in excess of the impacts that will be created through the implementation of the Master Plan, Holt agrees to accelerate the manner in which Holt or a successor in interest to the Property would pay Transportation Impact Fees ("TIFs"). Holt shall pay TIFs associated with the Property based upon the TIF rate applicable at the time this

Agreement becomes effective. In addition to the payment of TIF, Holt shall also pay the Surcharge as described below. Instead of paying TIFs at the time of individual building permits, (as is currently provided for by the County's code), Holt, or its successor in interest agrees to the following permit application and TIF payment schedule.

- b.** Holt shall submit a fully complete application, (or if deemed incomplete, submit materials to achieve fully complete status within 28 days of the determination that the application is not fully complete), for preliminary plat approval for at least 150 lots prior to February 15th, 2020. Assuming Holt receives preliminary plat approval and no appeal is filed, Holt shall pay within 30 days of receiving said preliminary plat approval the sum of \$3025 for each lot receiving preliminary plat approval. Holt shall submit a fully complete application, (or if deemed incomplete, submit materials to achieve fully complete status within 28 days of the determination that the application is not fully complete), for preliminary plat approval for at least 150 additional lots prior to February 15th, 2021. Assuming Holt receives preliminary plat approval and no appeal is filed, Holt shall pay within 30 days of receiving said preliminary plat approval the sum of \$3025 for each lot receiving preliminary plat approval. Holt shall submit a fully complete application, (or if deemed incomplete, submit materials to achieve fully complete status within 28 days of the determination that the application is not fully complete), for preliminary plat approval for at least 150 additional lots prior to February 15th, 2022. Assuming Holt receives preliminary plat approval and no appeal is filed, Holt shall pay within 30 days of receiving said preliminary plat approval the sum of \$3025 for each lot receiving preliminary plat approval. Holt shall submit a fully complete application, (or if deemed incomplete, submit materials to achieve fully complete status within 28 days of the determination that the application is not fully complete), for preliminary plat approval for at least 91 additional lots prior to February 15th, 2023. Assuming Holt receives preliminary plat approval and no appeal is filed, Holt shall pay within 30 days of receiving said preliminary plat approval the sum of \$3025 for each lot receiving preliminary plat approval.
- c.** Holt shall submit an application for final plat approval for at least 150 lots prior to November 1st, 2020. Assuming Holt receives final plat approval, Holt shall pay \$3025 for each lot receiving final plat approval. Holt shall submit an application for final plat approval for at least 150 additional lots prior to November 1st, 2021. Assuming Holt receives final plat approval, Holt shall pay \$3025 for each lot receiving final plat approval. Holt shall submit an application for final plat approval for at least 150 additional lots prior to November 1st, 2022. Assuming Holt receives final plat approval, Holt shall pay \$3025 for each lot receiving final plat approval. Holt shall submit an application for final plat approval for at least 91 additional lots prior to November 1st, 2023. Assuming Holt receives final plat approval, Holt shall pay \$3025 for each lot receiving final plat approval

- d. In addition to the TIF, each building permit for each lot developed upon the Property, shall pay an additional surcharge (the “Surcharge”) in the amount of \$3,500 per lot. The Surcharge shall be paid at the time of the issuance of the building permit.
- e. Regardless of the schedule provided for in Section 8.b above, Holt agrees that by December 31, 2023, if the combined amount of TIF and Surcharge paid by Holt is less than \$2,900,000, then Holt shall, on or before December 31st, 2023, pay to the County the difference between what Holt has paid in combined TIF and Surcharge and \$2,900,000 (the “Gap Amount”). The Gap Amount shall be applied in the future to subsequent preliminary plat, final plat or building permit applications on the Property as pre-paid TIF or prepaid Surcharge. Nothing in this Agreement limits to \$2,900,000 Holt’s total obligations to pay TIF, Surcharge, or combined TIF and Surcharge that may arise from the Property’s future development approvals.
- f. Notwithstanding any other provision of Section 8 of this Agreement relating to the timing of the submission of a preliminary plat application or the submission of a final plat application, Holt shall not have to submit any of the applications referenced in Section 8 of this Agreement, provided Holt makes the payment that otherwise would be due if such application had been submitted and approved by the dates set forth in Section 8. Nothing in this paragraph shall be construed to alter the dates upon which such payments shall be made to the County as provided for in this Agreement, regardless of whether Holt submits any land use applications.
- g. If Developer fails to timely make any payment due pursuant to Section 8 of this Agreement, Developer may not submit, and County may not accept or process, any further land use or permit application relating to development of the Property until all payments then due in accordance with Section 8 have been fully made.
- h. Subject to the provisions of Section 8(e), nothing herein shall prevent Holt from applying for and receiving preliminary plat approval for more lots earlier in time than provided for in subsection 8(b) above. Provided, however, that if Holt does apply for and receive preliminary plat approval for more than 150 lots prior to August 15th 2020; 300 lots prior to August 15th, 2021, 450 lots prior to August 15th 2022, or 541 lots prior to August 15th 2023, Holt shall pay the per lot fee identified in subsection 8(b): (1) August 15th 2020, based upon 150 lots; (2) August 15th 2021, based upon 300 lots if 300 lots or more have received preliminary plat approval; (3) August 15th 2022, based upon 450 lots if 450 lots or more have received preliminary plat approval; and (4) August 15th, 2023 based upon 541 lots if 541 lots have received preliminary plat approval. The amount of TIF owed under section 8(b) that has not been paid for a lot receiving preliminary plat approval pursuant to this subsection shall be paid at the time of final plat approval for that lot.

9. Amendment

The Parties may agree to any amendments to this Agreement to facilitate necessary infrastructure improvements and other matters; provided, however, that this Agreement may only be amended by mutual, written agreement of the Parties that is approved by the Clark County Councilors pursuant to a Type IV legislative process as set forth in the Clark County Code.

10. Miscellaneous

- a. Failure by either party at any time to require performance by the other party of any of the provisions hereof shall in no way affect the parties' rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this non-waiver clause.
- b. This Agreement shall be construed with, and governed by, the laws of the State of Washington. The parties agree to venue in the Superior Court for Clark County, State of Washington, to resolve any disputes that may arise under this Agreement.
- c. If any portion of this Agreement shall be invalid or unenforceable to any extent, the validity of the remaining provisions shall not be affected thereby.
- d. This Agreement is assignable and shall run with the land and be binding upon and inure to the benefit of the parties, their respective heirs, successors and assigns. This Agreement shall be recorded.
- e. The recitals contained herein are agreed to state binding obligations of the Parties, as their terms provide.

CLARK COUNTY

By _____
Shawn Hennessee, County Manager

Approved as to form only:
Anthony F. Golik, Prosecuting Attorney

By _____
Deputy Prosecuting Attorney

STATE OF WASHINGTON)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that Shawn Hennessee is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument as the County Manager of the Clark County, Washington, and acknowledged it to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Notary Public in and for the State of
Washington, residing at Vancouver.
My appointment expires:

STATE OF WASHINGTON)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that Edward C Prentice as co-manager of Birchwood Farms is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Notary Public in and for the State of
Washington, residing at Vancouver.
My appointment expires:

STATE OF WASHINGTON)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that Greg Kubicek as co-manager of Birchwood Farms is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and

My appointment expires:

DRAFT