

When Recorded, Return to:

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ABOVE SPACE RESERVED FOR RECORDING INFORMATION

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DEVELOPMENT AGREEMENT

This Development Agreement (this “Agreement”) is entered into by and between Clark County, a Washington Municipal Corporation (the “County”) and Holt Homes, (“Holt”) and shall be effective as of the last signed date below.

RECITALS

A. **WHEREAS**, Holt, owns or controls real property in Clark County Washington, (the “Property”), which is more particularly described in Exhibit A and incorporated by reference herein; and,

B. **WHEREAS**, Holt and the County would like to further plan for the development of the Property with a unique and innovative design and a wide range of residential densities, advance funding for transportation improvements, predictable infrastructure and regulations; and,

C. **WHEREAS**, the parties recognize the extensive amount of transportation analysis done for this area by the County, Holt and others to determine what critical links and intersections in the 179th interchange Area are necessary to be constructed or reasonably funded within six years such that the Urban Holding overlay for the Property may be removed; and

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

E. **WHEREAS**, the County is a Washington Municipal Corporation with land use planning and permitting authority over all land within its corporate limits; and,

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

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

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

H. **WHEREAS**, the County and Holt recognize that the development of the Property may take as long as ten years to fully build out; and because of that, there is increased need and desire for long term predictability; and

I. **WHEREAS**, the County and Holt wish to provide such increased predictability to both Holt and the County on these issues through the implementation of this Agreement and its attendant Master Plan; and,

J. **WHEREAS**, Holt and the County have collaborated over a number of years through a public-private partnership, to facilitate the improvement of transportation infrastructure in the area of the 179th Street interchange with Interstate 5 (“179th Interchange Area”), an area which faces challenges to development and to fully implementing the Comprehensive Plan, including a lack of capacity on the local roadways and intersections, congestion on existing roadways, and lack of access to underdeveloped properties, and resulting traffic safety problems. Each Party has dedicated significant resources to planning for that area, which provides a gateway to development of currently underutilized land in the 179th Interchange Area. It is necessary for the Parties to complete certain planning efforts in the area, so that public and private funding will be available to complete the needed infrastructure, and that development of the infrastructure can go forward. Completion of certain intersections and other transportation links in the area will allow certain properties to develop, thereby generating further resources for more transportation improvements, and addressing the continuing harm to the public because of the problems and challenges listed above. This Agreement will document the completion of planning relevant to the subject property, the Holt’s contributions to the completion of certain infrastructure in the area, and the County’s assurances that the Holt may proceed as set forth herein.

K. **WHEREAS**, this Agreement addresses the Comprehensive Plan criteria to lift the UH overlay from the Property and includes Holt’s agreement to satisfy the criteria through the

construction of or reasonable funding of the mitigation measures, including the critical links and intersections, identified in Exhibit D.

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

AGREEMENT

1. Development Agreement

This Agreement is a Development Agreement to be implemented in accordance with RCW 36.70B.170 through RCW 36.70B.210. It shall become a contract between Holt and the County upon the County's approval by ordinance or resolution following a public hearing as provided for in RCW 36.70B.170, and execution by all parties, subject to the provision of Section 2 below.

2. Effective Date and Duration of Agreement

This Agreement shall take effect upon the Effective Date and shall terminate ten years thereafter; provided that, any time periods specified in this Agreement shall be tolled pending any appeals of this Agreement or any city, state or federal land use decisions entitling Holt to commence or complete development of the Property. In recognition of the need for the Board of County Councilors to make a formal finding declaring that the improvements needed to create transportation capacity sufficient to accommodate the trips generated by the Master Plan, including the critical links and intersections as provided for in the Comprehensive Plan, are reasonably funded; and in recognition that removal of the current Urban Holding overlay zone must also occur before development of the Property may occur; and recognizing that at the time this matter comes before the County Councilors the final funding package for the critical links and intersections may not yet be adopted, the Parties agree that the Urban Holding designation for the Property shall immediately occur upon, but not sooner than, the Board of County Councilors declaration that the improvements needed to create transportation capacity sufficient to accommodate the trips generated by the Master Plan, including the critical links and intersections as provided for in the Comprehensive Plan, are reasonably funded within six years.

3. Vesting

Any land use application submitted with respect to the Property during the term of this Agreement, shall be vested to the zoning, building and land use regulations applicable to the Property on the Effective Date, including, and superseded by, any development standards that are identified in the Master Plan attached hereto as Exhibit B and incorporated by reference herein. Any land use approvals granted under the pendency of this Agreement shall expire on the dates provided for in the applicable development regulations of the County in effect at the time of this

Agreement, or at the expiration of this Agreement, whichever date occurs later in time.

4. Conceptual Master Plan

Attached as Exhibit “B” and incorporated by reference herein, is a master plan for the Property (the “Master Plan”). The design of the Master Plan is unique and innovative through its “front loading” of transportation mitigation, its blending and transitioning of density both within and outside of the Property, its provisions for trails and open space (in excess of 15% of the Property area) and the trails’ and open space’s relationship to, protection of and integration with existing critical areas on the Property. The Master Plan provides for a variety of housing types and lot sizes. Adoption of the Master Plan and development of the Property consistent with the Master Plan shall constitute compliance with CCC 40.520.080, such that future development applications consistent with the Master Plan, shall not be required to satisfy the criteria provided for in 40.520.080, as such criteria is hereby found to be satisfied by adoption of the Master Plan. The Master Plan will provide the Parties with predictability regarding certain aspects of the future development of the Property, including access locations on to public streets and any associated offsite improvements related to transportation. Future development of the Property shall be generally consistent with the Master Plan. It is contemplated by the parties that due to the number of years it will likely take the project to fully build out, changing market conditions, future urban growth boundary expansion considerations and other factors, this Agreement may need to be amended in the future. Nothing in this Agreement shall be construed to prevent the Parties from mutually agreeing to amend the zoning or development standards provided for in Master Plan. Similarly, nothing contained herein shall be construed to obligate either party to amend the Master Plan or any other provision in this Agreement.

5. Effect on Fees or Charges

As provided for in RCW 36.70B.180, during the term of this Agreement, the development standards provided for in this agreement, (not otherwise consented to by Holt), shall not be subject to unilateral amendment, or amendment to zoning ordinances, development standards, or regulations, or a new zoning ordinance or development standard or regulation adopted after the effective date of this Agreement. Provided, however, that the vesting granted by this Agreement shall not apply to impact fees, taxes, permit application fees or utility connection charges, which shall be determined or calculated consistent with the County’s provisions applicable on the date such fee, charge or tax is triggered. As provided for in RCW 36.70B, the County reserves the right to impose new standards or changes in development regulations to the extent required by a serious threat to public health and safety.

6. SEPA

Pursuant to the State Environmental Policy Act (SEPA), piecemeal environmental review is to be discouraged. As such, the Parties wish for SEPA review to be accomplished as part of the Agreement for as many of the Property's potential adverse environmental impacts as can be reasonably analyzed, based upon current information contained within the SEPA checklist submitted with this Agreement, including, but not limited to, the traffic study, GIS data as to the general presence of wetlands on some portions of the Property and off site storm water impacts. This review is done under the Consolidated Review provisions of SEPA. The SEPA checklist attendant with this Agreement identifies various potential adverse impacts including transportation, parks, wetlands sewer, water and storm water. The Checklist also identifies a variety of technical reports or information that provide a basis for the proposed mitigation or partial mitigation of these impacts. It is the intent of this Agreement and its attendant SEPA process, to have the County issue a Threshold Determination (as that term is utilized in RCW 43.21C) on the identified conceptually proposed impacts of the development of the Property. Uses and impacts that are identified at future stages of the development, i.e., preliminary plat approval or PUD approval, that have been previously analyzed through this or other SEPA processes, shall not be re-analyzed; provided the future identified adverse impacts are substantially similar to and of the same or less intensity as those previously analyzed under this or other SEPA processes. Any probable significant adverse environmental impacts of the Property's future proposed development that have not been analyzed under the SEPA process attendant with this Agreement or previously through some other lawful SEPA process, shall be undertaken at the time of such future development.

7. Transportation

Kittelson and Associates Transportation Engineers and the County have analyzed the transportation impacts of the full development (based upon the Master Plan in Exhibit B) of the Property as identified in the traffic study. Based upon the Master Plan, the Property at full development will increase the existing number of PM peak hour trips on the transportation system by 657 PM peak hour and 6346 average daily trips. Based upon Kittelson's and the County's analysis, the future development of the Property shall be conditioned upon the construction of, or the reasonable funding within six years of, the critical links and intersections provided for in the Comprehensive Plan and the other mitigation measures provided for in Exhibit D, which is attached hereto and incorporated by reference herein. The Property shall be vested during the term of this Agreement with 657 PM peak hour and 6346 average daily trips and no additional off site transportation mitigation or analysis will be required during the term of this Agreement; provided however, that in the event Holt proposes uses or intensities of uses that would cause the total number of PM Peak or

Average Daily trips to exceed the number of trips analyzed as part of this Agreement, then the County may require additional transportation analysis and lawful mitigation for those increased trips. The transportation vesting provided for in this Section shall be subject to the mitigation measures and the timing provided for in Exhibit "D". Some of the transportation improvements may be on the County's Transportation Capital Facility Plan. Holt or successor in interest to the Property, upon construction of such qualifying transportation improvement, shall be eligible to apply for Transportation Impact Fee Credits, but only if such improvements are eligible for Credits under the County's applicable Capital Facilities Plan and Transportation Impact Fee programs.

8. Advance Payment Of TIF

To increase the County's ability to fund and construct certain transportation improvements in the area which will provide systemic benefits in excess of the impacts that will be created through the implementation of the Master Plan, Holt agrees to accelerate the manner in which Holt or a successor in interest to the Property would pay Transportation Impact Fees ("TIFs"). Instead of paying TIFs at the time of individual building permits, (as is currently provided for by the County's code), Holt, or its successor in interest, shall within ten (10) days of the effective date of this Agreement and the expiration of any applicable appeal period and the removal of UH from all of the Property, pay twenty five percent (25%) of the total estimated TIFs (based upon the middle of the range of the number of units provided for in the Master Plan-685 units) that would be due for the full build out of the Master Plan. An additional twenty five percent (25%) of the TIFs owed would be paid to the County within ten days of the first preliminary plat approval of the Property and the expiration of any applicable appeal period; and the remaining TIFs applicable to the development of the Property would be paid on a pro rata basis at the time of final plat approval for each phase of the Master Plan.

9. Threat to Public Health

Nothing in this Section shall preclude the County from requesting information on the potential adverse environmental impacts associated with a specific land use application that have not been previously analyzed as required under the State Environmental Policy Act.

10. Miscellaneous

a. Failure by either party at any time to require performance by the other party of any of the provisions hereof shall in no way affect the parties' rights hereunder to

enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this non-waiver clause.

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

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

d. Binding on Successors and Recording: This Agreement is assignable and shall run with the land and be binding upon and insure to the benefit of the parties, their respective heirs, successors and assigns. This Agreement shall be recorded.

e. Each of the recitals contained herein are intended to be, and are incorporated as, covenants between the parties and shall be so construed.

f. This Agreement may only be amended by mutual agreement of Holt and the Clark County Councilors. .

CLARK COUNTY,

By _____

Title _____

MILL CREEK JV LLC

By TCK, Inc, Manager

By _____

Greg Kubicek President

WILFRED N ZILKE FAMILY TRUST

By _____

Wilfred N. Zilke Trustee

GARY WEBB TRUST

By _____

Gary Webb Trustee of the Gary Webb Trust

BIRCHWOOD FARMS LLC

By _____
Edward C. Prentice, Co-Manager

HOLT HOMES

By _____
Greg Kubicek President.

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Exhibit D

Development of the Mill Creek PUD is predicated on several planned transportation improvements being constructed or reasonably funded within six years involving the NE 179th Street corridor between I-5 and NE 15th Avenue to the west to which the PUD applicant will be contributing financially. Assumed improvements include:

1. Completion of NE 10th Avenue between NE 154th Street and NE 164th Street (currently under construction by Clark County)
2. Reconfiguration of the I-5 Northbound off-ramp/NE 179th Street intersection to provide:
 - two northbound left-turn lanes and two northbound right-turn lanes; and
 - two westbound through lanes and a separate westbound right-turn lane to the I-5 northbound on-ramp
3. Widening and completion of NE 15th Avenue between NE 179th Street and NE 10th Avenue to an ultimate improvement width (providing two westbound and two eastbound through travel lanes between the I-5 Northbound off-ramp/NE 179th Street intersection and NE 15th Avenue);
4. Construction of a new multi-lane roundabout on NE 179th Street approximately midway between NE 15th Avenue and the I-5 Northbound off-ramp;
5. Construction of a new multi-lane roundabout on NE 179th Street at NE 15th Avenue (replacing the existing traffic signal);
6. Construction of NE 15th Avenue between the new roundabout on NE 179th Street at NE 15th Avenue and NE 10th Avenue (allowing for termination of the existing NE 10th Avenue connection to NE 179th Street); and
7. Termination of Union Road at NE 179th Street through provision of alternative access for properties along Union Road south of NE 179th Street.

The following improvements at the proposed roadway connections to NE 50th Avenue and NE 179th Street are required for implementation in conjunction with site development:

1. A stop sign will be installed on each of the new public site roadway approaches to NE 50th Avenue and NE 179th Street. The stop signs should be installed in accordance with Clark County standards and the *Manual on Uniform Traffic Control Devices* (MUTCD).
2. Left-turn lanes will be provided on NE 179th Avenue at each of the three site public roadway connections to NE 179th Avenue. The turn lanes should provide at least 50 feet of storage.
 - Provision of an eastbound left-turn lane at the central site access on NE 179th Street (Intersection B) may require off-site right-of-way acquisition to accommodate the

associated roadway widening and tapers along NE 179th Street. If provision of an eastbound left-turn lane is not possible at the time of site development, it may be necessary to restrict the access to right-turns only on an interim basis.

3. While not yet necessitated based on projected 2020 build-out traffic volumes, provision of a northbound left-turn lane at the NE 50th Avenue intersection is required with site development if the NE 50th Avenue frontage widening provides sufficient width to make the improvement.

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