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CLARK COUNTY
STAFF REPORT

DEPARTMENT: Public Works, Transportation Division

DATE: October 6, 2020

REQUESTED ACTION: Approve a development agreement and second amendment to the concomitant rezone agreement for five parcels, generally located at the intersection of Northeast 10th Avenue and Northeast 139th Street.

____ Consent __X__ Hearing ____ County Manager

INTRODUCTION

The property owners of certain parcels are requesting a development agreement and amendment to a concomitant rezone agreement. The proposed development agreement and amendment have been negotiated and will require the developer to design and construct a roundabout at Northeast 10th Avenue and Northeast 141st Street. In exchange, the county will recalculate traffic impact fees, or TIFs, for the Skyview Station development. This will be accomplished using an alternative methodology, providing for expedited review of its revised plans, and for other consideration as set forth in the development agreement.

The proposed development agreement will:

- Revise the required transportation improvements to include:
  - Installation of a westbound right-turn lane from Northeast 139th to Northeast 10th Avenue with an overlap phase;
  - Modification of the southbound Northeast 10th Avenue approach to Northeast 139th Street to provide a shared through/right lane and double left-turn lanes, operating as an eight-phase signal; and
  - Installation of a roundabout at the site access to Northeast 10th Avenue, opposite Northeast 141st Street.
- Process all subsequent variances and technical road modifications as a Type I process;
- Revise the TIF assessment calculation for the proposed development of Skyview Station;
- Specify the transportation improvements included in the calculation of TIF credits; and
- Waive application and review fees associated with implementing the revised transportation improvements.

The proposal to amend the concomitant rezone agreement includes the following modifications:

- The first sentence of Section 2.b.: replace the words "a building permit" with "an occupancy permit.";
- Section 2.b., fourth bullet in the original Covenant, is further modified to state that, in lieu of a traffic signal at the intersection of Northeast 10th Avenue and Northeast 141st Street, the Developer will construct the revised transportation improvements, as specified in the proposed development agreement;
- Section 2.b in the Covenant, fifth bullet in the original Covenant, is further modified to eliminate the following requirement: Modify the northbound Northeast 10th Avenue

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between Northeast 139th Street and the site access to include turn lane(s) for the entire street segment; and

- The phrase "building permits and/or" is removed from Section 3.a in the Covenant.

The developer will file an application under CCC 40.520.060.E. subject to a Type II post-decision review, to modify the June 17, 2019, hearings examiner decision.

BACKGROUND

On April 21, 2015, Clark County approved an agreement and covenant to rezone certain property and require transportation mitigation measures prior to the issuance of building permits for properties identified by numbers 185796000, 185700000, 185672000, 185726000 and 185727000. These properties are located in the vicinity of the Northeast 139th Street and Northeast 10th Avenue intersection. The concomitant rezone agreement was approved concurrent with a Comprehensive Plan map and zoning amendment from a light industrial designation with IL zoning to a General Commercial designation with GC zoning on the subject properties. The concomitant rezone agreement is recorded by the Clark County Auditor as document number 5170404.

On September 22, 2018, Hurley Development LLC filed an application with the county requesting short plat approval to divide an 8.66-acre parcel located at 13909 Northeast 10th Avenue into 8 lots. The applicant also requested site plan approval to construct eight commercial/retail buildings and the associated parking and infrastructure on the proposed lots. In a written decision on March 4, 2019, the Community Development Director approved the application subject to conditions. The applicant's attorney filed an appeal of the director's decision on March 11, 2019. A public hearing was held on May 23, 2019. On June 17, 2019 the hearings examiner filed their final order. The final order, among other things, required the assessment of TIFs on the individual uses proposed and reversed the director's decision to require dual southbound left-turn lanes on the Northeast 10th Avenue approach to Northeast 139th Street. The developer has received preliminary plat and final civil engineering and final site plan approval for these improvements. The approvals will not expire before June 17, 2026.

On February 18, 2020, the Clark County Council approved the partial release of the Concomitant Rezone Agreement. The action removed the required condition of development to provide an additional right-turn lane at the intersection of Northeast 23rd Avenue and Northeast 134th Street. This was the first amendment to the Concomitant Rezone Agreement and is recorded under Clark County Auditor File Number 5715654.

On February 28, 2020, the Clark County Council approved the 2020 Transportation Capital Facilities Plan (CFP) and increase to TIFs through Ordinance 2020-02-02. The 2020 CFP included an improvement project on Northeast 10th Avenue from Northeast 139th Street to Northeast 141st Street. This project is located directly adjacent to the Skyview Station development. The project's inclusion on the 2020 CFP made transportation capacity improvements on this section of Northeast 10th Avenue required by the Concomitant Rezone Agreement and hearings examiner decision TIF-credit eligible.

COUNCIL POLICY IMPLICATIONS

The action to approve a development agreement and modify the concomitant rezone agreement would promote economic development, and would build safe, multi-modal, efficient transportation infrastructure. Specifically, the requested actions would fulfill the following goals in the Comprehensive Growth Management Plan:

- Economic Development Goal 9.2: Goal: Provide commercial and industrial employment opportunities to meet the needs of Clark County citizens.

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- Economic Development Goal 9.4: Provide contextually appropriate commercial sites adequate to meet a diversity of needs for retail, service and institutional development in Clark County.

- Transportation Goal 5.3: Optimize and preserve the investment in the transportation system.

- Transportation Goal 5.4: Ensure mobility throughout the transportation system.

ADMINISTRATIVE POLICY IMPLICATIONS

The development agreement negotiation between the developer of Skyview Station and Clark County began prior to Clark County adopting formal development agreement procedures. The negotiation began in February 2020. Ordinance 2020-03-08 was approved on March 24, 2020 and became effective on April 3, 2020. The ordinance amended the Clark County Development Code to add a new section CCC 40.550.030 to create a process and criteria for review of proposed development agreements. The county will not assess any additional engineering, land use application or review fees associated with any application needed to construct the revised transportation improvements (specified in the proposed development agreement), including engineering fees, post-decision application fees, fees for the amendments to the Covenant and variance and road modification fees. The estimation of fees that would be not be collected if the development agreement is approved would be approximately 7,800 dollars.

A concomitant rezone agreement may be fully or partially released, or modified, by the County Council following a public hearing with notice as prescribed by Section 40.510.040(E) and in accordance with the criteria set forth in CCC 40.560.020.E. The following paragraph demonstrates compliance with the criteria for modifying the concomitant rezone agreement.

The proposed covenant modification will maintain consistency with the current General Commercial (GC) zoning regulations and Commercial (C) comprehensive plan land designation. The proposed covenant modification will not impact public/private services to support the site development. The proposed covenant modification would not impact development undertaken on nearby properties in reliance upon the covenant commitments. The future commercial development of the site will be consistent with existing and planned development in the General Commercial zoning district.

COMMUNITY OUTREACH

A legal public notice was published in the Columbian newspaper notifying the public of the potential action of the County Council. Clark County published a website specifically for this application providing the application, staff report, and background documents for the public.

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BUDGET IMPLICATIONS

YES	NO	
X		Action falls within existing budget capacity.
	X	Action falls within existing budget capacity but requires a change of purpose within existing appropriation
	X	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	N/A
Grant Fund Dollar Amount	N/A
Account	N/A
Company Name	N/A

DISTRIBUTION:
Council staff will post all staff reports to the web. https://www.clark.wa.gov/council-meetings

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ATTACHEMENTS: (1) Development Agreement; and (2) Second Amendment to Concomitant Rezone Agreement

Robert Klug

Robert D. Klug, PE
Transportation Division Manager

Ahmad Qayoumi

Ahmad Qayoumi, PE
Public Works Director/County Engineer

Eva Haney

Eva Haney, CGFM
Finance Division Manager

Primary Staff: Matt Hermen, Ext. 4343

APPROVED: Eileen J. O'Brien
CLARK COUNTY, WASHINGTON
CLARK COUNTY COUNCIL

DATE: Oct 6, 2020

SR# ——

AFTER RECORDING RETURN TO:
Miller Nash Graham & Dunn, LLP
Attn: LeAnne M. Bremer
500 Broadway Street, Suite 400
Vancouver, Washington 98660

Space above for recording information only.

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between CLARK COUNTY, a political subdivision of the State of Washington (the "County"), and TEN TALENTS INVESTMENTS 18, LLC, a Washington limited liability company ("Developer"), on the date the last party to this Agreement signs ("Effective Date").

RECITALS

A. Developer owns certain parcels of real property in unincorporated Clark County Washington (APNs 185726-000 and 185727-000), which are more particularly described in **Exhibit A**, attached hereto and incorporated by reference herein (the "Property"). Developer has received approval for the Skyview Station commercial project on the Property ("Skyview Station"). A conceptual illustration of the currently approved Skyview Station is attached as **Exhibit B**.

B. Developer obtained land use approval under County File No. APL-2019-00001 (Skyview Station) for a mix of commercial uses integrated in a single development with shared amenities and infrastructure, and which will be subject to design standards and other covenants applicable to the entire project to ensure a cohesive, consistent development ("Decision"). The Decision is attached as **Exhibit D**.

C. The Property is also subject to a Concomitant Rezone Agreement dated April 21, 2015, recorded under Auditor's File Nos. 5167709 and 5170404, as amended by a first Amendment recorded on March 24, 2020, under Auditor's File No. 5715654 ("Covenant"). The Covenant is attached as **Exhibit E**.

D. Both the Decision and Covenant require Developer to install certain transportation system improvements to serve Skyview Station and the surrounding area.

E. The Decision also sets forth the traffic impact fees Developer must pay upon the County's issuance of each building permit within Skyview Station.

F. One condition of approval in the Decision, based on the Covenant, requires

Developer to install a traffic signal at the intersection of NE 10th Avenue and NE 141st Street and construct related improvements. In lieu of installation of this traffic signal, the County desires installation of a roundabout as a measure that allows improved safety and mobility in light of planned growth in the vicinity of Skyview Station.

G. The County has issued site plan and engineering approval for the transportation improvements Developer is required to make under the Decision. In consideration for revising its plans to design and construct a roundabout and other transportation improvements, instead of the improvements required by the Decision, Developer is willing to enter into this Agreement and design and construct the roundabout and related improvements in exchange for recalculating the TIFs for Skyview Station, providing for expedited review of its revised plans, and for other consideration as set forth in this Agreement.

H. Pursuant to RCW 36.70B.170(1), Clark County is authorized to enter into a development agreement with any owner of real property within its jurisdiction setting forth the development standards that will apply to and govern and vest the development, use and mitigation related to the development of the real property during the specified term of the agreement.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1. **Development Agreement.** This Development Agreement is to be implemented under the authority of and in accordance with RCW 36.70B.170 – 210. It will become a contract between the Parties upon its approval by ordinance or resolution following a public hearing as provided in RCW 36.70B.170, and its execution by the Parties.

2. **Effective Date; Term of Agreement**. The Effective Date of this Agreement is the date on which all of the parties execute the Agreement, and when the Clark County Council has approved this Agreement after holding a public hearing, whichever occurs later. This Agreement will take effect upon the Effective Date and will terminate ten (10) years thereafter, unless extended or terminated by mutual written consent of the Parties.

3. **Current Project Approvals.** The County acknowledges that the Skyview Station project has been previously planned, permitted, designed and approved for a site layout and public right-of-way improvements that include a signalized intersection at NE 141st Street and NE 10th Avenue, a new northbound right lane on NE 10th Avenue from NE 139th Street to the site access across from NE 141st Street, a right turn lane on NE 139th Street for westbound turns to northbound NE 10th Avenue, and a change of the NE 10th Avenue southbound approach to NE 139th Street for a shared through/left lane with associated signal changes. Developer has received preliminary plat and final civil engineering and final site plan approval for these improvements (Current Project Approvals). The Current Project Approvals will not expire before seven years from the effective date of the Decision.

3.1 Prior to the Clark County Council's approval of an amended Covenant as described in Section 13, Developer reserves the right to construct the improvements pursuant to the Current Project Approvals, as required by the Decision, if it determines in its sole discretion that there are unanticipated costs, site impacts, or a prolonged schedule approval for the Revised Transportation Improvements (defined below). In the event that the Developer does not construct the Revised Transportation Improvements as set forth in this agreement, Developer will not be entitled to any consideration offered by the County in this agreement, including but not limited to, the reduction of Traffic Impact Fees, the waiver of review fees, or the agreed terms relating to TIF Credits.

4. **Revised Transportation Improvements**. The Parties agree that in lieu of designing and constructing the transportation improvements required by the Decision, Developer will instead design and install the following improvements, subject to its rights to opt out of these improvements in Section 3 above (collectively, "Revised Transportation Improvements"):

4.1 Install a westbound right turn lane on NE 139th at NE 10th Avenue with an overlap phase;

4.2 Modify the southbound NE 10th Avenue approach to NE 139th Street to provide a shared through/right lane and double left turn lanes, operating as an eight phase signal; and

4.3 Install a roundabout at the site access to NE 10th Avenue, opposite NE 141st Street.

If Developer installs the Revised Transportation Improvements, Developer will not be required to install a new northbound right lane on NE 10th Avenue from NE 139th Street to the site access across from NE 141st Street.

5. **Roundabout Design**. The Parties acknowledge the unique existing conditions of placement of a roundabout at the intersection of NE 141st Street and NE 10th Avenue. The roundabout design is described and illustrated in **Exhibits C** ("Roundabout"). The County agrees that the Roundabout design is feasible and that a review of a preliminary concept plan showed no fatal design flaws. However, the Parties agree that the County may require changes to the Roundabout design described in **Exhibit C**, to comply with Clark County Code, as may be modified through variances and technical road modifications, or other applicable standards. Developer will design and construct the Roundabout at its cost subject to issuance of TIF credits described in Section 11. The County agrees to be guided by the following to the greatest extent possible as it reviews and gives final approval to the Roundabout:

5.1 The Roundabout does not require additional public right-of-way on NE 141st Street and NE 10th Avenue, except for that needed for the site access approach, crosswalk and sidewalks on the east side of the Roundabout.

5.2 The available right-of-way north of the proposed Roundabout, along the adjacent NE 10th Avenue frontage along the mobile home park, north of and adjacent to Tax Parcel 185726-

000, is limited and may not allow for ideal deflection on the southbound approach to the Roundabout. This right-of-way limit is understood by the Parties to be a specific design parameter.

5.3 The Roundabout will have a maximum inscribed diameter of 120 feet in order to minimize impacts to the site and travel direction offset for through traffic on NE 10th Avenue.

5.4 The Roundabout will be designed for emergency vehicle access and will be designed to accommodate WB-67 trucks for the NE 10th Avenue and site access approaches.

5.5 The Roundabout design with include truck aprons to address the turning requirements of WB-67 trucks.

5.6 The NE 141st Street eastbound approach to the Roundabout will be designed for passenger vehicles and, emergency vehicles, school busses, and single unit trucks. To the extent possible, the Roundabout will also be designed to accommodate large truck traffic.

5.7 As part the Roundabout, Developer will design the landscaping within the roundabout and associated islands as further described in Section 12.

5.8 The Roundabout design includes changing the NE 10th Avenue approach south to NE 139th Street to a shared through/right lane and double left turn lanes. Developer is not required to make any improvements south of the intersection of NE 10th Avenue and NE 139th Street.

6. **Modifications and Variances**. The County acknowledges that due to the Roundabout design criteria, variances and technical road modifications to standard County engineering and planning requirements will be necessary to fully implement the proposed Roundabout design and the modified Skyview Station site plan. The County agrees to process all variances and technical road modifications through a Type I process. Developer retains the burden to demonstrate that the proposed variance and modification requests meet all applicable criteria.

7. **Review Process**. The Clark County Public Works Director, or his/her designee, will act as a point of contact for the Developer throughout the County's review. In order to implement the Revised Transportation Improvements, Type II post decision review of the Decision, and changes to the final site plan will be required and the County agrees to coordinate the changes to the planning approvals with the engineering review for the Roundabout so that these reviews will occur concurrently to the greatest extent possible. The County agrees to participate in discussions with Clark Public Utilities (water and electrical) and Clark Regional Wastewater District (sanitary sewer) regarding approvals sought by Developer relating to the Revised Transportation Improvements.

7.1 The County agrees to meet with the Developer at least every other week during the County's review period. The County agrees to a maximum of three review iterations of Developer's engineering plans unless Developer has failed to address a previous items of correction. The fourth review will be of the mylars prepared for execution. Each review period by

the County of Developer's engineering plans will be a maximum of 10 workdays, excluding government holidays. The County will also have a maximum of 10 workdays, excluding government holidays, to obtain County signatures on the mylars and schedule a preconstruction conference.

8. **Review Fees**. County will not assess any additional engineering or land use application or review fees associated with any application needed to construct the Revised Transportation Improvements, including engineering fees, post-decision application fees, fees for the amendments to the Covenant and variance and road modification fees. If Developer pays any of the foregoing fees prior to adoption of this Development Agreement, the County agrees to reimburse Developer for these fees within 30 days of the County Council's approval of this Agreement.

9. **Traffic Studies**. County will not require any additional traffic studies for the Revised Transportation Improvements unless Developer's site plan, uses or development substantially changes that would normally trigger additional traffic studies under County code.

10. **Traffic Impact Fees**.

10.1 The TIFs will be calculated for Skyview Station based on the approved building area of 79,950 SF. The total amount of TIFs due may increase or decrease depending upon the actual, total gross square footage of the buildings in Skyview Station. The equation in this Section 10.1 will be used to apply a proportionate share of the TIF to each building in Skyview Station to ensure that each building will pay the same TIF per 1,000 square feet of building area. Accordingly, the following equation will be applied to each building to determine the TIF for each building within Skyview Station:

((72.58 ADT/1,000 SF) x (Building SF)) x 0.6 x 0.7 x 0.85 x $930(or then current TIF District Rate) = TIF Assessment

The equation above includes the trip rate 72.58 ADT/1,000 SF, a pass-by adjustment of 0.6, a 0.7 BEF (Business Enhancement Factor), and a 0.85 standard adjustment.

11. **TIF Credits**. The County agrees to issue TIF credits to Developer for the Revised Transportation Improvements pursuant to UDC 40.630.060, subject to the additional terms set forth below.

11.1 As consideration for this agreement, the Parties agree that the following shall be included in the calculation of TIF credits:

11.1.1 The land value for any right-of-way dedication needed for the Revised Transportation Improvements will be based on Developer's recent appraisal at $30 per square foot;

11.1.2 Construction costs related to the Revised Transportation Improvements;

11.1.3 Costs associated with the relocation of any existing utilities/infrastructure necessary to implement the Revised Transportation Improvement. Any claim for TIF Credits by Developer, including for costs set forth herein, will be subject to review and validation by Clark County pursuant to UDC 40.630.060 as well as any applicable policies and procedures; and

11.1.4 Engineering and design costs related to the Revised Transportation Improvements, including design and engineering costs associated with relocating utilities and installing landscaping in and around the Roundabout, provided that these costs shall not exceed fifteen percent (15%) of the validated construction and utility relocation costs described in 11.1 (2-3) above.

12. **Landscape Design and Maintenance**. Developer agrees to install landscaping and irrigation in and around the Roundabout similar to the design within the existing roundabout at NE 10th Ave. and NE 136th Street. The design will include the following features:

12.1 Hearty, drought-resistant, low-maintenance vegetation;

12.2 Low growing vegetation so vehicle sight distance is not impaired;

12.3 May include landscape rocks;

12.4 May be consistent with design of landscaping within Skyview Station;

12.5 Must include irrigation equipment, including a dedicated irrigation water meter; and

12.6 Landscaping features are not required if they interfere with future access and maintenance to any utilities.

Once Developer installs the landscaping, the County will assume ownership and maintenance responsibility for the landscaping and irrigation equipment, including the irrigation water meter, in addition to maintaining the Roundabout and all improvements within the public right-of-way. Developer retains the right to perform landscaping and irrigation maintenance within the Roundabout at any time, at its own expense and without a right of reimbursement from the County, in the event the frequency or quality of the County's maintenance falls below standards acceptable to Developer

13. **Modifications of Existing Approvals**. Developer must seek revisions to the Decision and Covenant as specified in Sections 13.1 and 13.2. Specifically, at the time Developer submits engineering plans for the Roundabout, Developer will file an application under UDC 40.560.020.E. to modify the Covenant, and file an application under UDC 40.520.060.E. subject to a Type II post-decision review, to modify the Decision:

13.1 **Developer to Request Modifications to Covenant:**

13.1.1 Developer shall request that the first sentence of Section 2.b. be modified to replace the words "a building permit" with "an occupancy permit."

13.1.2 Developer shall request that Section 2.b. in the Covenant be modified to state that, in lieu of a traffic signal at the intersection of NE 10th Avenue and NE 141st , the Developer will construct the Revised Transportation Improvements prior to the County issuing a final occupancy permit for development within Skyview Station.

13.1.3 Developer shall request that Section 2.b. in the Covenant be modified to eliminate the following requirement: Modify the northbound NE 10th Ave. between NE 139th Street and the site access to include turn lane(s) for the entire street segment.

13.1.4 Developer shall request that Section 3.a. in the Covenant be modified to remove the phrase "building permits and/or."

13.2 **Developer to Request Modifications to Decision:**

13.2.1 Developer shall request that Condition D-2 of the Decision be removed.

13.2.2 Developer shall request that Condition E-1 of the Decision be moved to Section F of the Decision applicable to actions that must occur before occupancy permit issuance.

13.2.3 Developer shall request that Condition E-3 of the Decision be revised to specify that the TIFs will be calculated based on the formula in Section 10 of this Agreement.

13.2.4 Developer shall request that an additional condition, Condition F-4, be added to the Decision to state as follows: Prior to the issuance of an occupancy permit, the applicant shall show compliance with conditions shown in the Concomitant Rezone Agreement (5170404 AGR), as amended.

14. **Environmental and Health Department Review.** For the purposes of this Agreement, no additional SEPA review, stormwater permitting, or health department review is required.

MISCELLANEOUS PROVISIONS

15. **Recitals.** The Recitals contained herein are agreed to be binding obligations on the Parties, as their terms provide.

16. **Counterparts.** This Agreement may be executed in counterparts; however, all signature pages will be recorded together, and the complete recorded Agreement, including **Exhibits A-E**, will constitute the final instrument.

17. **Amendments; Termination.** This Agreement may only be amended by mutual, written agreement of the Parties that is approved by the Clark County Council. This Agreement will terminate upon the mutual agreement of the Parties in writing, which will be recorded, or upon expiration of the Term, whichever first occurs.

18. **County's Reserved Authority.** Notwithstanding anything in this Agreement to the contrary, the County will have the authority to impose new or different regulations to the extent required by a serious threat to public health and safety as required by RCW 36.70B; provided that such action will only be taken by legislative act of the Clark County Council after appropriate public process.

19. **Authorization.** The persons executing this Agreement on behalf of County and Developer are authorized to do so and, upon execution by such parties, this Development Agreement will be a valid and binding obligation of such parties in accordance with its terms. Developer has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby.

20. **Run with the Land.** This Agreement will run with the land and be binding on the Parties' successors and assigns, and will be recorded with the Clark County Auditor.

21. **Public Hearing.** The Clark County Council has approved execution of this Agreement by resolution after a public hearing.

22. **Dispute Resolution.** Should a disagreement arise between the Parties, the Parties agree to attempt to resolve the disagreement by first meeting and conferring. If such meeting proves unsuccessful to resolve the dispute, the disagreement may be resolved by a civil action.

23. **Venue.** This Agreement will be construed in accordance with the laws of the State of Washington, and venue is in the Clark County Superior Court.

24. **Performance.** Failure by any Party at any time to require performance by the other Parties of any of the provisions hereof, will not affect the Parties' rights hereunder to enforce the same, nor will any waiver by a Party of the breach hereof be held to be a waiver of any subsequent breach or a waiver of this clause.

25. **Severability.** If any portion of this Agreement is invalid or unenforceable to any extent, the validity of the remaining provisions will not be affected thereby.

26. **Inconsistencies.** If any provisions of the Clark County Code and land use regulations are deemed inconsistent with this Agreement, the provisions of this Agreement will prevail, excepting the County's reserved authority described above.

27. **Survival.** Any promise or condition set forth in this Agreement, the full performance of which is not specifically required prior to the expiration or earlier termination but which by its

terms is to survive the termination of this Agreement, will survive the expiration or earlier termination of this Agreement and will remain fully enforceable thereafter.

28. **No Benefit to Third Parties.** The Parties are the only parties to this Agreement and are the only parties entitled to enforce its terms, except as otherwise specifically provided in this Agreement. There are no third-party beneficiaries.

29. **Entire Agreement.** This Agreement, including its exhibits attached hereto, constitutes the entire agreement between the Parties as to the subject matter.

30. **Notices.** All notices will be in writing and may be delivered by personal delivery, by overnight courier service, or by deposit in the United States Mail, postage prepaid, as certified mail, return receipt requested, and addressed as follows:

County:	Attn: County Manager P.O. Box 5000 Vancouver, WA 98666-5000
With a copy to:	Taylor Hallvik Deputy Prosecuting Attorney 1300 Franklin Street Vancouver, WA 98660
	Owner: Ten Talents Investments 18, LLC 275 W 3rd Street, Suite 300 Vancouver, WA 98660
With a copy to:	LeAnne M. Bremer Miller Nash Graham & Dunn, LLP 500 Broadway Street, Suite 400 Vancouver, WA 98660

Notices will be deemed received by the addressee upon the earlier of actual delivery or refusal of a party to accept delivery thereof. The addresses to which notices are to be delivered may be changed by giving notice of such change in address in accordance with this notice provision.

31. **Interpretation of Agreement; Status of Parties.** This Agreement is the result of arm's-length negotiations between the Parties and will not be construed against any Party by reason of its preparation of this Agreement. Nothing contained in this Agreement will be construed as creating the relationship of principal and agent, partners, joint ventures, or any other similar relationship between the Parties.

32. **Future Assurances.** Each of the Parties will promptly execute and deliver such additional documents and will do such acts that are reasonably necessary, in connection with the performance of their respective obligations under this Agreement so as to carry out the intent of this Agreement.

SIGNATURES ON FOLLOWING PAGE

Ten Talents Investments 18, LLC

By: _____ Dated: 09/29/20
Hurley Development, LLC, Manager
By: Ryan Hurley, Manager

Clark County

By: Kathleen Otto Dated: Oct. 6, 2020
Kathleen Otto
Interim County Manager

State of Washington)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that he 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 Manager of Hurley Development, LLC, Manager of Ten Talents Investments, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: September 29, 2020.

Tiffany Ann Wolfe
Notary Public
State of Washington
My Appointment Expires 02/22/2021

Tiffany Wolfe
NOTARY PUBLIC for the State of Washington,
Residing in the County of Clark
My Commission Expires: 2-22-21

State of Washington)
) ss.
County of Clark)

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

Dated: OCT. 6, 2020.

Rebecca L. Messinger
NOTARY PUBLIC for the State of Washington,
Residing in the County of Clark
My Commission Expires: 4/26/2021

REBECCA L MESSINGER
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION NUMBER 3715
COMMISSION EXPIRES APRIL 26, 2021

Approved as to form:

Anthony F. Golik
Clark County Prosecuting Attorney

By Taylor Hallvik
Digitally signed by Taylor Hallvik
DN: cn=Taylor Hallvik, o=Clark County Prosecuting Attorney's Office, ou=Civil Division, email=taylor.hallvik@clark.wa.gov, c=US
Date: 2020.10.06 10:34:13 -07'00'
Taylor Hallvik
Deputy Prosecuting Attorney

EXHIBIT INDEX

EXHIBIT A - LEGAL DESCRIPTION OF DEVELOPER PROPERTY
EXHIBIT B – SKYVIEW STATION
EXHIBIT C - ROUNDABOUT DESIGN
EXHIBIT D - DECISION
EXHIBIT E - COVENANT

EXHIBIT A
LEGAL DESCRIPTION OF DEVELOPER PROPERTY

Tax Parcel No. 185726-000

14019 NE 10th Avenue, Vancouver, WA 98685

THE LAND REFERRED TO HEREIN BEELOW IS SITUATED IN THE CITY OF VANCOUVER, COUNTY OF CLARK, STATE OF WASHINGTON AND IS DESCRIBED AS FOLLOWS:

The North quarter (also known as the North half of the North half) of the Southwest quarter of the Southwest quarter of the Southwest quarter of Section 23, Township 3 North, Range 1 East of the Willamette Meridian, Clark County, Washington.

EXCEPT that portion lying within NE 10th Avenue.

ALSO EXCEPT that portion conveyed to Clark County by deed recorded September 21, 2006 under Auditor's File No. 4225602.

Tax Parcel No. 185727-000

13909 NE 10th Avenue, Vancouver, WA 98685

THE LAND REFERRED TO HEREIN BEELOW IS SITUATED IN THE CITY OF VANCOUVER, COUNTY OF CLARK, STATE OF WASHINGTON AND IS DESCRIBED AS FOLLOWS:

The South ¾ of the Southwest quarter of the Southwest quarter of the Southwest quarter of Section 23, Township 3 North, Range 1 East of the Willamette Meridian, Clark County, Washington.

EXCEPT any portion lying within NE 139th Street and NE 10th Avenue.

ALSO EXCEPT that portion conveyed to the State of Washington, Department of Transportation, recorded under Clark County Auditor's File No. 4763611 on May 12, 2011.

EXHIBIT B
ILLUSTRATION OF CURRENT SKYVIEW STATION

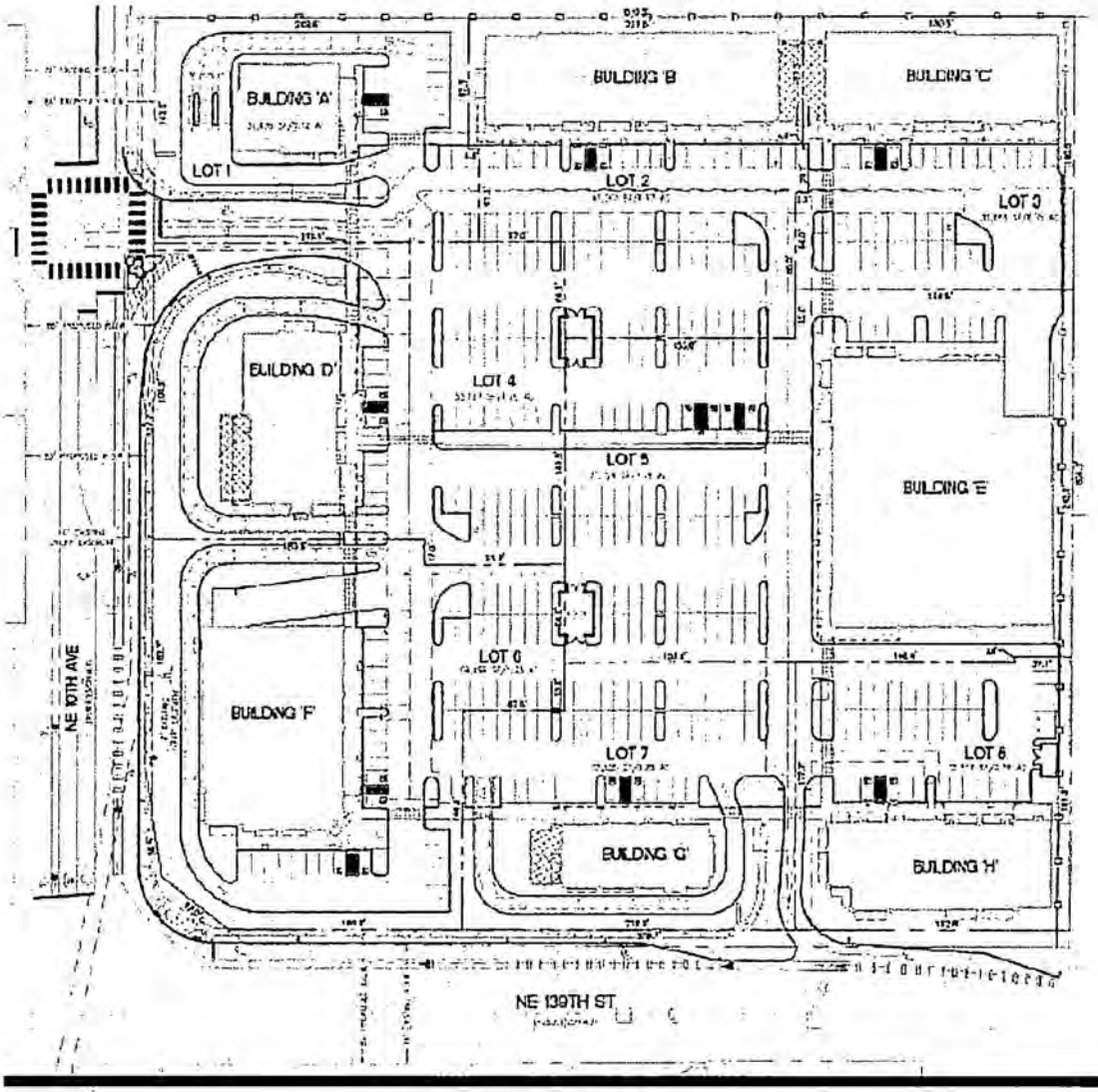
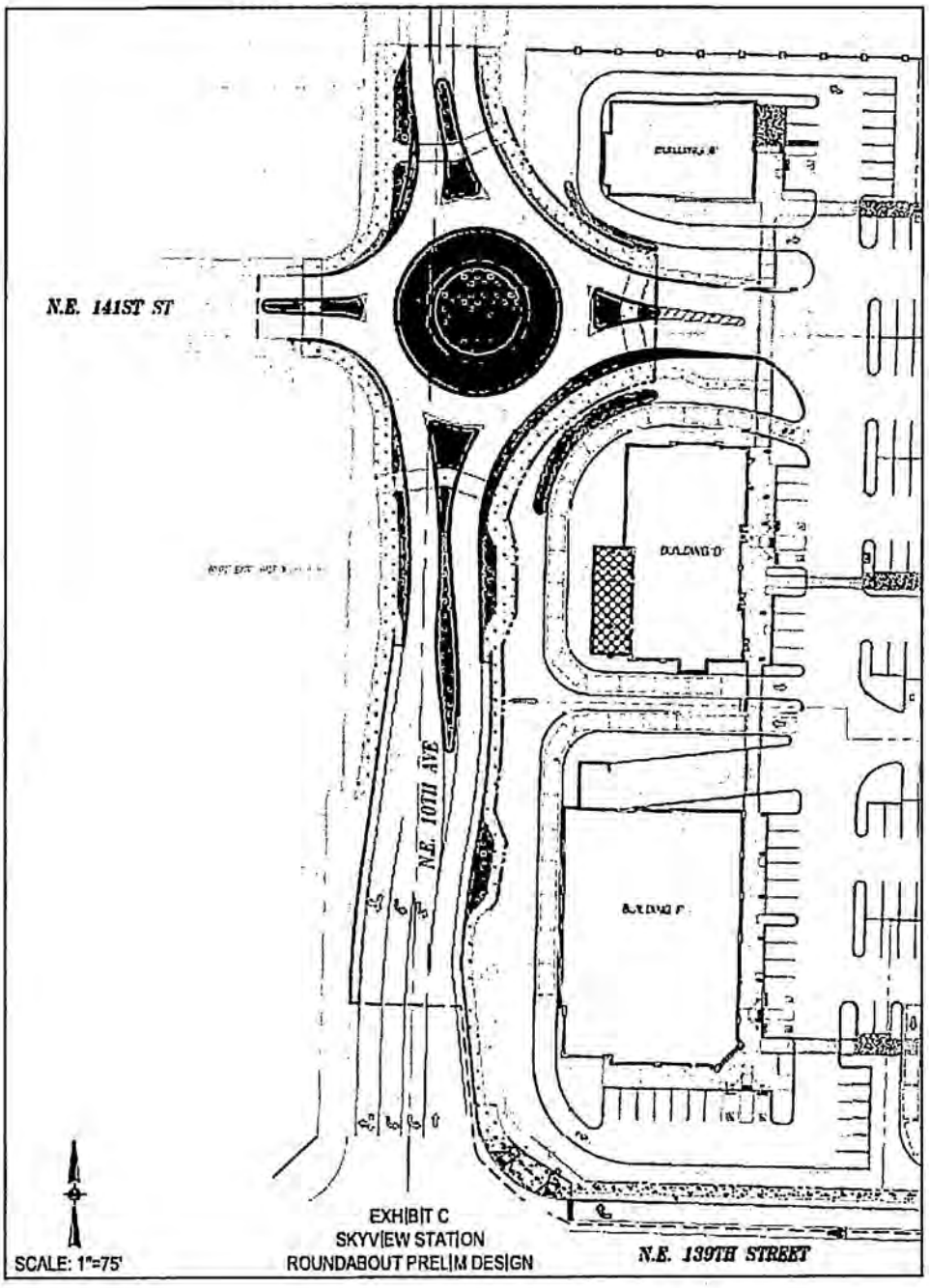


EXHIBIT C
ROUNDABOUT DESIGN



Notice to Parties of Record

Project Name: Skyview Station

Case Number: APD-2019-00001

The attached decision of the Land Use Hearing Examiner is final unless a motion for reconsideration is filed or an appeal is filed with Superior Court.

See the *Appeals* handout for more information and fees.

Motion for Reconsideration:
Any party of record to the proceeding before the hearings examiner may file with the responsible official a motion for reconsideration of an examiner's decision within fourteen (14) calendar days of written notice of the decision. A **party of record** includes the applicant and those individuals who signed the sign-in sheet or presented oral testimony at the public hearing, and/or submitted written testimony prior to or at the Public Hearing on this matter.

The motion must be accompanied by the applicable fee and identify the specific authority within the Clark County Code or other applicable laws, and/or specific evidence, in support of reconsideration. A motion may be granted for any one of the following causes that materially affects the rights of the moving party:

a. Procedural irregularity or error, clarification, or scrivener's error, for which no fee will be charged;
b. Newly discovered evidence, which the moving party could not with reasonable diligence have timely discovered and produced for consideration by the examiners;
c. The decision is not supported by substantial evidence in the record; or,
d. The decision is contrary to law.

Any party of record may file a written response to the motion if filed within fourteen (14) calendar days of filing a motion for reconsideration.

The examiner will issue a decision on the motion for reconsideration within twenty-eight (28) calendar days of filing the motion for reconsideration.

Mailed on: June 17, 2019

Community Development
1300 Franklin Street, Vancouver, Washington
Phone: (360) 397-2375 Fax: (360) 397-2011
www.clark.wa.gov/development

EXHIBIT D

For an alternate format, contact the Clark County ADA Compliance Office.
Phone: (360)397-2322
Relay: 711 or (800) 833-6384
E-mail: ADA@clark.wa.gov

BEFORE THE LAND USE HEARINGS EXAMINER
OF CLARK COUNTY, WASHINGTON

Regarding an appeal by LeAnne Bremer of an administrative decision approving commercial development at 13909 NE 10th Avenue in unincorporated Clark County, Washington	))))	**FINAL ORDER** **APL-2019-00001** **(Skyview Station)**

A. SUMMARY

1. On September 22, 2019, Hurley Development, LLC (the applicant) filed an application with the County requesting Short Plat approval to divide an 8.66 acre parcel located at 13909 NE 10th Avenue; also known as Parcels 185727 and 185726 (the site) into eight lots. The applicant also requests Site Plan Review to construct 8 commercial/retail buildings and the associated parking and infrastructure on the proposed lots. The site and abutting properties to the east are zoned GC (General Commercial). Properties to the north and northwest (across NE 10th Avenue) are zoned R-18 (Multi-Family Residential, 18-units per acre). Properties to the southwest, across NE 10th Avenue and south of NE 139th Street. are zoned CC (Community Commercial). Properties to the south, across NE 139th Street, are zoned PF (Public Facilities).

2. In a written decision dated March 4, 2019, the director approved the application subject to conditions (Exhibit 22).

3. Attorney LeAnne Bremer, filed a written appeal of the director's decision on March 11, 2019. Exhibit 24.

4. Hearing Examiner Joe Turner (the "examiner") conducted a *de novo* public hearing to receive testimony and evidence about the appeal. At the hearing, County staff recommended that the examiner deny the appeal and affirm the director's decision. See the May 8, 2019 "Appeal, Staff Report & Recommendation to the Hearings Examiner" (the "Staff Report). The appellant's attorney and traffic engineer testified in support of the appeal. One person testified with questions and concerns about the proposed development. Disputed issues or concerns in the case include the following:

a. Whether the County is required to calculate the TIFs for the entire development based on the ITE Shopping Center Code, or individually for each type of use proposed on the site;

b. Whether the County erred in calculating the TIF for the entire building "Retail F" as a single use, a fast food restaurant with drive-through;

c. Whether the County exceeded its authority in calculating TIF for building "Retail E" based on the codes in the ITE Manual rather than the adopted TIF Technical Program Document Table;

EXHIBIT D

d. Whether the County erred in denying the proposed right-out access onto NE 139th Street;

e. Whether the applicant is required to provide a public road or easement through the site;

f. Whether a modification to the driveway spacing requirements is warranted; and

g. Whether the applicant can be required to provide a shared left turn rather than a split phase signal on southbound NE 10th Avenue at NE 139th Street.

5. Based on the findings provided or incorporated herein, the examiner:

a. Denies those portions of the appeal objecting to:

i. Denial of the road modification for driveway spacing;

ii. Denial of the right-out access; and

iii. Assessing TIFs based on the individual uses proposed.

b. Grants the appeal and reverses those portions of the director's decision:

i. Requiring a public road or easement through the site;

ii. Requiring dual southbound left turn lanes on the southbound NE 10th Avenue approach to NE 139th Street; and

iii. Calculating the TIF for the entire building "Retail F" as a single use, a fast food restaurant with drive-through; and

iv. Calculating TIF for building "Retail E" based on the ITE Manual code for a pharmacy with drive-through.

B. HEARINGS AND RECORD HIGHLIGHTS

1. The examiner received testimony at a public hearing about this appeal on May 23, 2019. That testimony and evidence, including a videotape of the public hearing and the casefile maintained by the Department of Community Development ("DCD"), are included herein as exhibits. A list of the exhibits is attached to and incorporated into this final order. The exhibits are filed at DCD. The following is a summary by the examiner of selected testimony and evidence offered at the hearing.

2. County planner Richard Daviau summarized the Staff Report and the director's decision and showed slides of the site and surrounding area.

a. He noted that the appellant objected to those portions of the director's decision:

i. Calculating the Transportation Impact Fee ("TIF") based on the trip generation estimates for the individual uses on the site rather than the overall trip generation estimate using the "shopping center" category of the Institute of Traffic Engineers ("ITE") Manual, ITE Category 820;

ii. Denying a road modification request for a right-out access onto NE 139th Street;

iii. Requiring dedication of a right-of-way or non-exclusive easement to provide cross-circulation through the site;

iv. Denying a road modification request to the driveway spacing standards for the right-out access onto NE 139th Street;

v. Requiring dual southbound left turns on NE 10th Avenue at the NE 139th Street intersection; and

vi. Certain conditions of approval related to the above issues.

3. County transportation concurrency engineer David Jardin responded to the issues in the appeal.

a. He argued that the majority of vehicle trips using the proposed right-out access onto NE 139th Street will turn left onto NE 10th Avenue. As shown in in Figure 13B of the traffic study, the right-in access will eliminate 16 trips that would otherwise have continued west on NE 139th Street to turn right at NE 10th Avenue in order to access the site. Subtracting those 16 trips from the 39 trips using the southbound right-out access leaves 23 trips using the right-out access. 11 of the southbound right-out trips will turn left onto NE 10th Avenue, a near majority of trips.

i. A key component of the road modification analysis is safety. The County only considers enhanced mobility once it determines that a proposed modification will be safe. The proposed right-out access may create a hazard, creating a new conflicting vehicle movement on NE 139th Street without significant public benefit. The right-out access will allow vehicles to turn left onto westbound NE 139th Street and then maneuver across two westbound through lanes in order to enter the southbound left turn lane at the intersection of NE 10th Avenue. Westbound NE 139th Street carries relatively high volumes of traffic. Drivers maneuvering into the southbound left turn lane must also avoid vehicles trying to maneuver into the northbound right turn lane at the NE 10th Avenue intersection. In addition, the proposed right-out access will be offset from the existing driveway serving the C-Tran Park and Ride on the south side of NE 139th Street. Vehicles using the right-out access may conflict with vehicles turning left out of the C-Tran driveway. Without the right-out access onto NE 139th Street, all drivers will exit the site via the signalized access onto NE 10th Street. All intersections affected by this

development will operate at acceptable LOS without the right-out access. Therefore, there is no reason to add new conflicting turning movements on NE 139th Street.

b. Development on this site is subject to a Concomitant Rezone Covenant agreement (the "Rezone Agreement") that requires the applicant to construct dual southbound left turn lanes or a shared through-left center lane (converted from the existing though only lane) and split phasing with the northbound approach. Both options improve the Level Of Service ("LOS") of the intersection. The dual left turn lane option at the NE 10th Avenue/NE 139th Street intersection "works better." The split phase option will cause this intersection to degrade faster over time. The County made substantial investments to the 139th Street corridor, including increasing the capacity of the NE 10th Avenue intersection. The dual southbound left turn lanes provide more intersection capacity, which will allow this intersection to accommodate greater traffic volumes and protect the existing mobility and capacity. The split phase signal option is not the most efficient use of the intersection. It provides adequate LOS, but the LOS will degrade faster as development occurs in this area. The Rezone Agreement is not limited to this site, it affects the entire area between NE 10th Avenue and the I-5 freeway. However, the applicant's analysis only considered the traffic impacts of the proposed development.

c. The TIF amounts listed in the Staff Report are merely estimates. The County will determine the actual TIFs when building permits are issued for the proposed buildings on the site.

i. CCC 40.630.0.B requires that where a development contains a mix of uses the County must calculate separate impact fees for each use within the development. This development will provide a mix of uses, including retail, fast food restaurants, a pharmacy, a bank, etc. Therefore, the County must calculate separate TIFs for each use rather than applying the "shopping center" code to the entire site.

ii. The County has used the "shopping center" code in the past where a proposed building will be owned and managed as a single entity with multiple tenants. In this case, the applicant requested an eight lot land division. Each of the proposed buildings will be located on a separate parcel. Therefore, the proposed buildings can be sold separately. Absent the proposed land division, the TIF for the site could be evaluated based on the shopping center category.

iii. The applicant's transportation analysis was permitted to use the "shopping center" code when calculating the projected trip generation for concurrency purposes in order to allow flexibility in the uses allowed on the site. Concurrency allows for engineering judgement. However, concurrency is different than TIF calculations. The TIF calculations do not allow for engineering judgement.

iv. The TIF calculation accounts for pass-by trips, vehicle trips that are already on the roadway and merely stop in at the site on the way to another destination. The Code does not provide for a reduction in the TIF amount to accommodate "internal capture," trips between uses within the development site.

d. The applicant cannot rely on the cost of the right-in access to support its rough proportionality argument against the cross-circulation requirement. The right-in access is a deviation from the Code and it is not needed to serve the proposed development; all affected intersections will operate at acceptable LOS without the right-in access.

e. Transportation improvements required as a condition of approval of this development, specifically modifications to the NE 10th Avenue/NE 139th Street intersection, will alleviate the congestion issues noted by Mr. Kruskamp. The applicant will provide two southbound left turn lanes on NE 10th Avenue and NE 139th Street, which will provide additional left turn queuing space and reduce queue lengths on NE 10th Avenue.

4. County deputy prosecuting attorney Taylor Hallvik argued that the Rezone Agreement is a contract between the applicant's predecessor and the County. The County lifted a trip cap on the site and surrounding properties in exchange for an agreement to improve the NE 10th Avenue/NE 139th Street intersection. The mitigation requirements set out in the agreement clearly apply to all properties affected by the Rezone Agreement, the site and abutting properties east of the site, all of which are zoned for commercial development. Whichever property develops first is obligated to provide transportation improvements for all properties affected by the Rezone Agreement. Because the Rezone Agreement is a contract, constitutional takings issues under *Nollan* and *Dolan* are not relevant. The applicant agreed to provide the required improvements in exchange for the County lifting the trip cap. The cost of the proposed improvements is not relevant to the *Dolan* analysis. Paragraph 2B of the Rezone Agreement states that the rezone does not limit the County's ability to require additional mitigation as a condition of development approval.

a. The applicant is seeking to rebalance the cost of the improvements required by the Rezone Agreement. However, the Rezone Agreement applies equally to all five properties affected by the agreement. The Rezone Agreement requires that the first development to occur on any of the five properties must provide all of the improvements listed in the Rezone Agreement. "Fairness" is not a relevant consideration; the parties voluntarily entered into an agreement to that effect. The applicant is attempting to use the easement as leverage to force the Meyer properties to contribute towards the cost of the required improvements. However, the agreement makes no provisions for reallocation of the cost of the improvements. The applicant cannot rely on the cost of the improvements to support a claim of unconstitutional takings.

b. The *Kramer* and *Burton* cases cited by the appellant are distinguishable from this case. The purpose of the cross-circulation standard is to provide regional cross-circulation, not just access to the Meyer properties. The applicant's analysis focuses on circulation within the site and the Meyer properties, ignoring the cross-circulation benefits that extend beyond those properties. In addition, the *Kramer* is an unpublished opinion and therefore not binding precedent.

c. The cross-circulation requirement in this case is consistent with *Burton*.

i. The public problem is the existing lack of regional cross-circulation in this area.

ii. The proposed development will exacerbate that problem by generating additional traffic on area streets, increasing the need for cross-circulation.

iii. Providing access across this site will facilitate the provision of regional cross-circulation, providing cross-circulation access between NE 10th and NE 16th Avenues. The extension of the road or easement across the Meyer properties is foreseeable. The *Burton* court held that foreseeability may be addressed directly or circumstantially. In this case, the Rezone Agreement demonstrates the foreseeability of development on the Meyer properties. The owners of the Meyer properties were parties to the Rezone Agreement. Unlike the situation in *Kramer*, there is an existing street connection to the east of the Meyer properties, NE 16th Avenue. The access will not just serve an adjacent property, it will provide a through connection to other public streets in the area.

iv. The cost of the access is roughly proportional to the impact of the development. The applicant's analysis only considered the cost of a public road. The applicant failed to consider the significantly lower cost of an easement.

5. Attorney LeAnne Bremer and traffic engineer Brent Ahren testified in support of the appeal and summarized Ms. Bremer's May 21, 2019, Memorandum (Exhibit 29).

a. The three properties east of the site, collectively the "Meyer properties," are in three separate ownerships.

b. They argued that the County overestimates the TIF by roughly $800,000.

i. The County miscalculated the TIFs for some buildings.

(A) Building F contains two separate uses, a fast food restaurant with drive-through and a general retail use. However, the County calculated the TIF for the entire building based on the highest trip generating use, a quick service restaurant, which overstates the TIF for that building by $300,000.

(B) The County went beyond the Code to determine the TIF for the pharmacy building. CCC 40.620.010.A requires that the County determine the TIF based on the uses listed in the Traffic Impact Fee Technical Document (Attachment 2 of Exhibit 29). If a particular use is not listed, the County must use the closest use listed in the Table. The applicant did not provide an independent calculation pursuant to CCC 40.630.030.C. Therefore, the County must rely on the trip generation estimates in the adopted Table. In this case, the Table includes a pharmacy, but not a pharmacy with drive-through. Instead of using the pharmacy rate listed in the Table, the County relied on

the ITE manual trip rate for a pharmacy with drive-through, exceeding the requirements of the Code.

ii. The County should be required to calculate the TIF for this development by applying the trip generation estimates in ITE Category 820 (Shopping Center) to the overall site rather than based on the ITE trip generation estimates for the individual uses proposed on the site.

(A) Calculating the TIF based on individual uses ignores "internal trip capture" - trips that travel between individual uses on the site and do not impact the public roadway. The Shopping Center category does consider such internal trip capture. As shown in the table attached to the County's Traffic Impact Fee Technical Document, as the size of a shopping center increases, the number of trips per square foot decreases, reflecting increased internal trip capture as more uses are added.

(B) The proposed use is consistent with the ITE Manual definition of "Shopping Center." The proposed development is an integrated group of commercial establishments that is planned, developed, and managed as a single unit, subject to CC&Rs regulating the design and use of the site. The fact that the buildings are physically separate and on individual lots should not affect the analysis. An attached strip-mall with these same uses would not alter the number of vehicle trips generated by the development. The applicant must divide the site in order to lease the buildings to separate tenants, citing RCW 58.17.020(1). However, the site will still be managed as a single entity.

(C) The phrase "mix of uses" in CCC 40.630.030.B should be interpreted to apply to a mix of office, retail, and residential uses. In this case, the applicant is only proposing retail uses, consistent with the ITE definition of "shopping center."

(D) The shopping center category includes internal trip capture. Therefore, there is no need to include that factor in the TIF calculation

iii. Use of the Shopping Center category is consistent with the County's 2008 decision for the Gaither Commercial Center (Attachment 4 of Exhibit 29). That development consisted of six separate commercial buildings, but the County calculated the TIF based on the Shopping Center category. The County issued an Addendum to that decision (Exhibit 30), which expressly uses the Shopping Center category for the entire use. This is also consistent with the County's development agreement with Three Creeks Investors, LLC (Attachment 5 of Exhibit 29), which recognized that separate uses could be subject to the Shopping Center category where independent uses are collected and part of an integrated development.

iv. The County's Traffic Impact Fee Technical Document includes the Shopping Center category. However, the County's analysis would prevent any use of this category.

c. The applicant cannot be required to provide east-west cross-circulation through this site.

i. The Courts ruled on this issue in an unpublished opinion, *Kramer v. Clark County*, 135 Wash.App. 1005 (2006) (Attachment 7 of Exhibit 29). The County has no authority to require the applicant to provide an access that only benefits a neighboring property. The *Kramer* court concluded that such a condition would be "manifestly unreasonable." The *Unlimited* and *Burton* cases also support the applicant's argument. The applicant is willing to negotiate an easement with the owners of the Meyer properties, whereby the owners of the Meyer properties contribute towards the cost of the rezone improvements provided by the applicant. A condition of approval requiring such an easement eliminates the applicant's leverage to negotiate such a cost-sharing agreement.

ii. An easement or roadway over the site will not provide cross-circulation, because it would not provide a direct connection to any other roads or properties in the area, other than the Meyer properties. NE 16th Avenue currently terminates in a cul-de-sac on the east side of the Meyer properties. This road extends south, beneath NE 139th Street, until turning west and becoming NE 136th Street. NE 136th Street continues west to intersect NE 10th Avenue at a roundabout south of the site. This circuitous access would not enhance public access to the site. An access across the site would only benefit the Meyer properties.

iii. Providing an easement or roadway over the site will significantly increase the cost of the proposed development. The eastern section of NE 139th Street is supported by a retaining wall. (p 5 of Attachment 8 of Exhibit 29). The height of the wall increases as the road continues to the east. The applicant will need to relocate a portion of the retaining wall in order to construct a right turn lane approaching the right-in access. WSDOT approved a shorter turn lane for this development. However, WSDOT will require a longer turn lane if access is provided to the Meyer properties through this site. Extending the turn lane will significantly increase the cost, requiring additional right-of-way, a taller retaining wall, and potential wetland impacts (Attachment 11 of Exhibit 29). The existing wall is supporting "low density fill," which may cost significantly more to modify.

iv. Extending a public road through the site would significantly impact the proposed development, eliminating numerous parking spaces and reducing the overall square footage of buildings allowed on the site (Attachment 9 of Exhibit 29). In addition, the County would likely require a temporary turnaround at the eastern terminus of the roadway on the site, which would further impact the proposed development. Construction of such a roadway would cost $1.4 to $1.5 million, depending on the location of the roadway (Attachment 10 of Exhibit 29). Those costs do not include lost rental income from the reduced building area required to accommodate the road. Cost is relevant to the road modification standards; CCC 40.550.010.C(2)(d) authorizes the County to grant a road modification where the cost of compliance would be "grossly disproportionate" to the impacts of the development.

v. The County must consider the cost to the applicant in comparison to the impact of the specific development proposed. In this case, the applicant will mitigate all of its impacts on the transportation system by constructing the improvements set out in the Rezone Agreement and the payment of TIFs. The applicant will fund more than $3,000,000 in transportation improvements including the TIFs, improvements required by the Rezone Agreement, and frontage improvements required by WSDOT. Using the County's TIF calculations, these costs are significantly higher. Therefore, because the proposed development will have no impacts on the transportation system, the cost of the required roadway is grossly disproportional to the impacts of the development.

vi. An on-site road or easement would not allow for any traffic circulation to the east, because there is no existing easement or roadway over the Meyer properties to which such an access could connect. There is no evidence in the record that such the easement or roadway on this site will be extended and provide the desired connection in the foreseeable future. Therefore, as in *Burton*, a condition requiring such a connection is unconstitutional.

d. The County has no authority to require the applicant to build two southbound turn lanes on NE 10th Avenue at NE 139th Street.

i. The County rezoned the site and the Meyer properties from industrial to commercial and imposed a trip cap on the properties. The County and the property owners then negotiated an agreement to lift the trip cap in exchange for certain transportation improvements (Attachment 12 of Exhibit 29). The Rezone Agreement applies to the site and the Meyer properties. The required improvements include "Modify the southbound NE 10th Avenue approach to NE 139th Street to provide either: (1) a second southbound left turn lane; or (2) a shared through-left center lane (converted from the existing through only lane) and split phasing with the northbound approach." (bullet two of paragraph 2.b of Exhibit 29). The Rezone Agreement requires the applicant to provide either dual left turn lanes or a shared left turn lane and split signal phasing. Either improvement will ensure that this development meets concurrency. Therefore, the County has no authority to specify which improvement the County provides.

ii. Paragraph 2.b of the Rezone Agreement further provides that the Rezone Agreement does not prevent the County from requiring additional mitigation measures through the development review process. The applicant will provide the improvements listed in the Rezone Agreement. However, if the County wants to require more improvements than the Rezone Agreement requires, the County must demonstrate that such additional requirements are consistent with the constitutional analysis in *Nollan* and *Dolan*.

e. There is no evidence that the proposed right-out access onto NE 139th Street will create a hazard. Merely stating that the development will reduce safety is insufficient. The County must provide some analysis to support that conclusion. Any increase in traffic will cause an incremental reduction in safety. This development will only generate 11 p.m. peak hour vehicle trips turning right out of the site and then left at

NE 10th Avenue. Those vehicles can safely maneuver across the two through lanes and enter the southbound left turn lane. The westbound vehicle queue on NE 139th Street will not extend past the proposed right-out access. Under existing conditions NE 139th Street carries 500 westbound through trips and 100 southbound left turns. In addition, providing a right-out access will slightly improve the operation of the NE 10th Avenue/ NE 139th Street intersection by reducing the number of southbound vehicles on NE 10th Avenue.

f. The proposed development will improve traffic flow on streets in the area, reducing the queuing issues noted by Mr. Kruskamp. The applicant will add a westbound right turn on NE 139th Street at the NE 10th Avenue intersection, provide multiple southbound left turn lanes on NE 10th Avenue at the NE 139th Street intersection, and provide a signal at the NE 141st Street/site access intersection with NE 10th Avenue.

6. Tyler Kruskamp testified that he owns a residential property at the intersection of NE 141st Street and NE 10th Avenue, across NE 10th Avenue from the proposed site access. Under existing conditions traffic queues in the southbound left turn lane at NE 139th Street frequently extend past and block the NE 141st Street intersection during peak hours. Westbound traffic queues on NE 139th Street frequently back up past the proposed right-in/right-out access. Increased traffic from the proposed development is likely to exacerbate these problems.

7. At the end of the hearing the examiner held the record open one week, until May 31, 2019, to allow the County and the public an opportunity to submit additional testimony and evidence. The examiner held the record open for a second week, until June 7, 2019, to allow the applicant an opportunity to respond to the County and public submittals and to submit a final argument. The record in this case closed at 3:00 p.m. on June 7, 2019.

C. DISCUSSION

1. CCC 40.510.020.H(3) authorizes the examiner to hear appeals of planning director decisions as a *de novo* matter. The applicant shall have the burden of proving by substantial evidence compliance with applicable approval standards. Where evidence is conflicting, the examiner shall decide an issue based upon the preponderance of the evidence. CCC 40.51.020.H(3)(b).

Appeal Issue 1, TIF Fees:

2. The examiner finds that CCC 40.630.030.B requires that County calculate the TIFs for this development based on the specific uses proposed. The language of this code section is clear, unambiguous, and mandatory, "If the development for which approval is sought contains a mix of uses, the impact fee must be separately calculated for each type of use." CCC 40.630.030.B.

a. The applicant proposed to develop the site with eight separate buildings on eight separate lots. Each building and lot is proposed as a separate phase.

i. Four of the proposed buildings will contain a single use: building "Retail A (Phase 3)" a discount supermarket, building "Retail E (Phase 2)" a pharmacy, building "Phase 7" a drive-in bank, and building "Phase 8" a fast food restaurant with a drive-through window. Each of these uses is listed separately in the County's TIF Technical Program Document Table (pp 1 and 2 of Attachment 2 of Ex 29). The County calculated the TIFs for these buildings based on the specific uses proposed.

ii. Proposed building "Retail F (Phase 6)" contains two separate uses, a fast food restaurant with a drive-through window and a retail use. The County calculated the TIF for this building based solely on the fast food restaurant with a drive-through window code.

iii. Proposed buildings "Retail A," "B," and "D" each includes multiple unspecified retail uses. The County calculated the TIFs for these buildings based on the "shopping center" code.

b. The proposed development contains a mix of uses. Therefore, the County properly calculated the TIFs based on those individual uses.

3. The examiner finds that the overall development proposed in this application does not constitute a "shopping center" as defined by the ITE Manual.

a. The ITE Manual provides, in relevant part:

> A shopping center is an integrated group of commercial establishments that is planned, developed, owned, and managed as a unit....A shopping center also provides on-site parking facilities sufficient to serve its own parking demand. ... Some of these centers contained non-merchandising facilities, such as office buildings, movie theaters, restaurants, post offices, banks, health clubs, and recreational facilities... Many shopping centers, in addition to the integrated unit of shops in one building or enclosed around a mall, include outparcels (peripheral buildings or pads located on the perimeter of the center adjacent to the streets and major access points). These buildings are typically drive-in banks, retail stores, restaurants, or small offices....

b. The applicant is proposing a group of commercial establishments that will be planned and developed, as a unit. However, the entire site may not be "owned and managed as a unit" Each building will be located on a separate lot and therefore potentially subject to separate ownership.

i. The appellant argues that it must divide the site in order to lease the buildings to separate users, citing RCW 58.17.020(1). However, this statute is merely the definition of the term "subdivision," which provides, "Subdivision" is the division or redivision of land into five or more lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership, except as provided in subsection (6) of this

section." Although a subdivision may be required to lease the land, there is no evidence that the applicant must divide the site in order to lease the individual buildings to separate users.

c. In addition, the proposed development is inconsistent with the ITE Manuals definition that, although a "shopping center" may include separate outparcels, the primary uses consists of an "[i]ntegrated unit of shops in one building or enclosed around a mall..." The applicant is proposing eight separate buildings, four of which contain single uses.

i. The Vancouver Mall development, cited by the applicant, is clearly distinguishable from this application. Although the mall property consists of multiple lots, there is no evidence that each individual building is located on a separate lot. Based on the County's GIS website, the Vancouver Mall development primarily consists a single large building (mall) with multiple tenants. The mall building extends across multiple lots.

d. Calculating TIFs based on individual uses is consistent with the County's decision in PSR2008-00016 (Gaither Commercial Center). That development proposed a commercial development consisting of six separate buildings on four separate parcels. (Attachment 4 of Exhibit 29). The County calculated the TIFs for the development using the "shopping center" code. However, the County calculated a separate TIF for each individual building. (p. 5 of Exhibit 30). There, as here, the County did not calculate a single TIF for the overall development as a single large "shopping center."

i. It appears the County may have erred in using the shopping center code to calculate the TIFs for all of the proposed buildings in Gaither Commercial Center, based on the current Code language. As described in the Gaither decision, "No specific tenants for the proposed building are identified in the application, but likely uses proposed by the applicant include general office, a restaurant with a drive-through window, automotive services, personal services, and general retail." (p 5 of Attachment 4 of Exhibit 29). Under the current language of CCC 40.630.030.B, the County should have calculated the TIF for each individual use. However, that decision is not binding precedent. This application is subject to the plain language of the current code, which clearly requires that the County calculate the TIF for this development based on individual uses proposed.

e. The Three Creeks Investors, LLC development agreement cited by the applicant is not relevant to the TIF calculation for this development. The development agreement is a negotiated agreement between the County and Three Creeks Investors, LLC. It is not reflective of the County's typical process for calculating TIFs. RCW 26.70B.170 expressly authorizes the County to modify the amount of impact fees through the development agreement process.

4. The County properly relied on the "shopping center" Code to calculate the TIF for proposed buildings Retail A, B and D. The uses proposed in these buildings do not

clearly fall into any other category listed in the County's TIF Technical Program Document Table. These buildings clearly meet the definition of "shopping center" in the ITE Manual; they are proposed as single buildings containing multiple retail tenants. Each building will provide an integrated group of shops in one building that is owned and managed as a unit, and each building will provide on-site parking facilities sufficient to serve its own parking demand.

5. The Appellant argues that the TIF amount is "grossly unfair and excessive, over and above the project's impacts, given all the other transportation related improvements the applicant must complete for its project..." (p. 6 of Exhibit 29). However, TIFs authorized pursuant to RCW 39.92 are expressly exempt from this type of proportionality analysis. RCW 82.020.020.

6. The County erred in calculating the TIF for the entire building "Retail F" as a single use, a fast food restaurant with drive-through. This building will contain two separate uses: a fast food restaurant with drive-through and a general shopping center/retail use. However, the TIF fee calculations included in this record are merely the County's preliminary estimates. The actual TIF amounts will be determined through the building permit review process. CCC 40.610.040.B. The County can correct this error through the building permit review process based on review of detailed building designs that will specify the actual square footage of each use in proposed in building "Retail F."

7. The examiner finds that the County exceeded its authority in calculating TIF for building "Retail E" based on the ITE Manual code for a pharmacy with drive-through (ITE Land Use Code 881), rather than the TIF Technical Program Document Table. The TIF Technical Program Document Table does not include ITE Land Use Code 881. The Table only lists a pharmacy, without a drive-through (ITE Land Use Code 880).

a. CCC 40.630.030.A requires that the County calculate the impact fee for a nonresidential development by applying the traffic impact fee formula set out in CCC 40.620.010. CCC 40.620.010 provides, in relevant part:

> The impact fee component for roads shall be calculated using the following formula: TIF = (size of development by unit of measure/unit of measure) x (daily trips per unit of measure) x (pass-by factor) x (BEF) x (0.85) x (fee per daily trip by district)
>
> A. "Unit of measure" means the associated trip generation rates and other factors by land use type that have been adopted in the Traffic Impact Fee Technical Document. These rates are based on the Institute of Transportation Engineers Trip Generation User's Guide.
>
> ...

b. The examiner finds, based on the language of the Code, that TIFs must be calculated based on the land use codes "that have been adopted in the TIF Technical Program Document Table." CCC 40.620.010.A. Although the rates listed in the Table are

based on the Institute of Transportation Engineers Trip Generation User's Guide, the County did not adopt the trip generation estimates for all uses listed in the ITE Manual. The plain language of the Code limits TIF calculations to those land use codes listed in the adopted TIF Technical Program Document Table. CCC 40.630.030.C authorizes the development approval authority to reduce or eliminate the TIF fee based on studies and data provided by a developer. The Code does not authorize the County to increase the TIF based on such analysis. In addition, Mr. Jardin conceded that the County did not perform such an analysis in this case. p. 3 of Exhibit 35. The examiner finds that the County should be required to calculate the TIFs for this development based on the land use codes in the adopted TIF Technical Program Document Table. A condition of approval is warranted to that effect.

c. The examiner denies that portion of the appeal objecting to the County's failure to utilize the shopping center code to calculate the TIF for the entire development. The examiner grants those portions of the appeal objecting to the County's TIF calculations for buildings "Retail E" and "Retail F."

Appeal Issue 2. Right-Out Access:

8. The applicant applied for a road modification to allow a right-out access onto NE 139th Street, which is otherwise prohibited by CCC 40.350.30(B)(4)(d)(1). The applicant has the burden of proof to demonstrate that the proposed modification complies with the applicable approval criteria in CCC 40.550.010.C, which provides, in relevant part:

1. In reviewing a modification request, the county shall consider the applicable factors that include, but are not limited to, the following:
   a. Public safety, durability, cost of maintenance, function, and appearance;
   b. Advancing the goals of the comprehensive plan as a whole;
   c. Any modification shall be the minimum necessary to alleviate the hardship or disproportional impact;
   d. Potential benefits of low impact development or innovative concepts;
   e. Self-imposed hardships shall not be used as a reason to grant a modification request.
2. Modifications to the standards contained in Chapter 40.350 may be granted when the applicant demonstrates at least one (1) of the following:
   a. Topography, right-of-way, existing construction or physical conditions, or other geographic conditions make compliance with standards clearly impractical for the circumstances;
   b. A minor change to a specification or standard is required to address a specific design or construction problem which, if not enacted, will result in an unusual hardship;
   c. An alternative design is proposed which will provide a plan that is functionally equivalent or superior to the standards;

d. Application of the standards of Chapter 40.350 to the development would be grossly disproportional to the impacts created;
e. A change to a specification or standard is required to ensure consistency with existing features adjacent to or affected by the site where those existing features are not expected to change over time.

a. The applicant argued that the modification complies with CCC 40.550.010.C(2)(a) and (c).

i. The examiner finds that the applicant failed to demonstrate how the application complies with CCC 40.550.010.C(2)(a), that, "topography, right-of-way, existing construction or physical conditions, or other geographic conditions make compliance with standards clearly impractical for the circumstances." The proposed right-out access is not necessary for the proposed development. All affected intersections will continue to operate at acceptable levels of service without this access.

ii. The applicant argued that the proposed modification is an alternative design that is functionally equivalent or superior to the standard CCC 40.550.010.C(2)(c), because it would provide a secondary access to the site and it would reduce the volume of traffic through the NE 139th Street/NE 10th Avenue intersection. However, the applicant failed to address the additional approval criteria in CCC 40.550.010.C(1). Specifically, the applicant failed to address potential impacts on public safety. Drivers using the right-out access will turn onto westbound NE 139th Street, which is projected to carry 1,108 vehicle trips during the p.m. peak hour. 11 of the 39 drivers using the right-out access will attempt to turn left onto NE 10th Avenue. Those drivers must maneuver across the two westbound through lanes on NE 139th Street in order to enter the southbound left turn lane at NE 10th Avenue, roughly 349 feet from the right-out driveway. The County Road Modification Committee (the "RMC") expressed concerns that this maneuver may create a hazard. The applicant argued that there is no evidence that this maneuver will create a hazard. However, as noted above, the applicant, not the County, has the burden of proof to demonstrate compliance with the approval criteria, including public safety. Given the expert engineering opinion of the RMC members that drivers using the right-out access to turn left at NE 10th Street may create a hazard, the examiner cannot find that the proposed alternative design is "functionally equivalent or superior." Therefore, the examiner denies this portion of the appeal.

Appeal Issue 3. Road or Easement Through the Site:

9. The applicant applied for a second road modification to waive the cross-circulation requirement of CCC 40.350.030.B(2)(c)(1). The applicant argued that the modification complies with CCC 40.550.010.C(2)(a), (b), and (d). The County approved a modification waiving the circulation requirement north of the site, but denied the request to waive east-west circulation.

a. The examiner finds that the applicant failed to demonstrate how the request to waive the requirement for east-west circulation complies with CCC 40.550.010.C(2)(a). There are no existing barriers to the extension of a road or access

easement through the site; the site is currently vacant and relatively flat. A stub street or easement could be extended further east to connect with existing NE 16th Avenue.

i. The examiner recognizes that an existing mobile home park precludes cross-circulation to the north of the site.

b. However, the examiner finds that the applicant demonstrated compliance with CCC 40.550.010.C(2)(d). The proposed condition requiring the applicant to dedicate a public road or easement across the site is an exaction under RCW 82.020.020 and the 5th Amendment of the U.S. Constitution. Therefore, the County has the burden of proving a nexus between the exaction and the proposed development and that the cost of the exaction is roughly proportional to the impacts of the development.

i. In *Burton v. Clark County,* 91 Wn.App. 505, 958 P.2d 343 (1998), the Washington Court of Appeals set out a four-part test for demonstrating the constitutionality of exactions. In order to impose an exaction as a condition of approval the County must:

1. Identify a public problem that the condition is designed to address:
2. Show that this development will create or exacerbate the identified public problem;
3. Show that the proposed exaction tends to alleviate the identified public problem; and
4. Show that proposed solution to the identified public problem is "roughly proportional" to the impact of the proposed development.

ii. The examiner finds that the County met its burden of proof that the east-west access complies with the first three *Burton* criteria.

(A) The identified public problem is a lack of cross-circulation roadways, which forces all traffic onto the arterial and collector road system, increasing congestion on these roads.

(B) This development will exacerbate that problem by generating additional traffic on area roads.

(C) The proposed exaction, an east-west access easement or roadway through the site, will help alleviate the identified problem to some extent. The on-site access road or easement can be further extended and connect with NE 16th Avenue east of the site when the abutting Meyer properties redevelop in the future. This connection will provide an alternate route for some traffic traveling in the area, reducing the overall traffic volume and congestion on other area roads.

(1) The majority of customers of the development proposed on this site may not utilize this connection to 16th Avenue, as it does not

provide a direct route between the site and most other destinations in the area (Attachment 8 of Exhibit 29 and Attachment 2 of Exhibit 39). However, it may provide a more direct route for some trips generated by development on the Meyer properties, allowing these trips to avoid NE 10th Avenue and NE 139th Street, thereby reducing overall volume of traffic and associated congestion on these higher classification streets, mitigating the traffic impact of this development to some extent.

(2) The examiner finds that the extension of the easement or roadway to 16th Avenue is foreseeable. The County will require such an extension and connection to NE 16th Avenue when the Meyer properties east of the site redevelop. Unlike in *Burton*, there is evidence in the record that the Meyer properties are reasonably likely to redevelop in the foreseeable future: the Meyers were parties to the 2008 rezone and the 2015 Rezone Agreement, both of which affected the site and the Meyer properties. (Attachments 1 and 4 of Exhibit 36 and Attachment 12 of Exhibit 29) and the Meyers have stated that they, "continue to be active in preparing these properties for sale and development." (p. 2 of Attachment 5 of Exhibit 36). In addition, the applicant will construct the transportation improvements required by the Rezone Agreement, which will reduce the cost of developing the Meyer properties, making development of those properties more likely.

iii. However, the County failed to demonstrate compliance with the fourth *Burton* requirement, that the cost of the road/easement is "roughly proportional" to the impact of the proposed development. Provision of a road or easement will impose a significant cost on the applicant, which is grossly disproportionate to the impacts of the development.

(A) Dedication of right-of-way and construction of a public road across the site will cost the applicant between $1.4 and $1.5 million. (Attachments 6 and 9 of Exhibit 29). In addition, construction of a public roadway will eliminate some of the required parking available on the site, which will force the applicant to reduce the size of the development, reducing the value of the development. There is no evidence that this development will generate sufficient traffic on such a roadway to justify this significant cost. As discussed above, the proposed connection to NE 16th Avenue will not provide a direct route for the majority of trips in the area. The small reduction in congestion provided by this connection is not roughly proportional to the cost of a public road.

(B) Creation of an access easement across the site will impose little or no cost on the applicant as it will require little or no construction or alteration to the proposed development. The easement can align with the proposed east-west parking lot access aisle near the northern portion of the site. The applicant intends to provide such an easement through negotiations with the owners of the Meyer properties in exchange for the Meyers contributing towards the cost of the transportation improvements required by the Rezone Agreement. A condition of approval requiring the creation of such an easement would eliminate the applicant's negotiating leverage. However, the loss of such negotiating leverage is not an exaction subject to *Nollan/Dolan* analysis. Since the applicant is the owner of the first property subject to the Rezone Agreement to develop, the applicant is contractually required to construct the

improvements in the Rezone Agreement. The applicant must construct these improvements whether or not they provide an access through the site.

(C) However, creation of an easement allowing access between the Meyer properties and this site will impose significant additional costs on the applicant. WSDOT approved a reduction in the length of the right turn pocket approaching the right-in access on NE 139th Street for access to the site. However, if the right-in access will also serve development on the Meyer properties, WSDOT will require a full length right turn pocket, increasing construction costs by more than $260,000, not including right-of-way acquisition and wetland mitigation costs. (Attachments 6 and 11 of Exhibit 29). These additional costs are only necessary to serve future development on the Meyer properties. These costs are completely unrelated to the impacts of the proposed development. Therefore, the examiner finds that those costs are grossly disproportionate to the impact of the proposed development. In addition, there is no nexus between those costs and the impacts of the proposed development.

(D) The cost of extending the right turn pocket is not a "self-imposed hardship." CCC 40.350.030.B(1)(e). Although this right-in access is not necessary for the proposed development, it is part of the applicant's proposal and it was approved by the County and WSDOT. The applicant is not required to modify the project design in order to reduce the cost of an exaction imposed by the County where those costs are solely the result of another development. A self-imposed hardship would exist if the applicant were arguing that the costs for a right turn lane exclusively or primarily serving this development alone were grossly disproportional.

(E) The *Kramer* and *Unlimited* cases cited by the appellant are inapplicable. The purpose of the east-west access is to provide cross-circulation. It is not solely to provide access to an otherwise landlocked parcel. Unlike in *Kramer* and *Unlimited*, the required access is intended to provide a connection to an existing public road, NE 16th Avenue, that will enhance cross circulation in the surrounding area.

c. Condition of approval A-1.f should be deleted.

Appeal Issue 4. Road Modification for Driveway Spacing:

10. The right-out access is denied, as discussed above. Therefore, the request for a modification to the driveway spacing standards is moot.

Appeal Issue 5 – Shared Left Turn or Split Phase Signal at NE 139th Street:

11. The examiner finds that the County has no authority to require the applicant to provide dual left turn lanes on the southbound NE 10th Avenue approach to NE 139th Street.

a. Section 2.b of the Rezone Agreement provides, in relevant part:

> Prior to building permit being issued for any portion of the Properties, the following mitigation measures must be in place; provided, however, that the terms of this Concomitant Rezone Agreement shall not prevent or limit mitigation measures that may be required by Clark County as part of the development review process:
>
> ...
>
> - Modify the southbound NE 10th Avenue approach to NE 139th Street to provide either: (1) a second southbound left turn lane; or (2) a shared through-left center lane (converted from the existing through only lane) and split phasing with the northbound approach.

b. This requirement is clearly stated in the alternative, requiring that the applicant, "[p]rovide either: (1) a second southbound left turn lane; or (2) a shared through-left center lane..." Based on the plain language of the agreement, the choice of which option to implement is left to the sole discretion of the applicant. The County could have included language authorizing the County to determine which option to require, or requiring the option which maintained the greatest intersection capacity, but it did not do so. The applicant agreed to provide a shared left turn lane and split phase signal. That is sufficient to fulfill this portion of the Rezone Agreement.

i. The County argues that the examiner lacks jurisdiction to consider this issue, because the Rezone Agreement is a contract. P. 6 of Exhibit 35). However, the examiner is not interpreting the contract. The language of the contract is clear on its face and not subject to interpretation. The County is requiring the applicant to construct a specific improvement as a condition of the proposed development. Review of such conditions is clearly within the examiner's jurisdiction.

c. The Rezone Agreement authorizes the County to require additional mitigation measures through the development review process. However, there is no evidence that dual left turn lanes are necessary to mitigate the impacts of this development. As noted in the director's decision, although "[t]he dual southbound left turn option consistently performs 5-10% better [than the shared left-through lane]..., [b]oth options are well below County thresholds for delay." p. 15 of Attachment B of Exhibit 22. The County has no authority to require the applicant to provide excess capacity beyond what is necessary to fulfill the requirements of the Rezone Agreement and mitigate the impacts of the proposed development. The additional capacity provided by the shared left turn lane would benefit public at large, unrelated to the impacts of this development.

d. Condition A.1.g should be modified to that effect.

D. ORDER

1. Based on the above findings and discussion, the examiner:

a. Denies those portions of the appeal objecting to:

i. Denial of the road modification for driveway spacing;

ii. Denial of the right-out access; and

iii. Assessing TIFs based on the individual uses proposed.

b. Grants the appeal and reverses those portions of the director's decision:

i. Requiring a public road or easement through the site;

ii. Requiring dual southbound left turn lanes on the southbound NE 10th Avenue approach to NE 139th Street; and

iii. Calculating the TIF for the entire building "Retail F" as a single use, a fast food restaurant with drive-through; and

iv. Calculating TIF for building "Retail E" based on the ITE Manual code for a pharmacy with drive-through.

E. DECISION

Based on the findings and conclusions contained herein and the testimony and evidence in the public record, the examiner hereby grants the appeal, in part and approves the application subject to the revised conditions below.

A	**Final Construction/Site Plan Review** **Review and Approval Authority: Development Engineering/Land Use**

Prior to construction, a Final Construction Plan shall be submitted for review and approval, consistent with the approved preliminary plan and the following conditions of approval:

A-1 **Final Transportation Plan/On-Site** - The applicant shall obtain county approval of a final transportation design in conformance to CCC 40.350 and the following conditions of approval:

a. The applicant shall show on the final construction plans that all pedestrian facilities will be constructed to comply with ADA standards. (See Transportation Finding 1)

b. The applicant shall submit final construction plans that show the access onto NE 139th Street as a westbound right-in only access. The final construction plans shall show:

1. The right-in only access location shall be located in approximate alignment with the existing C-Tran access on the south side of NE 139th Street. (See Transportation Finding 3)

2. The radius of the right-turn only transitioning from the turn lane to the driveway throat shall be sufficient to allow an inbound speed of 20 MPH. (See Transportation Finding 3)

3. The length of the driveway throat shall be maximized before intersection with pedestrian crossing locations, parking and maneuvering areas. The right-turn deceleration lane together with the driveway throat shall be no less than 270 feet in length. (See Transportation Finding 3)

4. Stopping sight distance on approach to the driveway throat shall be no less than 120 feet as recommended by the engineer. In no case shall the horizontal offset sight distance, to the right-in only radius, be less than is required by AASHTO/WSDOT Design Manual for the design speed of 20 MPH stopping sight distance, and curve radius. (See Transportation Finding 3)

c. The applicant shall submit final construction plans that show a dedicated westbound right-turn deceleration lane. The final construction plans shall:

1. Be coordinated, reviewed and approved by WSDOT for construction associated with the NE 139th Street bridge structure. (See Finding 3)

2. Show that the lane transition taper is appropriate for a 35 MPH roadway. (See Finding 3)

3. Show that the deceleration lane length is equal to, or more than 145 feet. (See Finding 3)

d. The applicant shall submit final construction plans that show limited sidewalk construction along the NE 139th Street frontage. The sidewalk shall be detached and construction shall comply with the Clark County Drawing 3. The plans shall show the construction of sidewalk, along NE 139th Street, between NE 10th Avenue and the west side of the right-out only access. (See Finding 3)

e. The applicant shall submit final construction plans that show sidewalk construction along the NE 10th Avenue frontage south of the proposed signalized site access location. The sidewalk shall be detached and construction shall comply with the Clark County Drawing 5. The existing 8-foot wide attached sidewalk may be retained north of the prosed signalized site access location onto NE 10th Avenue. (See Finding 3)

f. The applicant shall submit final construction drawings that show NE 23rd Avenue/NE 134th Street intersection improvements to include signing and

striping for a shared left-right turn lane (converted from the existing left-only lane) and a dedicated southbound right-turn lane. The turn lane modifications to NE 23rd Avenue may require modifications to the signal at that location. Therefore, the applicant's traffic signal designer will need to coordinate with the county's Traffic Signals Manager and/or Washington State Department of Transportation (WSDOT) for design, signals components and materials necessary for compliance and compatibility with the signal infrastructure. (See Finding 4)

g. The applicant shall submit final construction drawings that show NE 10th Avenue/NE 139th Street intersection improvements to include either

   i. Dual southbound left-turn lanes, a southbound through lane and a dedicated southbound right- turn lane; or

   ii. A shared through-left center lane (converted from the existing through only lane) and split phasing with the northbound approach, a southbound through lane, and a dedicated southbound right- turn lane

   The construction drawings shall also include the redesign of the existing signal. This redesign may include, but is not limited to, new traffic signal cabinetry, traffic signal controls, traffic signal poles and mast arms and/or relocation, traffic signal heads, signal wiring and phasing changes, etc. The applicant's traffic signal designer will need to coordinate with the county's Traffic Signals Manager for design, signals components and materials necessary for compliance and compatibility with the county's signal infrastructure. (See Finding 4)

h. The applicant shall submit construction drawings that show NE 10th Avenue/NE 141st Street intersection improvements to include signing and striping for the northbound approach to include a dedicated left-turn lane, a dedicated through lane and a dedicated right-turn 'slip' lane. The signing and striping for the southbound approach shall include a dedicated left-turn lane and a shared through-right lane. The construction drawings shall also include the design a traffic signal at the intersection of NE 10th Avenue/NE 141st Street/Site Access. This design may include, but is not limited to, traffic signal cabinetry, traffic signal controls, traffic signal poles and mast arms, traffic signal heads, and signal wiring, etc. The applicant's traffic signal designer will need to coordinate with the county's Traffic Signals Manager for design, signals components and materials necessary for compliance and compatibility with the county's signal infrastructure. (See Finding 4)

i. The applicant shall submit construction drawings that show the construction of half-width improvements, for NE 139th Street, in compliance with Clark County Standard Drawing 3 and as modified by the Concomitant Rezone Agreement (5170404 AGR) and Road Modification (EVR2018-00069) as discussed above. (See Finding 5)

j. The applicant shall submit construction drawings that show the construction of frontage improvements, for NE 10th Avenue, in compliance with Clark County Standard Drawing 5 and as modified by the Concomitant Rezone Agreement (5170404 AGR) and Road Modification (EVR2018-00069) as discussed above. (See Finding 5)

A-2 Transportation:

a. Signing and Striping Plan - The applicant shall submit a signing and striping plan for review and approval. This plan shall show signing and striping and all related features for required frontage improvements and any off-site improvements. The offsite improvements shall include signing and striping for the intersection improvements at NE 23rd Avenue/NE 134th Street. The applicant shall obtain a work order with Clark County to reimburse the County for required signing and striping.

b. WSDOT Design Manual - The applicant shall consider the WSDOT Design Manual – Roadside Safety Mitigation Guidance (Section 1600.04) in the final engineering design of all proposed roadways and frontage improvements. (See Finding 15)

c. Intersection Geometry - The applicant shall submit construction plans that show the design of the intersection geometry will accommodate all applicable design vehicles for review and approval, unless modified by the County Engineer. The plans will also need to show that all applicable design vehicles have the ability to enter and exit the development while minimizing the impact on adjacent and/or opposing travel lanes. This may result in longer driveway throat depths prior to accessing parking and maneuvering areas near the site accesses with NE 10th Avenue and NE 139th Street. (See Finding 16)

A-3 Final Stormwater Plan - The applicant shall obtain county approval of a final stormwater plan designed in conformance to CCC 40.386 and the following conditions of approval:

a. The applicant shall submit final construction plans and a final Technical Information Report that addresses Minimum Requirements #1 though #9. (See Finding 7)

b. The applicant shall submit documentation from the stormwater treatment system manufacturer indicating that the proprietary treatment devices were sited and sized appropriately. (See Finding 8)

c. The applicant shall address the impacts of high groundwater on all proposed stormwater facilities at the time of final construction plan review and submit analysis and design of any facilities needed to mitigate for it with the final TIR. (See Finding 8)

d. The applicant shall show on the final construction plans that the solid waste storage areas are designed in accordance with the requirement of Book 3, Chapter 2, pg. 47 of the CCSM 2015. (See Finding 8)

e. The applicant shall note on the final construction plans that all on-site stormwater systems are privately owned and maintained. (See Finding 8)

A-4 **Erosion Control Plan** - The applicant shall submit and obtain county approval of a final erosion control plan designed in accordance with CCC 40.386.

A-5 **Excavation and Grading** - Excavation / grading shall be performed in compliance with CCC Chapter 14.07.

A-6 **Other Required Documents:** – The following documents shall be submitted with the Final Construction/Site Plan:

a. Developer's Covenant: - A "Developer Covenant to Clark County" shall be submitted for recording that specifies the following Responsibility for Stormwater Facility Maintenance: For stormwater facilities for which the county will not provide long-term maintenance, the developer shall make arrangements with the existing or future (as appropriate) occupants or owners of the subject property for assumption of maintenance to the county's Stormwater Facilities Maintenance Manual as adopted by Chapter 13.26A. The responsible official prior to county approval of the final stormwater plan shall approve such arrangements. The county may inspect privately maintained facilities for compliance with the requirements of this chapter. An access easement to the private facilities for the purpose of inspection shall be granted to the county. If the parties responsible for long-term maintenance fail to maintain their facilities to acceptable standards, the county shall issue a written notice specifying required actions to be taken in order to bring the facilities into compliance. If these actions are not performed in a timely manner, the county shall take enforcement action and recover from parties responsible for the maintenance in accordance with Section 32.04.060.

A-7 The final site plan shall show solid waste/recycling enclosures with the required screening/cover and stormwater containment. A building permit will be required. (See Finding 3b)

A-8 The final site plan shall identify two methods of the notifying drivers of a pedestrian crosswalk (see Finding 3c).

A-9 A final landscape plan shall be submitted consistent with the preliminary plan (see Finding 3d).

A-10 Archaeological Resources - A note shall be placed on the face of the final construction plans as follows: "In the event that archaeological or historic materials (e.g. bones, shell, stone tools, beads, ceramics, old bottles, hearths, etc.)

are observed during project activities, all work in the immediate vicinity should stop and the State Department of Archaeology and Historic Preservation (360-586-3065), the County planning office, and the affected Tribe(s) should be contacted immediately. If any human remains are observed, all work should cease and the immediate area secured. Local law enforcement, the county medical examiner (360-397-8405), State Physical Anthropologist, Department of Archaeology and Historic Preservation (360-586-3534), the County planning office, and the affected Tribe(s) should be contacted immediately. Compliance with all applicable laws pertaining to archaeological resources (RCW 27.53, 27.44 and WAC 25-48) and human remains (RCW 68.50) is required. Failure to comply with these requirements could constitute a Class C Felony."

A-11 **Wetland Plan** - The Final Construction plan shall show location of the outer extent of wetland buffer for marking in the field. Markings shall be installed prior to construction and maintained throughout the duration of construction.

A-12 The applicant shall submit evidence of a wetland mitigation bank credit transfer for the total amount of credits identified in the approved final mitigation plan.

A-13 **Fire Marshal Requirements**

a. Fire flow in the amount of 2750 gallons per minute supplied for 60 minutes duration is required for this application. Prior to obtaining building permits, submit proof from the water purveyor indicating that the required fire flow is available at the site. Water mains supplying fire flow and fire hydrants shall be installed, approved and operational prior to the commencement of combustible building construction. Fire flow is based on a 10,600 sq. ft. building of Type 5B construction. (See Finding 18)

b. Provide an unobstructed vertical clearance of not less than 13.5 feet, with an all-weather driving surface and capable of supporting the imposed loads of fire apparatus. (See Finding 19)

A-14 All wetland, buffer boundaries shall be delineated on the face of the Final Site Plan.

A-15 The applicant shall provide all necessary transportation, stormwater facility, and utilities improvements for each individual phase. The required improvements for each proposed phase will be reviewed during final site and engineering review.

B	**Prior to Construction of Development** **Review and Approval Authority: Development Inspection**

Prior to construction, the following conditions shall be met:

B-1 **Pre-Construction Conference** - Prior to construction or issuance of any grading or building permits, a pre-construction conference shall be held with the County.

B-2 **Erosion Control** - Prior to construction, erosion/sediment controls shall be in place. Sediment control facilities shall be installed that will prevent any silt from

entering infiltration systems. Sediment controls shall be in place during construction and until all disturbed areas are stabilized and any erosion potential no longer exists.

B-3 **Erosion Control** - Erosion control facilities shall **not** be removed without County approval.

C	**Provisional Acceptance of Development** **Review and Approval Authority: Development Inspection**

C-1 **Traffic Control Plan**: Prior to issuance of any building or grading permits for the development site, the applicant shall obtain written approval from Clark County Department of Public Works of the applicant's Traffic Control Plan (TCP). The TCP shall govern all work within or impacting the public transportation system.

C-2 Permanent physical demarcation along the upland boundary of the wetland buffer areas shall be installed and thereafter maintained. Such demarcation may consist of logs, a tree or hedge row, fencing, or other prominent physical marking approved by the responsible official. In addition, signs shall be posted at an interval approved by the Wetland and Habitat Review Manager, and perpetually maintained at locations along the outer perimeter of the wetland buffer approved by the responsible official worded substantially as follows:

Wetland and Buffer –
Please retain in a natural state

D	**Final Plat Review & Recording** **Review and Approval Authority: Development Engineering**

Prior to final plat approval and recording, the following conditions shall be met:

D-1 The applicant shall ensure the dedication of right-of-way to include the required westbound right-turn lane, at the NE 10th Avenue/NE 139th Street intersection, the westbound right-turn deceleration lane, at the proposed right-in only access, and all pedestrian facilities between NE 10th Avenue and the proposed right-in only access. In no case shall the minimum total half-width be less than 50 feet. (See Finding 5)

D-2 The applicant shall ensure the dedication of right-of-way to include the required northbound right-turn 'slip' lane, between the NE 10th Avenue/NE 139th Street intersection and the proposed site access, at the intersection of NE 10th Avenue/NE 141st Street, and all pedestrian facilities along the NE 10th Avenue frontage. In no case shall the minimum total half-width be less than 35 feet. (See Finding 5)

D-3 The applicant shall record a reciprocal access/driveway easement agreement benefiting all the lots within this subdivision.

D-4 **Developer Covenant** – A "Developer Covenant to Clark County" shall be submitted for recording to include the following:

a. Joint Driveway Maintenance Covenant - A private joint driveway maintenance covenant shall be submitted to the responsible official for approval and recorded with the County Auditor. The covenant shall set out the terms and conditions of responsibility for maintenance, maintenance methods, standards, distribution of expenses, remedies for noncompliance with the terms of the agreement, right of use easements, and other considerations, as required under 40.350.030(C)(4)(g).

b. Critical Aquifer Recharge Areas - "The dumping of chemicals into the groundwater and the use of excessive fertilizers and pesticides shall be avoided. Homeowners are encouraged to contact the State Wellhead Protection program at (206) 586-9041 or the Washington State Department of Ecology at 800- RECYCLE for more information on groundwater /drinking supply protection."

c. Erosion Control - "Building Permits for lots on the plat shall comply with the approved erosion control plan on file with Clark County Building Department and put in place prior to construction."

d. Responsibility for Stormwater Facilities Maintenance: For stormwater facilities for which the county will not provide long-term maintenance, the developer shall make arrangements with the existing or future (as appropriate) occupants or owners of the subject property for assumption of maintenance to the county's Stormwater Facilities Maintenance Manual as adopted by Chapter 13.26A. The responsible official prior to county approval of the final stormwater plan shall approve such arrangements. Final plats shall specify the party(s) responsibility for long-term maintenance of stormwater facilities within the Developer's Covenants to Clark County. The county may inspect privately maintained facilities for compliance with the requirements of this chapter. If the parties responsible for long-term maintenance fail to maintain their facilities to acceptable standards, the county shall issue a written notice specifying required actions to be taken in order to bring the facilities into compliance. If these actions are not performed in a timely manner, the county shall take enforcement action and recover from parties responsible for the maintenance in accordance with Section 32.04.060. (The covenant will not be required if the stormwater facilities are to be owned and maintained by Clark County.)

D-5 **Plat Notes** - The following notes shall be placed on the final plat:

a. Utilities: "An easement is hereby reserved under and upon the exterior six (6) feet at the front boundary lines of all lots for the installation, construction, renewing, operating and maintaining electric, telephone, TV, cable, water and sanitary sewer services. Also, a sidewalk easement, as necessary to comply with ADA slope requirements, shall be reserved upon the exterior six (6) feet along the front boundary lines of all lots adjacent to public streets."

b. Driveways: "All driveway approaches entering public roads are required to comply with CCC 40.350. No direct driveway access onto NE 139th Street or NE 10th Avenue will be permitted."

c. Privately Owned Stormwater Facilities: "The following party(s) is responsible for long-term maintenance of the privately owned stormwater facilities: _____."

d. Critical Aquifer Recharge Area: "If applicable, at the time of site plan review for each lot, the applicant shall submit a Level 1 site evaluation report for review and approval."

e. Archaeological: "If any cultural resources and/or human remains are discovered in the course of undertaking the development activity, the Department of Archaeology and Historic Preservation in Olympia and Clark County Community Development shall be notified. Failure to comply with these State requirements may constitute a Class C Felony, subject to imprisonment and/or fines."

D-6 The wetland buffer boundaries shall be delineated on the face of the Final Plat. This covenant may stand alone or be combined with the required wetland covenant. The applicant shall submit evidence of a wetland mitigation bank credit transfer for the total amount of credits identified in the approved mitigation plan.

E	**Building Permits** **Review and Approval Authority: Permit Services**

Prior to issuance of a building permit, the following conditions shall be met:

E-1 The applicant shall show compliance with conditions shown in the Concomitant Rezone Agreement (5170404 AGR). Where the Rezone Agreement provides a choice of alternative improvements, the choice of alternative is within the applicant's sole discretion.

E-2 Water mains supplying fire flow and fire hydrants shall be installed, approved and operational prior to combustible building construction. Fire hydrants are required for this application. Provide fire hydrants such that the maximum spacing between hydrants does not exceed 300 feet and such that no portion of the building exterior is in excess of 300 feet from a fire hydrant as measured along approved fire apparatus access roads. Fire hydrants shall be provided with appropriate 'storz' adapters for the pumper connection prior to combustible building construction. Contact Fire District # 6 at (360) 576-1195 to arrange for location approval. Buildings with fire sprinklers shall have a minimum of two fire hydrants. One fire hydrant shall be located within 100 feet of Fire Department Connections. (See Finding 26)

E-3 **Impact Fees** - Traffic Impact fees are required and the site is located in the Mt Vista Transportation subarea. As found in CCC 40.610.040, impact fees are

calculated using the rates in effect at the time of building permit issuance. This project is under the TIF waiver program (see Finding 21). TIFs shall be calculated based on the individual uses proposed, using the land use codes in the adopted TIF Technical Program Document Table.

E-4 **Rooftop Equipment:** Rooftop exterior equipment shall be screened from an abutting public road right-of-way to at least an F2 or L3 standards if visible at grade from the right-of-way. This requirement shall be shown on building plans.

F	**Occupancy Permits** **Review and Approval Authority: Building**

Prior to issuance of an occupancy permit, the following conditions shall be met:

F-1 **Landscaping** - Prior to the issuance of an approval of occupancy for final site plan, the applicant shall submit a copy of the approved landscape plan(s) with a letter signed and stamped by a landscape architect licensed in the state of Washington certifying that the landscape and irrigation (if any) have been installed in accordance with the attached approved plan(s) and verifying that any plant substitutions are comparable to the approved plantings and suitable for the site.

F-2 **Fire Marshal** - Automatic Fire sprinklers are required for the buildings. Fire sprinkler designs shall include fire sprinkler protection of balconies and covered entry and egress routes. Fire alarm system is required for the buildings provided with fire sprinklers.

F-3 Proposed buildings shall connect to approved public water and sewer systems. The applicant needs to comply with all requirements of the purveyor.

G	**Development Review Timelines & Advisory Information** **Review and Approval Authority: None - Advisory to Applicant**

G-1 **Department of Ecology Permit for Construction Stormwater** - A permit from the Department of Ecology (DOE) is required If:

- The construction project disturbs one or more acres of land through clearing, grading, excavating, or stockpiling of fill material; **AND**
- There is a possibility that stormwater could run off the development site during construction and into surface waters or conveyance systems leading to surface waters of the state.

The cumulative acreage of the entire project whether in a single or in a multiphase project will count toward the one acre threshold. This applies even if the applicant is responsible for only a small portion [less than one acre] of the larger project planned over time. **The applicant shall Contact the DOE for further information.**

G-2 **Site Plans and Other Land Use Approvals** - Within seven (7) years of preliminary plan approval, a Fully Complete application for a building permit shall be submitted.

G-3 **Building and Fire Safety** - Building and fire, life, and safety requirements must be addressed through specific approvals and permits. This decision may reference general and specific items related to structures and fire, life, and safety conditions, but they are only for reference in regards to land use conditions. It is the responsibility of the owner, agent, tenant, or applicant to insure that Building Safety and Fire Marshal requirements are in compliance or brought into compliance. Land use decisions do not waive any building or fire code requirements.

G-4 **Building Elevation Approvals** - Approval of building elevations submitted for preliminary plan review does not ensure compliance with other requirements (such as building setbacks) under other construction codes. Compliance with other construction codes is the responsibility of the applicant at the time of building permit issuance.

H	**Post Development Requirements** **Review and Approval Authority: As specified below**

H-1 **Outdoor Lighting** - Exterior lighting shall be located, shielded, and directed to prevent significant off site glare, in accordance with CCC 40.340.010(A)(7) and RCW 47.36.180.

H-2 **Noise Limits** - uses in the proposed commercial development are required to comply with state noise standards. See Washington Administrative Code, WAC 173-60-040. (See Finding 4).

H-3 For all proposed identification signs, the applicant shall make application for a separate sign permit pursuant to CCC 40.310.

H-4 Maintain an unobstructed vertical clearance of not less than 13.5 feet, with an all-weather driving surface and capable of supporting the imposed loads of fire apparatus.

DATED this 17th day of June 2019.

Joe Turner, AICP, Hearings Examiner

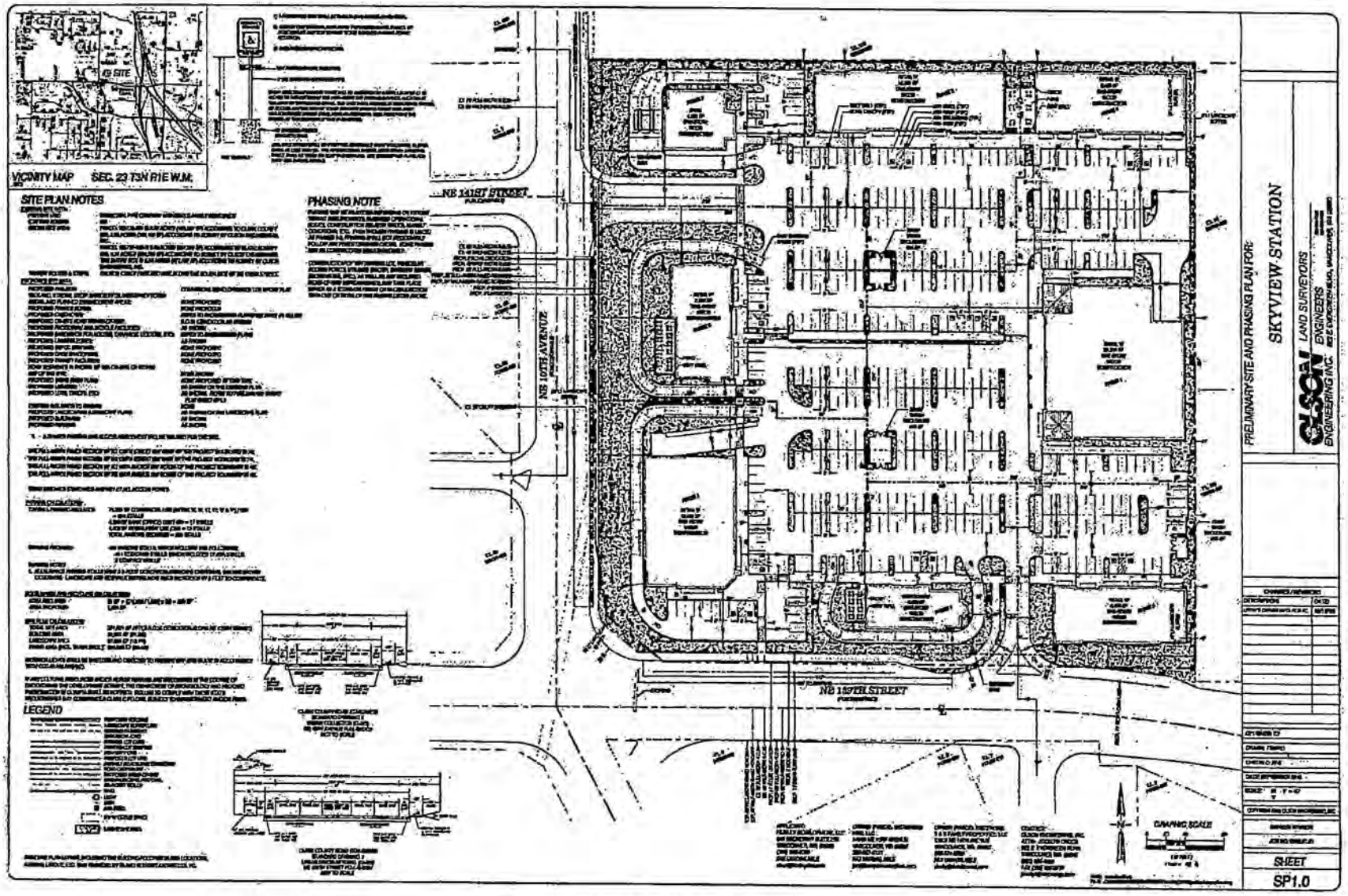

VICINITY MAP
SEC. 23 T3N R1E W.M.
SITE PLAN NOTES
PHASING NOTE
LEGEND
NE 141ST STREET
NE 10TH AVENUE
NE 139TH STREET
DRAWING SCALE
PRELIMINARY SITE AND PHASING PLAN FOR:
SKYVIEW STATION
LAND SURVEYORS
ENGINEERS
ENGINEERING INC.
SHEET
SP1.0

EXHIBIT D

APD-2019-00001
PLD2018-00034; PSR2018-00036;
SEP2018-00046; EVR2018-00069;
WET2018-00074; WET2018-00075

Role	Company Name	Name	Address 1	Address 2	City	State	Zip Code	Email Address
Planner	Clark County	Richard Daviau						
Applicant	Hurley Development, LLC	Chad Hurley	915 Broadway	Ste 250	Vancouver	WA	98660	chad@hurleydev.com
Owner	T & S Family Properties, LLC		13909 NE 10th Ave		Vancouver	WA	98685	shelly@dewittconst.com
Owner	Hag, LLC		14019 NE 10th Ave		Vancouver	WA	98685	jan@hamptonautoglass.com
Appellant	Miller Nash Graham & Dunn, LLP	LeAnne Bremer	500 Broadway	Ste 400	Vancouver	WA	98660	leanne.bremer@millernash.com
N/H Association	North Salmon Creek Nbhd Assoc							nscna+president@salmoncreeklive.com
Contact Person	Olson Engineering	Jocelyn Cross	222 E Evergreen Blvd		Vancouver	WA	98660	jocelyn@olsonengr.com
Utility Contact								
	Clark County	Desiree DeMonye						Desiree.DeMonye@clark.wa.gov
	City of Vancouver	Kristin Lehto						Kristin.Lehto@cityofvancouver.us
		Jennifer Halleck						Jennifer.Halleck@vansd.org
		Jeff Roberts						jeff@crandallgroup.com
		Tyler Kruskamp & Christine Parker	908 NE 141st St		Vancouver	WA	98685	
		Thomas Hemphill	14204 NE 10th Ave	#80	Vancouver	WA	98685	tomh2491@comcast.net
		John Davis						jbda5253@mac.com

EXHIBIT D

EXHIBIT LIST

Project Name:	**SKYVIEW STATION**
Case Number:	**PSR2018-00036; PLD2018-00034; SEP2018-00046; EVR2018-00069; WET2018-00074; WET2018-00075**

EXHIBIT NUMBER	DATE	SUBMITTED BY	DESCRIPTION
1	11/5/18	Applicant	Application Package
2	10/3/18	CC Land Use	Legal Lot Determination
3	11/19/18	CC Land Use	Fully Complete
4	12/4/18	CC Wetland/Habitat Rev	Wetland Comments
5	12/19/18	CC Land Use	Notice of Type II Application
6	12/19/18	CC Land Use	Affidavit of Mailing - Exhibit 5
7	12/14/18	Applicant	Revised Site Plan & Narrative
8	12/20/18	Applicant	Road Modification Request
9	12/29/18	Tyler & Christine Kruskamp	Comments
10	12/30/18	Tom & Linda Hemphill	Comments
11	1/3/19	CC Land Use	Early Issues
12	1/3/19	Dept of Ecology	Comments
13	1/8/19	Applicant	Wetland Mitigation Plan
14	1/10/19	Applicant	Revised TIR binder
15	1/18/19	Applicant	Revised storm, wetland, traffic, Road mod info
16	1/18/19	John Davis	Comments
17	1/16/19	CC Wetland/Habitat Rev	Comments
18	2/15/19	Applicant	New Road Modication Request
19	2/19/19	Applicant & Staff	Road Mod/timing coordination
20	3/1/19	CC Development Engineering	Road Mod Decision
21	3/4/19	Applicant	Comments
22	3/4/19	CC Land Use	Staff Report and Decision
23	3/4/19	CC Land Use	Affidavit of Mailing - Exhibit 22
24	3/13/19	Appellant	Appeal Letter
25	5/1/19	CC Land Use	Notice of Appeal
26	5/1/19	CC Land Use	Affidavit of Mailing - Exhibit 25
27	5/8/19	CC Land Use	Appeal Staff Report
28	5/8/19	CC Land Use	Affidavit of Mailout - Exhibit 27
29	5/21/19	Appellant	Response to staff report

Copies of these exhibits can be viewed at:
Department of Community Development
Development Services Division
1300 Franklin Street
Vancouver, WA 98666-9810

EXHIBIT D

EXHIBIT NUMBER	DATE	SUBMITTED BY	DESCRIPTION
30	5/25/19	Appellant	Addendum - Staff Report and Decision
31	5/29/19	CC Land Use	Hearing Presentation
32	5/29/19	CC Land Use	Hearing Sign-In
33	5/29/19	CC Land Use	Hearing Transcript
34	5/31/10	CC Prosecuting Attorney	Final Comments
35	5/31/19	CC Engineering	Final Comments
36	6/3/19	CC Land Use	Order on Motion to Re-Open the Record
37	6/3/19	CC Land Use	Affidavit of Mailing - Exhibit 36
38	6/5/19	CC Land Use	Affidavit of Publication - The Reflector
39	6/7/19	Appellant	Memorandum
40	6/10/19	CC Land Use	Affidavit of Publication - The Columbian
41	6/17/19	CC Land Use	Hearing Examiner Decision
42	6/17/19	CC Land Use	Affidavit of Mailing - Exhibit 41

Copies of these exhibits can be viewed at:
Department of Community Development
Development Services Division
1300 Franklin Street
Vancouver, WA 98666-9810

EXHIBIT D

RETURN ADDRESS

Clark County
Council

5715654 AMD 03/24/2020 03:12
Total Pages: 12 Rec Fee: $218.00
CLARK COUNTY COUNCIL
Recorded in Clark County, WA

Please print neatly or type information

Document Title(s)

Amendment to Concomitant Rezone Agreement

Reference Number(s) of related documents:

5167709, 5170404

Additional Reference #'s on page ____

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

Meyer, Thomas F. and Meyer, Jean L., husband & wife

Additional grantors on page 1

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

Clark County

Additional grantees on page ____

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

A strip of land of variable width lying in SW qtr.

Additional legal is on page 9,10,11

Assessor's Property Tax Parcel/Account Number

185796-000, 185700-000, 185672-000, 185726-000

Additional parcel #'s on page 1

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 process may cover up or otherwise obscure some part of the text of the original document.

Signature of Requesting Party

EXHIBIT E

When Recorded, Return to:

LeAnne M. Bremer
Miller Nash Graham & Dunn LLP
500 Broadway, Suite 400 98660
Vancouver, WA 98666-1086

ABOVE SPACE RESERVED FOR RECORDING INFORMATION

AMENDMENT TO CONCOMITANT REZONE AGREEMENT

Grantors: Thomas F. Meyer and Jean L. Meyer, husband and wife; T&J Meyer, LLC, a Washington Limited Liability Company; Meyer Clan, LLC, a Washington Limited Liability Company; HAG, LLC, a Washington Limited Liability Company; and T & S Family Properties, LLC, a Washington Limited Liability Company.

Grantee: Clark County, Washington, a political subdivision of the State of Washington ("Clark County").

Grantors and Grantee are collectively the "Parties."

Assessor's Property Tax Serial Numbers: 185796-000; 185700-000; 185672-000; 185726-000; and 185727-000 ("Property").

The Parties entered into a Concomitant Rezone Agreement dated April 21, 2015, recorded under Auditor's File Nos. 5167709 and 5170404 ("Covenant") encumbering the property legally described in **Exhibit A**, incorporated by this reference.

Clark County recently approved a development application applicable to Tax Parcel Nos. 185727-000 and 185726-000, known as Skyview Station. In the Final Order for Skyview Station, the hearings examiner conditioned the Skyview Station project on complying with five mitigation measures in the Covenant.

By action of the Clark County Councilors on February 18, 2020, the County determined that one of the mitigation measures encumbering the Property was no longer necessary after analysis by Clark County staff and the Washington Department of Transportation. The Council approved the staff recommendation (No. PW20-009) to partially release a certain condition of the Covenant described herein.

EXHIBIT E

The purpose of this Amendment is to memorialize the partial release of the Covenant.

THE PARTIES AGREE AS FOLLOWS:

1. Partial Release. The fourth bullet of Section 2.b. of the Covenant, which reads as follows, is hereby deleted and released from the Covenant in its entirety:

> Modify the southbound NE 23rd Avenue approach to NE 134th Street to provide either: (1) a shared left-right lane (converted from the existing left only lane) with the existing exclusive right turn lane; or (2) an overlap phase for the existing right turn lane.

2. Binding. The Covenant, as amended by this Amendment, shall remain in full force and effect until amended, modified or terminated by the action of the property owners and Clark County in proceedings appropriate for that purpose. The County reserves authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

3. Recording, Annexation, Successors, and Assigns. This Amendment shall be recorded with the real property records of Clark County and is applicable to the real property legally described in **Exhibit A**. This Amendment is binding on the parties hereto, their successors, and assigns, including the city, town, or municipality that assumes jurisdiction through incorporation or annexation of the area covering the Properties by this Amendment.

4. Effective Date. The Effective Date of this Agreement shall be the date of the last signature required for this agreement to be enforceable.

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

DATED this 10 day of March, 2020

GRANTORS:

Property owners for #185796-000

Thomas F. Meyer

Thomas F Meyer _____ 03/04/20 _____
Date

EXHIBIT E

Jean L. Meyer

Jean L. Meyer _____ 03/04/2020 _____
Date

Property owner for #185700-000

T&J Meyer, LLC

By Thomas F Meyer _____ 03/04/2020 _____
Date

Print name THOMAS F. MEYER

Position: MEMBER

Property owner for #185672-000

Meyer Clan, LLC

By Thomas F Meyer _____ 03/04/2020 _____
Date

Print name THOMAS F. MEYER

Position: MEMBER

Property owner for #185726-000

HAG, LLC

By Jan Vis _____ 03/04/2020 _____
Date

Print name Jan Vis

Position: Member

Property owner for #185727-000

T & S Family Properties, LLC

By Ty Dewitt Molly Spaar _____ 3-2-2020 _____
Date

Print name TY DEWITT Molly Spaar

Position: members

731460-0003/4830-1917-3813.2

EXHIBIT E

GRANTEE:

CLARK COUNTY:

Shawn Henessee 3-10-2020
County Manager

APPROVED AS TO FORM ONLY:

Anthony F. Golik
Clark County Prosecuting Attorney

By _____
Taylor Hallvik
Deputy Prosecuting Attorney

ATTEST: _____, Clerk to Council

CLARK COUNTY COUNCILORS
FOR CLARK COUNTY, WASHINGTON

By: _____
Eileen Quiring, Chair

By: _____
Julie Olson, Councilor

By: _____
Temple Lentz, Councilor

By: _____
John Blom, Councilor

By: _____
Gary Medvigy, Councilor

EXHIBIT E

STATE OF WASHINGTON)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that THOMAS F. MEYER signed this instrument, and on oath stated that he executed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

DATED this 4 day of March, 2020.

AMY STEWART Commission Expires 09-01-2022 NOTARY PUBLIC License Number 202427 STATE OF WASHINGTON

NOTARY PUBLIC for the State of Washington,
Residing in the County of Clark
My Commission Expires: 09-01-2022

STATE OF WASHINGTON)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that JEAN L. MEYER signed this instrument, and on oath stated that she executed this instrument and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in the instrument.

DATED this 4 day of March, 2020.

AMY STEWART Commission Expires 09-01-2022 NOTARY PUBLIC License Number 202427 STATE OF WASHINGTON

NOTARY PUBLIC for the State of Washington,
Residing in the County of Clark
My Commission Expires: 09-01-2022

EXHIBIT E

STATE OF WASHINGTON)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that THOMAS F. MEYER signed this instrument, on oath stated that he/~~she~~ was authorized to execute this instrument and acknowledged it as MEMBER of T&J Meyer, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 4 day of March, 2020.

AMY STEWART
Commission Expires
09-01-2022
NOTARY
PUBLIC
License Number 202427
STATE OF WASHINGTON

NOTARY PUBLIC for the State of Washington,
Residing in the County of Clark
My Commission Expires: 09-01-2022

STATE OF WASHINGTON)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that THOMAS F. MEYER signed this instrument, on oath stated that he/~~she~~ was authorized to execute this instrument and acknowledged it as MEMBER of the Meyer Clan, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 4 day of March, 2020.

AMY STEWART
Commission Expires
09-01-2022
NOTARY
PUBLIC
License Number 202427
STATE OF WASHINGTON

NOTARY PUBLIC for the State of Washington,
Residing in the County of Clark
My Commission Expires: 09-01-2022

EXHIBIT E

STATE OF WASHINGTON)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that JAN VLS signed this instrument, on oath stated that he/~~she~~ was authorized to execute this instrument and acknowledged it as MEMBER of HAG, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 4 day of March, 2020.

AMY STEWART
Commission Expires 09-01-2022
NOTARY PUBLIC
License Number 202427
STATE OF WASHINGTON

NOTARY PUBLIC for the State of Washington,
Residing in the County of Clark
My Commission Expires: 09-01-2022

STATE OF WASHINGTON)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that Ty Death and Shelly Speyer signed this instrument, on oath stated that he/she was authorized to execute this instrument and acknowledged it as members of T & S Family Properties, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 2 day of March, 2020.

KARIN ANDERSON
NOTARY
My Comm. Expires April 02, 2024
No. 72136
PUBLIC
STATE OF WASHINGTON

NOTARY PUBLIC for the State of Washington,
Residing in the County of Clark
My Commission Expires: April 2, 2024

EXHIBIT E

STATE OF WASHINGTON)
) ss.
County of Clark)

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

DATED this 10th day of March, 2020.

REBECCA L MESSINGER
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION NUMBER 3715
COMMISSION EXPIRES APRIL 26, 2021

Rebecca L. Messinger
NOTARY PUBLIC for the State of Washington,
Residing in the County of Clark
My Commission Expires: 4/26/2021

EXHIBIT E

EXHIBIT A

185726-000

SALMON CREEK INTERCHANGE-CRP # 330322
HAG, LLC PARCEL:

A strip of land of variable width lying in the southwest quarter of Section 23, Township 3 North, Range 1 East of the Willamette Meridian in Clark County, Washington, being more particularly described as follows:

All that portion of that parcel described in that Statutory Warranty Deed to Hag, LLC, a Washington limited liability company, recorded December 17, 2002 under Auditor's file # 3558301, records of Clark County, Washington, listed as Serial No. 185726-000, lying westerly of a line 35.00 feet easterly of, when measured at right angles of radial to, the centerline of Northeast 10th Avenue, as described in Exhibit "B", attached, all in Clark County, Washington.

NE 10th AVENUE CENTERLINE DESCRIPTION
CRP#330322:

A strip of land of varying width lying in Sections 22, 23, 26, and 27, Township 3 North, Range 1 East of the Willamette Meridian, the centerline of said strip being more particularly described as follows:

Beginning at a point in the center of Northeast 10th Avenue, being designated as Engineer's station 9+99.84, said point bears North 11°37'15" East 1505.66 feet from a brass cap marking the west quarter corner of Section 26, Township 3 North, Range 1 East, Willamette Meridian; thence North 1°35'09" East 490.36 feet to a point of curvature; thence along the arc of a 600.00 foot radius curve left through a central angle of 26°38'35" a distance of 279.01 feet; thence North 25°03'26" West 443.06 feet to a brass cap marking the southeast corner of said Section 22; thence North 1°34'58" East 2637.12 feet to a brass cap marking the east quarter corner of Section 22, Township 3 North, Range 1 East, Willamette Meridian; thence North 1°34'41" East 1330.26 feet to a point on the east line of the northeast quarter of said Section 22, and there terminating, said point bears South 1°34'41" West 1290.26 feet from a brass cap marking the northeast corner of said Section 22, all in Clark County, Washington.

Bearings are based on the east line of the southeast quarter of Section 22, Township 3 North, Range 1 East, WM as being North 1°34'58" East, based on the Washington State Plane Coordinate System, South Zone, NAD83(91) per information provided by WSDOT.

EXHIBIT E

3558301:

Two and one-half (2 ½) acres, being the North quarter of the Southwest quarter of the Southwest quarter of the Southwest quarter of Section 23, Township 3 North, Range 1 East of the Willamette Meridian, Clark County, Washington.

EXCEPT County Roads.

Legal Description: SECTION: 23 TOWNSHIP: 3 NORTH RANGE: 1 EAST

185672-000

BEGINNING at a point that bears South 88°37'15" East 1313.46 FEET FROM THE Southwest corner of Section 23, Township 3 North, Range 1 East of the Willamette Meridian, Clark County, Washington, said point being the Southeast corner of the Southwest quarter of the Southwest quarter of said Section 23; thence North 1°36'22" East along the East line of the Southwest quarter of the Southwest quarter of said Section 23 a distance of 30.00 feet; thence North 88°37'15" West 266.73 feet; thence North 1°35'39" East 299.6 feet; thence South 88°37'15" East 357.05 feet to the Westerly right of way line of N.E. 16'h Avenue; thence South 1°15'00" West along said right of way line 103.12 feet; thence continuing Southeasterly along said right of way line South 52°52'18" East 67.90 feet; thence continuing Southerly along said right of way line South 1°15'00" West 186.81 feet to the South line of said Section 23; thence North 88°37'15" West along the South line of said Section 23 a distance of 147.32 feet to the point of beginning.

185796-000

The following described property situated in the Southeast quarter of the Southwest quarter of the Southwest quarter of Section 23, Township 3 North Range 1 East of the Willamette Meridian, Clark County, Washington, to-wit: Beginning at a point that bears South 88°37'15" East 656.73 feet and North 1°35'39" East 30.00 feet from the Southwest corner of Section 23, Township 3 North, Range 1 East of the Willamette Meridian, Clark County, Washington, said point being on the East line of the Southwest quarter of the Southwest quarter of the Southwest quarter of Section 23; thence North 1°35'39" East along said East line 299.60 feet; thence South 88°37'15" East 390.00 feet; thence South 1°35'39" West 299.60 feet to a point that is 30.00 feet North of the South line of said Section 23; thence North 88°37'15" West 390.00 feet to the point of beginning.

185700-000

That portion of the Southwest quarter of Section 23, Township 3 North, Range 1 East of the Willamette Meridian, Clark County, Washington, described as follows:

EXHIBIT E

BEGINNING at a point 656.33 feet East and 329.6 feet North of the Southwest quarter of said Section; thence North 331.3 feet; thence North 89°47' East, 663.7 feet; thence North 0°45' East, 191.08 feet to the Southwest corner of the tract conveyed to Raymond Meade, et ux, by deed recorded in Volume 586, at Page 065, under Auditor's File No. G 135283; thence South 89°13' East 437.94 feet to the West line of the right-of-way of the New Pacific Highway; thence Southeasterly along the Westerly line of the New Pacific Highway, to a point that bears North 89°49' East from the Point of Beginning; thence South 89°49' West, 1216.6 feet to the Point of Beginning.

EXCEPTING THEREFROM that portion conveyed to Foster Enterprises by Statutory Warranty Deed recorded under Auditor's File No. 9505230228 and described as follows:

That portion of the Southwest quarter of Section 23, Township 3 North, Range 1 East of the Willamette Meridian in Clark County, Washington, described as follows:

BEGINNING at a point 656.33 feet East and 329.6 feet North of the Southwest corner of said Section 23, said point being the Southwest corner of Peter Van Prooyen et al Tract, as described in deed recorded under Auditor's File No. G 522386; thence North along said Van Prooyen West line 331.3 feet; thence North 89°47' East along the North line of said Van Prooyen Tract, 663.7 feet to an interior corner and the True Point of Beginning; thence North along the East line of the Donald Gene Foster and Eldon Ray Foster Tract as described in instrument recorded under Auditor's File No. G 588734 to an intersection with the West line of Primary Highway No. 1; thence Southeasterly along said Westerly line to a point that is North 89°47' East from the True Point of Beginning; thence South 89°47' West to the True Point of Beginning.

EXCEPT any portion lying North of the South line of the tract conveyed to Raymond Meade by Deed recorded in Book 586, Page 065, deed records of said County.

ALSO EXCEPT any portion thereof lying within the right-of-way of Primary State Highway No. 1.

AND EXCEPTING that portion taken in for Highway purposes as recorded in Auditor's File No. G 568793, February 16, 1971 and Superior Court Case 50406, Clark County, Washington.

185727-000

The South ¾ of the Southwest quarter of the Southwest quarter of the Southwest quarter of Section 23, Township 3 North, Range 1 East of the Willamette Meridian, in Clark County, Washington, EXCEPT Public Roads.

ALSO EXCEPT that portion sold to the State of Washington, Department of Transportation, recorded under Clark County Auditor's File No. 4763611 on May 12, 2011.

EXHIBIT E

When Recorded, Return to:

LeAnne M. Bremer
Miller Nash Graham & Dunn LLP
500 Broadway, Suite 400 98660
Vancouver, WA 98666-1086

ABOVE SPACE RESERVED FOR RECORDING INFORMATION

SECOND AMENDMENT TO CONCOMITANT REZONE AGREEMENT

Grantors: Thomas F. Meyer and Jean L. Meyer, husband and wife; T&J Meyer, LLC, a Washington Limited Liability Company; Meyer Clan, LLC, a Washington Limited Liability Company; and Ten Talents Investment 18, LLC, a Washington Limited Liability Company ("Developer").

Grantee: Clark County, Washington, a political subdivision of the State of Washington ("Clark County").

Grantors and Grantee are collectively the "Parties." Ten Talents Investment 18, LLC, a Washington Limited Liability Company is referred to as "Developer."

Assessor's Property Tax Serial Numbers: 185796-000; 185700-000; 185672-000; 185726-000; and 185727-000 ("Property").

The Parties, or their predecessors, entered into a Concomitant Rezone Agreement dated April 21, 2015, recorded under Auditor's File Nos. 5167709 and 5170404, as amended by a first Amendment to Concomitant Rezone Agreement recorded on March 24, 2020, under Clark County Auditor's File No. 5715654 ("Covenant"), encumbering the property legally described in **Exhibit A**, incorporated by this reference.

Clark County approved a development applicable to Tax Parcel Nos. 185727-000 and 185726-000, known as Skyview Station, APL-2019-00001 ("Decision"). In the Decision, the hearings examiner conditioned the Skyview Station project on complying with five mitigation measures in the Covenant. In the first Amendment to Concomitant Rezone Agreement, the Parties agreed to remove one of the five mitigation measures in the Covenant, the third bullet of Section 2.b. of the Covenant. The reference to "fourth bullet" in this first Amendment is hereby changed to "third bullet."

The Parties further desire to amend the Covenant to revise the transportation improvements required by the Covenant and the Decision, including allowing the installation of a roundabout at NE 10th Avenue and NE 141st Street for improved safety and mobility in the vicinity of Skyview Station.

The purpose of this Amendment is to memorialize the modification of the Covenant.

THE PARTIES AGREE AS FOLLOWS:

1. Modification of Decision. Prior to the Effective Date of this Second Amendment, Developer agrees to seek a modification of the Decision revising the required transportation improvements for Skyview Station in lieu of designing and constructing the transportation improvements required by the Decision, collectively, "Revised Transportation Improvements," stated as follows:

1.1 Install a westbound right turn lane on NE 139th at NE 10th Avenue with an overlap phase;

1.2 Modify the southbound NE 10th Avenue approach to NE 139th Street to provide a shared through/right lane and double left turn lanes, operating as an eight phase signal; and

1.3 Install a roundabout at the site access to NE 10th Avenue, opposite NE 141st Street.

2. Modification of Covenant.

2.1 The first sentence of Section 2.b. is modified to replace the words "a building permit" with "an occupancy permit."

2.2 Section 2.b., fourth bullet in the original Covenant, is further modified to state that, in lieu of a traffic signal at the intersection of NE 10th Avenue and NE 141st, the Developer will construct the Revised Transportation Improvements.

2.3 Section 2.b in the Covenant, fifth bullet in the original Covenant, is further modified to eliminate the following requirement: Modify the northbound NE 10th Ave. between NE 139th Street and the site access to include turn lane(s) for the entire street segment.

2.4 The phrase "building permits and/or" is removed from Section 3.a in the Covenant.

3. Binding. The Covenant, as amended by this Second Amendment, shall remain in full force and effect until amended, modified or terminated by the action of the property owners and Clark County in proceedings appropriate for that purpose. The County reserves authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

4. Recording, Annexation, Successors, and Assigns. This Second Amendment shall be recorded with the real property records of Clark County and is applicable to the real property legally described in **Exhibit A**. This Amendment is binding on the parties hereto, their successors, and assigns, including the city, town, or municipality that assumes jurisdiction through incorporation or annexation of the area covering the Properties by this Amendment.

5. Effective Date. The Effective Date of this Second Amendment shall be the date of the last signature required for this agreement to be enforceable.

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

DATED this 6th day of Sept., 2020

GRANTORS:

Property owners for #185796-000

Thomas F. Meyer

Thomas F Meyer — 10/5/2020
Date

Jean L. Meyer

Thomas F Meyer — 10/5/2020
ATTORNEY-IN-FACT — Date
Property owner for #185700-000

T&J Meyer, LLC

By Thomas F Meyer — 10/5/2020
Date

Print name THOMAS F. MEYER

Position: MEMBER

Property owner for #185672-000

Meyer Clan, LLC

By _____ _____
Date

Print name _____

Position: _____

Property owner for #185726-000 and #1856727-000

Ten Talents Investment 18, LLC

By _____ _____
Hurley Development, LLC, Manager Date
By: Ryan Hurley, Manager

GRANTEE:

CLARK COUNTY:

Kathleen Otto
Kathleen Otto Oct-6, 2020
Interim County Manager

APPROVED AS TO FORM ONLY:

Anthony F. Golik
Clark County Prosecuting Attorney

By Taylor Hallvik
Taylor Hallvik
Deputy Prosecuting Attorney

ATTEST:

CLARK COUNTY COUNCILORS
FOR CLARK COUNTY, WASHINGTON

By: Eileen Quiring, Chair

By: _____
Julie Olson, Councilor

By: _____
Temple Lentz, Councilor

By: _____
John Blom, Councilor

By: _____
Gary Medvigy, Councilor

Property owner for #185672-000

Meyer Clan, LLC

By Thomas F Meyer 10/5/2020
Date

Print name THOMAS F. MEYER

Position: MEMBER

Property owner for #185726-000 and #1856727-000

Ten Talents Investment 18, LLC

By 09/29/20
Hurley Development, LLC, Manager Date
By: Ryan Hurley, Manager

GRANTEE:

CLARK COUNTY:

Kathleen Otto
Interim County Manager

APPROVED AS TO FORM ONLY:

Anthony F. Golik
Clark County Prosecuting Attorney

By Taylor Hallvik Digitally signed by Taylor Hallvik DN: cn=Taylor Hallvik, o=Clark County Prosecuting Attorney's Office, ou=Civil Division, email=taylor.hallvik@clark.wa.gov, c=US Date: 2020.10.06 10:26:26 -07'00'
Taylor Hallvik
Deputy Prosecuting Attorney

ATTEST:

CLARK COUNTY COUNCILORS
FOR CLARK COUNTY, WASHINGTON

By: _____
Eileen Quiring, Chair

By: _____
Julie Olson, Councilor

By: _____
Temple Lentz, Councilor

By: _____
John Blom, Councilor

By: _____
Gary Medvigy, Councilor

STATE OF WASHINGTON)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that Thomas F. Meyer signed this instrument, and on oath stated that he executed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

DATED this 5th day of October, 2020.

Tiffany Ann Wolfe
Notary Public
State of Washington
My Appointment Expires 02/22/2021

Tiffany Wolfe
NOTARY PUBLIC for the State of Washington,
Residing in the County of Clark
My Commission Expires: 2-22-21

STATE OF WASHINGTON)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that Jean L. Meyer signed this instrument, and on oath stated that she executed this instrument and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in the instrument.

DATED this 5th day of October, 2020.

Tiffany Ann Wolfe
Notary Public
State of Washington
My Appointment Expires 02/22/2021

Tiffany Wolfe
NOTARY PUBLIC for the State of Washington,
Residing in the County of Clark
My Commission Expires: 2-22-21

STATE OF WASHINGTON)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that Thomas Meyer signed this instrument, on oath stated that he/she was authorized to execute this instrument and acknowledged it as Member of T&J Meyer, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 5th day of October, 2020.

Tiffany Ann Wolfe
Notary Public
State of Washington
My Appointment Expires 02/22/2021

Tiffany Wolfe
NOTARY PUBLIC for the State of Washington,
Residing in the County of Clark
My Commission Expires: 2-22-21

STATE OF WASHINGTON)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that Thomas Meyer signed this instrument, on oath stated that he/she was authorized to execute this instrument and acknowledged it as Member of the Meyer Clan, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 5th day of October, 2020.

Tiffany Ann Wolfe
Notary Public
State of Washington
My Appointment Expires 02/22/2021

Tiffany Wolfe
NOTARY PUBLIC for the State of Washington,
Residing in the County of Clark
My Commission Expires: 2-22-21

STATE OF WASHINGTON)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that Ryan Hurley signed this instrument, on oath stated that he/she was authorized to execute this instrument and acknowledged it as Manager of Ten Talents Investment 18, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 29 day of September, 2020.

Tiffany Ann Wolfe
Notary Public
State of Washington
My Appointment Expires 02/22/2021

Tiffany Wolfe
NOTARY PUBLIC for the State of Washington,
Residing in the County of Clark
My Commission Expires: 2-22-21

STATE OF WASHINGTON)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that Kathleen Otto signed this instrument, on oath stated that he was authorized to execute this instrument and acknowledged it as the Interim County Manager of Clark County, Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 6th day of Oct., 2020.

Rebecca L. Messinger

NOTARY PUBLIC for the State of Washington,
Residing in the County of Clark
My Commission Expires: 4/26/2021

REBECCA L MESSINGER
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION NUMBER 3715
COMMISSION EXPIRES APRIL 26, 2021

EXHIBIT A

185726-000

SALMON CREEK INTERCHANGE-CRP # 330322

A strip of land of variable width lying in the southwest quarter of Section 23, Township 3 North, Range 1 East of the Willamette Meridian in Clark County, Washington, being more particularly described as follows:

All that portion of that parcel described in that Statutory Warranty Deed to Hag, LLC, a Washington limited liability company, recorded December 17, 2002 under Auditor's file # 3558301, records of Clark County, Washington, listed as Serial No. 185726-000, lying westerly of a line 35.00 feet easterly of, when measured at right angles of radial to, the centerline of Northeast 10th Avenue, as described in Exhibit "B", attached, all in Clark County, Washington.

NE 10th AVENUE CENTERLINE DESCRIPTION
CRP#330322:

A strip of land of varying width lying in Sections 22, 23, 26, and 27, Township 3 North, Range 1 East of the Willamette Meridian, the centerline of said strip being more particularly described as follows:

Beginning at a point in the center of Northeast 10th Avenue, being designated as Engineer's station 9+99.84, said point bears North 11°37'15" East 1505.66 feet from a brass cap marking the west quarter corner of Section 26, Township 3 North, Range 1 East, Willamette Meridian; thence North 1°35'09" East 490.36 feet to a point of curvature; thence along the arc of a 600.00 foot radius curve left through a central angle of 26°38'35" a distance of 279.01 feet; thence North 25°03'26" West 443.06 feet to a brass cap marking the southeast corner of said Section 22; thence North 1°34'58" East 2637.12 feet to a brass cap marking the east quarter corner of Section 22, Township 3 North, Range 1 East, Willamette Meridian; thence North 1°34'41" East 1330.26 feet to a point on the east line of the northeast quarter of said Section 22, and there terminating, said point bears South 1°34'41" West 1290.26 feet from a brass cap marking the northeast corner of said Section 22, all in Clark County, Washington.

Bearings are based on the east line of the southeast quarter of Section 22, Township 3 North, Range 1 East, WM as being North 1°34'58" East, based on the Washington State Plane Coordinate System, South Zone, NAD83(91) per information provided by WSDOT.

3558301:

Two and one-half (2 ½) acres, being the North quarter of the Southwest quarter of the Southwest quarter of the Southwest quarter of Section 23, Township 3 North, Range 1 East of the Willamette Meridian, Clark County, Washington.

EXCEPT County Roads.

Legal Description: SECTION: 23 TOWNSHIP: 3 NORTH RANGE: 1 EAST

185672-000

BEGINNING at a point that bears South 88°37'15" East 1313.46 FEET FROM THE Southwest corner of Section 23, Township 3 North, Range 1 East of the Willamette Meridian, Clark County, Washington, said point being the Southeast corner of the Southwest quarter of the Southwest quarter of said Section 23; thence North 1°36'22" East along the East line of the Southwest quarter of the Southwest quarter of said Section 23 a distance of 30.00 feet; thence North 88°37'15" West 266.73 feet; thence North 1°35'39" East 299.6 feet; thence South 88°37'15" East 357.05 feet to the Westerly right of way line of N.E. 16'h Avenue; thence South 1°15'00" West along said right of way line 103.12 feet; thence continuing Southeasterly along said right of way line South 52°52'18" East 67.90 feet; thence continuing Southerly along said right of way line South 1°15'00" West 186.81 feet to the South line of said Section 23; thence North 88°37'15" West along the South line of said Section 23 a distance of 147.32 feet to the point of beginning.

185796-000

The following described property situated in the Southeast quarter of the Southwest quarter of the Southwest quarter of Section 23, Township 3 North Range 1 East of the Willamette Meridian, Clark County, Washington, to-wit: Beginning at a point that bears South 88°37'15" East 656.73 feet and North 1°35'39" East 30.00 feet from the Southwest corner of Section 23, Township 3 North, Range 1 East of the Willamette Meridian, Clark County, Washington, said point being on the East line of the Southwest quarter of the Southwest quarter of the Southwest quarter of Section 23; thence North 1°35'39" East along said East line 299.60 feet; thence South 88°37'15" East 390.00 feet; thence South 1°35'39" West 299.60 feet to a point that is 30.00 feet North of the South line of said Section 23; thence North 88°37'15" West 390.00 feet to the point of beginning.

185700-000

That portion of the Southwest quarter of Section 23, Township 3 North, Range 1 East of the Willamette Meridian, Clark County, Washington, described as follows:

BEGINNING at a point 656.33 feet East and 329.6 feet North of the Southwest quarter of said Section; thence North 331.3 feet; thence North 89°47' East, 663.7 feet; thence North 0°45' East, 191.08 feet to the Southwest corner of the tract conveyed to Raymond Meade, et ux, by deed recorded in Volume 586, at Page 065, under Auditor's File No. G 135283; thence South 89°13' East 437.94 feet to the West line of the right-of-way of the New Pacific Highway; thence Southeasterly along the Westerly line of the New Pacific Highway, to a point that bears North 89°49' East from the Point of Beginning; thence South 89°49' West, 1216.6 feet to the Point of Beginning.

EXCEPTING THEREFROM that portion conveyed to Foster Enterprises by Statutory Warranty Deed recorded under Auditor's File No. 9505230228 and described as follows:

That portion of the Southwest quarter of Section 23, Township 3 North, Range 1 East of the Willamette Meridian in Clark County, Washington, described as follows:

BEGINNING at a point 656.33 feet East and 329.6 feet North of the Southwest corner of said Section 23, said point being the Southwest corner of Peter Van Prooyen et al Tract, as described in deed recorded under Auditor's File No. G 522386; thence North along said Van Prooyen West line 331.3 feet; thence North 89°47' East along the North line of said Van Prooyen Tract, 663.7 feet to an interior corner and the True Point of Beginning; thence North along the East line of the Donald Gene Foster and Eldon Ray Foster Tract as described in instrument recorded under Auditor's File No. G 588734 to an intersection with the West line of Primary Highway No. 1; thence Southeasterly along said Westerly line to a point that is North 89°47' East from the True Point of Beginning; thence South 89°47' West to the True Point of Beginning.

EXCEPT any portion lying North of the South line of the tract conveyed to Raymond Meade by Deed recorded in Book 586, Page 065, deed records of said County.

ALSO EXCEPT any portion thereof lying within the right-of-way of Primary State Highway No. 1.

AND EXCEPTING that portion taken in for Highway purposes as recorded in Auditor's File No. G 568793, February 16, 1971 and Superior Court Case 50406, Clark County, Washington.

185727-000

The South ¾ of the Southwest quarter of the Southwest quarter of the Southwest quarter of Section 23, Township 3 North, Range 1 East of the Willamette Meridian, in Clark County, Washington, EXCEPT Public Roads.

ALSO EXCEPT that portion sold to the State of Washington, Department of Transportation, recorded under Clark County Auditor's File No. 4763611 on May 12, 2011.