

## CLARK COUNTY STAFF REPORT

**DEPARTMENT:** Public Works/Transportation and Development Division  
Development Engineering

**DATE:** July 17, 2018

**REQUESTED ACTION:** Approve development agreements with Simons Way Development, Inc. and Touchstone Ventures, Inc. for residential development improvements in the Fifth Plain Creek urban holding area.

Consent       Hearing       County Manager

### BACKGROUND

In 2007, properties were brought into the Vancouver Urban Growth Area, subject to urban holding. In December 2013, Clark County agreed to lift the urban holding designation in exchange for the property owner's agreement to pay a \$500 park impact fee surcharge for each residential lot. The county and property owners now agree that transportation improvements are the area's primary need and neighborhood parks may be accommodated within the existing capital facilities plan.

These development agreements would convert the park impact fee surcharge to a traffic impact fee (TIF) surcharge of \$500 and allow the residential developments to proceed. This surcharge is in addition to the standard TIF, will run with the land, and be paid by the homeowner at the time the standard TIF is paid. Additionally, the current property owners voluntarily agree to pay a lump sum supplemental TIF of \$300 per recorded lot.

### COUNCIL POLICY IMPLICATIONS

Effective Jan. 1, 2014, the then-Board of County Commissioners removed the urban holding designation for the properties described in Exhibit A. The board also amended the Capital Facilities Plan to allow TIFs from the Fifth Plain Creek area to be used for projects anywhere in the Orchards TIF District and/or outside the Orchards TIF District in the vicinity of the Northeast 182nd Avenue and Fourth Plain Road/SR 500 intersection.

### ADMINISTRATIVE POLICY IMPLICATIONS

See Council Policy Implications.

### COMMUNITY OUTREACH

Standard notification was provided for this public hearing.

### 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. |

PW18-097

**BUDGET DETAILS**

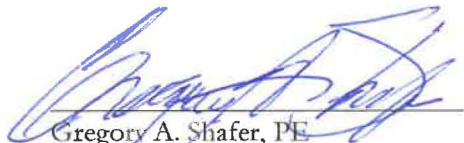
|                          |     |
|--------------------------|-----|
| Local Fund Dollar Amount | N/A |
| Grant Fund Dollar Amount | N/A |
| Account                  | N/A |
| Company Name             | N/A |

**DISTRIBUTION:**

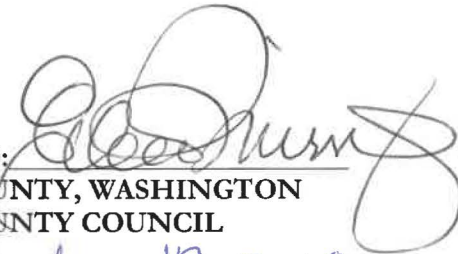
Council staff will post all staff reports to the county website, [www.clark.wa.gov/the-grid](http://www.clark.wa.gov/the-grid)

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**Attachments:** Development agreements

  
\_\_\_\_\_  
Gregory A. Shafer, PE  
Development Engineering Manager

  
\_\_\_\_\_  
Heath H. Henderson, PE  
Public Works Director/County Engineer

  
**APPROVED:** \_\_\_\_\_  
**CLARK COUNTY, WASHINGTON**  
**CLARK COUNTY COUNCIL**  
DATE: July 17, 2018  
SR# \_\_\_\_\_



**APPROVED:** \_\_\_\_\_  
**Kathleen Otto, Deputy County Manager**

DATE: \_\_\_\_\_

BOARD OF COUNTY COUNCILORS  
COUNTY OF CLARK, STATE OF WASHINGTON

Resolution  
No. 2018-07-03

A Resolution of the Clark County Council authorizing entry into a Developer Agreement between Clark County and Simons Way Development, Inc.

**WHEREAS**, RCW 36.70B.170 through .200 authorize the County to enter into Developer Agreements with persons or entities having ownership or control of real property within the County; and

**WHEREAS**, Simons Way Development, Inc. (“Owner”) owns certain real property described in the proposed Development Agreement attached hereto as Exhibit A, which property is located in Clark County, Washington; and

**WHEREAS**, County Staff has worked with the Owner to prepare the proposed Developer Agreement, which details an exchange of valuable consideration;

**WHEREAS**, the Council considered this matter at a duly advertised public hearing; and

**WHEREAS**, the Council concluded that approval of the proposed Developer Agreement will further the public welfare; now therefore,

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF CLARK COUNTY COUNCILORS:**

1. The Clark County Council approves the proposed Developer Agreement between Clark County, Washington and Simons Way Development, Inc., attached hereto as Exhibit A, and authorizes the County Manager to execute this agreement.

ADOPTED on this 17 day of July, 2018.

BOARD OF COUNTY COUNCIL  
CLARK COUNTY, WASHINGTON

Attest:

  
\_\_\_\_\_  
Clerk to the Board

By: \_\_\_\_\_  
Marc Boldt, Chair

Approved as to form only:  
ANTHONY F. GOLIK  
Prosecuting Attorney

By: \_\_\_\_\_  
Jeanne E. Stewart, Councilor

By:   
\_\_\_\_\_  
Deputy Prosecuting Attorney

By: \_\_\_\_\_  
Julie Olson, Councilor

By: \_\_\_\_\_  
John Blom, Councilor

By:   
\_\_\_\_\_  
Eileen Quiring, Councilor



**DEVELOPMENT AGREEMENT FOR  
REMOVAL OF URBAN HOLDING DESIGNATION  
BY AND BETWEEN CLARK COUNTY  
AND PROPERTY OWNER**

THIS DEVELOPMENT AGREEMENT is made and entered into by and between Clark County, a Washington municipal corporation, hereinafter the "County," and Simons Way Development, Inc., including their successors in interest, hereinafter referred to as the "Owner."

**RECITALS**

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

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

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

WHEREAS, a Development Agreement may set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement, all pursuant to RCW 36.70B.170(1), which provides:

- (1) A local government may enter into a development agreement with a person having ownership or control of real property within its jurisdiction. A city may enter into a development agreement for real property outside its

boundaries as part of a proposed annexation or a service agreement. A development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. A development agreement shall be consistent with applicable development regulations adopted by a local government planning under Chapter 36.70A, RCW;

And,

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

The legislature finds that the lack of certainty in 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 as set forth in a development agreement, will strengthen the public planning process, encourage private participation and comprehensive planning, and reduce the economic costs of development. Further, the lack of public facilities and services is a serious impediment to development of new housing and commercial uses. Project applicants and local governments may include provisions and agreements whereby applicants are reimbursed over time for financing public facilities. It is the intent of the legislature by RCW 36.70B.170 through 36.70B.210 to allow local governments and owners and developers of real property to enter into development agreements;

And,

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

WHEREAS, after being brought into the unincorporated Vancouver Urban Growth Area in 2007, the Property was subject to the County’s Urban Holding designation; and

WHEREAS, the Parties to this agreement (or their successors-in-interest) entered into a Development Agreement on or about December 9, 2013, wherein the County agreed to lift the Urban Holding designation in exchange for the Owner’s agreement to pay a \$500 Park Impact Fee (PIF) surcharge.

WHEREAS, pursuant to the County’s Comprehensive Plan criteria, the parties wish to modify the terms of the earlier Development Agreement and replace that document; and

WHEREAS, the terms and conditions below replace and supersede those of the Development Agreement executed by Owner’s predecessor in interest, H Squared Investments, LLC, on December 9, 2013, and



establish and memorialize that such criteria have been satisfied or shall be satisfied under the provisions of this Agreement, now, therefore,

**THE PARTIES HERETO AGREE AS FOLLOWS:**

**Section 1. Development Agreement.**

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

**Section 2. Definitions.**

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

- a) "Adopting Resolution" means the Resolution which approves this Development Agreement, as required by RCW 36.70B.200.
- b) "Effective Date" means the effective date established by the Adopting Resolution.

**Section 3. Removal of Urban Holding Designation.**

Effective January 1, 2014, the Clark County Council removed the urban holding designation for the properties described in "Exhibit A" and amended the Capital Facilities Plan to allow Impact fees from the Fifth Plain Creek Area to be used for projects anywhere in the Orchards Traffic Impact Fee (TIF) District and/or outside the Orchards TIF District in the vicinity of the 182<sup>nd</sup> and Fourth Plain/SR 500 intersection.

**Section 4. Payment of Traffic Impact Fee Surcharge.**

The Fifth Plain Creek urban holding area required adoption of a master plan that included a neighborhood park. The Owners and Clark County Council now agree that transportation issues predominate and that neighborhood parks may be accommodated within the existing capital facilities plan with any deficiency becoming a public share. Therefore, the payment of a surcharge park impact fee previously agreed to by the parties is converted into an obligation to pay a surcharge traffic impact fee. The parties' commitment below satisfies this requirement.

The park impact fee surcharge of \$500.00 per lot is, by this agreement, converted into a traffic impact fee surcharge of \$500.00. This surcharge is in addition to the standard TIF provided by Clark County Code and/or the Capital Facilities Plan, shall run with the land, and shall be paid at the same time as TIFs otherwise due would be paid.

In addition to the above referenced \$500 TIF surcharge, the Owner voluntarily agrees to pay Clark County a lump sum supplemental traffic impact fee surcharge of \$300 per recorded lot within 90 days of the recording of the final plat for each phase of the subject subdivision or within 90 days of the execution of this agreement if the plat was recorded prior to the execution of this agreement. This additional \$300 lump sum supplemental traffic impact fee surcharge is an obligation of the Owner(s) upon signing this agreement and shall not run with the land.

The agreed conversion of the park impact fee surcharge to a traffic impact fee surcharge and the Owner's agreement to pay additional surcharges shall not affect or modify either the standard park impact fee or the standard traffic impact fee imposed pursuant to Clark County Code and/or the Capital Facilities Plan.

#### **Section 5. Use of Collected Traffic Impact Fees**

The Parties acknowledge that the County's Capital Facilities Plan has been amended to allow the County to collect and utilize TIFs from the Fifth Plain Creek area on transportation improvements in the vicinity of Fifth Plain Creek. The Parties acknowledge that in the event that the County determines that there are insufficient funds to complete improvements in the vicinity of Fifth Plain Creek, that the collected TIFs may be used elsewhere in the Orchards TIF District and/or outside the Orchards TIF District in the vicinity of the 182<sup>nd</sup> and Fourth Plain/SR 500 intersection.

#### **Section 6. Term of Agreement.**

This Agreement shall commence upon the Effective Date, and shall continue in force for a period of ten (10) years by mutual agreement of the parties. Consistent with RCW 82.02.070, it is understood and agreed that the \$800 supplemental Traffic Impact Fee surcharges referenced herein and the standard Traffic Impact Fee provided by Clark County Code must be expended or encumbered in the Orchards TIF District and/or outside the Orchards TIF District in the vicinity of the 182<sup>nd</sup> and Fourth Plain/SR 500 intersection within ten years of receipt of the total \$800 surcharge, unless there exists an extraordinary and compelling reason for fees to be held longer than ten years. If not expended or encumbered during this ten year period, the \$500 per lot portion of the surcharge that runs with the land and is paid at the same time as the standard PIF will be refunded pursuant to RCW 82.02.070, while the \$300 per lot lump sum portion of the surcharge that does not run with the land and is paid by the undersigned Owner will be refunded to the undersigned Owner and not their successor in interest.

#### **Section 7. Land Use Applications and Vesting.**

As provided for in RCW 36.70B.180, during the term of this Agreement, the development standards provided for in this Agreement shall not be subject to unilateral amendment, or amendment to zoning ordinances, development standards, or regulations, or a new zoning ordinance or development standard or regulation adopted after the effective date of this Agreement; provided, however, that the parties agree that regulations imposed, pursuant to Clark County's NPDES Phase I Municipal Stormwater Permit, are not subject to vesting under this section. Pursuant to RCW 36.70B.170, the County reserves the right to impose new or different regulations to the extent required by a serious threat to public health and safety.



**Section 8. Minor Modifications.**

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

**Section 9. Further Discretionary Actions.**

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

**Section 10. Remedies.**

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

**Section 11. Performance.**

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, The waiver by a party of the breach of this Agreement shall not be held to be a waiver of any succeeding breach or a waiver of this non-waiver clause.

**Section 12. Venue.**

This Agreement shall be construed in accordance 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.

**Section 13. Notices.**

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

Notices to the County:

Clark County Council  
Clark County Public Service Center  
1300 Franklin Street, Sixth Floor  
Vancouver, WA 98660

With copies to: Chief Civil Deputy  
Prosecuting Attorney – Civil Division  
Post Office Box 5000  
Vancouver, WA 98666

Notice to Owner: Simons Way Development, Inc.  
Nick Redinger  
15706 NE 129<sup>th</sup> St.  
Brush Prairie, WA 98606

**Section 14. Severability.**

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.

**Section 15. Inconsistencies.**

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

**Section 16. Binding on Successors and Recording.**

This Agreement shall run with the land and be binding upon and inure to the benefit of the owner(s), the parties, and their respective heirs, successors and assigns during the term of this agreement. This Agreement shall be recorded against the real property indicated on "Exhibit A" with the Clark County Auditor.

Any Owner may sell or otherwise lawfully dispose of any portion of the Property to another person who, unless otherwise released by all parties, shall be subject to the applicable provisions of this Agreement and entitled to all rights provided for herein.

**Section 17. Recitals.**

Each of the recitals contained herein is intended to be, and is incorporated as, a covenant between the Parties and shall be so construed.

**Section 18. Amendments.**

Except as provided in Section 8, above, this Agreement may only be amended by mutual agreement of the Parties.

**Section 19. No Third-Party Beneficiaries.**

This Agreement represents the entire Agreement between the Owner and the County with regard to development of the Property, and all prior agreements, oral or written, are superseded hereby. This Agreement is for the benefit of the County in its duty to provide for public health,

safety, and welfare, and for the Owner. No third-party rights or obligations are intended or created by this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Development Agreement to be executed as of the dates set forth below.

**OWNERS(S)**


Date: \_\_\_\_\_

By \_\_\_\_\_

Date: July 17, 2018

By \_\_\_\_\_

Attest:

  
\_\_\_\_\_  
County Clerk

**CLARK COUNTY**

By Kathleen Oth

Approved as to form only:  
ANTHONY F. GOLIK, Prosecuting Attorney

By Christine Cook for  
Taylor Hallvik  
Deputy Prosecuting Attorney

**EXHIBIT "A"**

**May 30, 2018**

A parcel of land located in portion of Lot 5 and Lot 6, "Elaine Park", according to the plat thereof, recorded in Volume "C" of Plats, at Page 64, Clark County, Washington, in a portion of the Northwest quarter and southwest quarter of the Southeast quarter of Section 1 Township 2 North Range 2 East, Willamette Meridian, Clark County, Washington, described as follows;

**BEGINNING** at the Southeast corner of said Lot 6, said point also being the Northeast corner of "Shadow Ridge Phase II", according to the plat thereof, recorded in Book 310 of Plats, at Page 690, said Auditors Records, described as follows;

Thence North  $88^{\circ}16'07''$  West, along the South line of said Lot 6 and the North line of said "Shadow Ridge Phase II", for a distance of 627.73 feet to the Southwest corner of said Lot 6 and an angle point in the North line of said "Shadow Ridge Phase II",

Thence leaving said South line, North  $00^{\circ}47'43''$  East, along the West line of said Lot 6 and the East line of said "Shadow Ridge Phase II", and the extension thereof for a distance of 653.16 feet to the Northwest corner of said Lot 6 and the Southwest corner of said Lot 5;

Thence North  $00^{\circ}46'10''$  East, along the West line of said Lot 5, for a distance of 324.60 feet to the Northwest corner of the South Half of the West Half of said Lot 5;

Thence South  $88^{\circ}28'53''$  East, along the North line of said South Half of the West Half of said Lot 5, for a distance of 340.47 feet to the extension of an existing fence line;

Thence North  $00^{\circ}46'09''$  East, to and along said fence line more or less, for a distance of 131.20 feet;

Thence South  $88^{\circ}29'40''$  East, parallel with the North line of said East Half, for a distance of 282.68 feet to the East line of said Lot 5;

Thence South  $00^{\circ}33'03''$  West, along the East line of said Lot 5 and the East line of said Lot 6, for a distance of 1111.43 feet to the **POINT OF BEGINNING**;

**TOGETHER WITH AND SUBJECT** to easements, reservations, covenants and restrictions apparent or of record

**CONTAINING:** 14.91 acres, more or less.

BOARD OF COUNTY COUNCILORS  
COUNTY OF CLARK, STATE OF WASHINGTON

Resolution  
No. 2018-07-04

A Resolution of the Clark County Council authorizing entry into a Developer Agreement between Clark County and Touchstone Ventures, Inc.

**WHEREAS**, RCW 36.70B.170 through .200 authorize the County to enter into Developer Agreements with persons or entities having ownership or control of real property within the County; and

**WHEREAS**, Touchstone Ventures, Inc. (“Owner”) owns certain real property described in the proposed Development Agreement attached hereto as Exhibit A, which property is located in Clark County, Washington; and

**WHEREAS**, County Staff has worked with the Owner to prepare the proposed Developer Agreement, which details an exchange of valuable consideration;

**WHEREAS**, the Council considered this matter at a duly advertised public hearing; and

**WHEREAS**, the Council concluded that approval of the proposed Developer Agreement will further the public welfare; now therefore,


**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF CLARK COUNTY COUNCILORS:**

1. The Clark County Council approves the proposed Developer Agreement between Clark County, Washington and Touchstone Ventures, Inc., attached hereto as Exhibit A, and authorizes the County Manager to execute this agreement.

ADOPTED on this 17 day of July, 2018.

BOARD OF COUNTY COUNCIL  
CLARK COUNTY, WASHINGTON

Attest:

  
\_\_\_\_\_  
Clerk to the Board

By: \_\_\_\_\_  
Marc Boldt, Chair

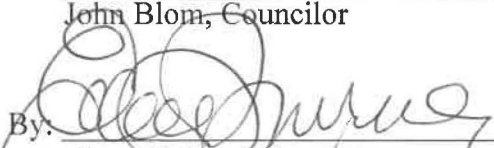
Approved as to form only:  
ANTHONY F. GOLIK  
Prosecuting Attorney

By: \_\_\_\_\_  
Jeanne E. Stewart, Councilor

By:   
\_\_\_\_\_  
Deputy Prosecuting Attorney

By: \_\_\_\_\_  
Julie Olson, Councilor

By: \_\_\_\_\_  
John Blom, Councilor

By:   
\_\_\_\_\_  
Eileen Quiring, Councilor





**DEVELOPMENT AGREEMENT FOR  
REMOVAL OF URBAN HOLDING DESIGNATION  
BY AND BETWEEN CLARK COUNTY  
AND PROPERTY OWNER**

THIS DEVELOPMENT AGREEMENT is made and entered into by and between Clark County, a Washington municipal corporation, hereinafter the "County," and Touchstone Ventures, Inc., including their successors in interest, hereinafter referred to as the "Owner."

**RECITALS**

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

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

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

WHEREAS, a Development Agreement may set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement, all pursuant to RCW 36.70B.170(1), which provides:

- (1) A local government may enter into a development agreement with a person having ownership or control of real property within its jurisdiction. A city may enter into a development agreement for real property outside its

boundaries as part of a proposed annexation or a service agreement. A development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. A development agreement shall be consistent with applicable development regulations adopted by a local government planning under Chapter 36.70A, RCW;

And,

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

The legislature finds that the lack of certainty in 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 as set forth in a development agreement, will strengthen the public planning process, encourage private participation and comprehensive planning, and reduce the economic costs of development. Further, the lack of public facilities and services is a serious impediment to development of new housing and commercial uses. Project applicants and local governments may include provisions and agreements whereby applicants are reimbursed over time for financing public facilities. It is the intent of the legislature by RCW 36.70B.170 through 36.70B.210 to allow local governments and owners and developers of real property to enter into development agreements;

And,

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

WHEREAS, after being brought into the unincorporated Vancouver Urban Growth Area in 2007, the Property was subject to the County's Urban Holding designation; and

WHEREAS, the Parties to this agreement (or their successors-in-interest) entered into a Development Agreement on or about December 9, 2013, wherein the County agreed to lift the Urban Holding designation in exchange for the Owner's agreement to pay a \$500 Park Impact Fee (PIF) surcharge.

WHEREAS, pursuant to the County's Comprehensive Plan criteria, the parties wish to modify the terms of the earlier Development Agreement and replace that document; and

WHEREAS, the terms and conditions below replace and supersede those of the Development Agreement executed by Owner's predecessor in interest, H Squared Investments, LLC, on December 9, 2013, and

establish and memorialize that such criteria have been satisfied or shall be satisfied under the provisions of this Agreement, now, therefore,

**THE PARTIES HERETO AGREE AS FOLLOWS:**

**Section 1. Development Agreement.**

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

**Section 2. Definitions.**

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

- a) "Adopting Resolution" means the Resolution which approves this Development Agreement, as required by RCW 36.70B.200.
- b) "Effective Date" means the effective date established by the Adopting Resolution.

**Section 3. Removal of Urban Holding Designation.**

Effective January 1, 2014, the Clark County Council removed the urban holding designation for the properties described in "Exhibit A" and amended the Capital Facilities Plan to allow Impact fees from the Fifth Plain Creek Area to be used for projects anywhere in the Orchards Traffic Impact Fee (TIF) District and/or outside the Orchards TIF District in the vicinity of the 182<sup>nd</sup> and Fourth Plain/SR 500 intersection.

**Section 4. Payment of Traffic Impact Fee Surcharge.**

The Fifth Plain Creek urban holding area required adoption of a master plan that included a neighborhood park. The Owners and Clark County Council now agree that transportation issues predominate and that neighborhood parks may be accommodated within the existing capital facilities plan with any deficiency becoming a public share. Therefore, the payment of a surcharge park impact fee previously agreed to by the parties is converted into an obligation to pay a surcharge traffic impact fee. The parties' commitment below satisfies this requirement.

The park impact fee surcharge of \$500.00 per lot is, by this agreement, converted into a traffic impact fee surcharge of \$500.00. This surcharge is in addition to the standard TIF provided by Clark County Code and/or the Capital Facilities Plan, shall run with the land, and shall be paid at the same time as TIFs otherwise due would be paid.

In addition to the above referenced \$500 TIF surcharge, the Owner voluntarily agrees to pay Clark County a lump sum supplemental traffic impact fee surcharge of \$300 per recorded lot within 90 days of the recording of the final plat for each phase of the subject subdivision or within 90 days of the execution of this agreement if the plat was recorded prior to the execution of this agreement. This additional \$300 lump sum supplemental traffic impact fee surcharge is an obligation of the Owner(s) upon signing this agreement and shall not run with the land.

The agreed conversion of the park impact fee surcharge to a traffic impact fee surcharge and the Owner's agreement to pay additional surcharges shall not affect or modify either the standard park impact fee or the standard traffic impact fee imposed pursuant to Clark County Code and/or the Capital Facilities Plan.

#### **Section 5. Use of Collected Traffic Impact Fees**

The Parties acknowledge that the County's Capital Facilities Plan has been amended to allow the County to collect and utilize TIFs from the Fifth Plain Creek area on transportation improvements in the vicinity of Fifth Plain Creek. The Parties acknowledge that in the event that the County determines that there are insufficient funds to complete improvements in the vicinity of Fifth Plain Creek, that the collected TIFs may be used elsewhere in the Orchards TIF District and/or outside the Orchards TIF District in the vicinity of the 182<sup>nd</sup> and Fourth Plain/SR 500 intersection.

#### **Section 6. Term of Agreement.**

This Agreement shall commence upon the Effective Date, and shall continue in force for a period of ten (10) years by mutual agreement of the parties. Consistent with RCW 82.02.070, it is understood and agreed that the \$800 supplemental Traffic Impact Fee surcharges referenced herein and the standard Traffic Impact Fee provided by Clark County Code must be expended or encumbered in the Orchards TIF District and/or outside the Orchards TIF District in the vicinity of the 182<sup>nd</sup> and Fourth Plain/SR 500 intersection within ten years of receipt of the total \$800 surcharge, unless there exists an extraordinary and compelling reason for fees to be held longer than ten years. If not expended or encumbered during this ten year period, the \$500 per lot portion of the surcharge that runs with the land and is paid at the same time as the standard PIF will be refunded pursuant to RCW 82.02.070, while the \$300 per lot lump sum portion of the surcharge that does not run with the land and is paid by the undersigned Owner will be refunded to the undersigned Owner and not their successor in interest.

#### **Section 7. Land Use Applications and Vesting.**

As provided for in RCW 36.70B.180, during the term of this Agreement, the development standards provided for in this Agreement shall not be subject to unilateral amendment, or amendment to zoning ordinances, development standards, or regulations, or a new zoning ordinance or development standard or regulation adopted after the effective date of this Agreement; provided, however, that the parties agree that regulations imposed, pursuant to Clark County's NPDES Phase I Municipal Stormwater Permit, are not subject to vesting under this section. Pursuant to RCW 36.70B.170, the County reserves the right to impose new or different regulations to the extent required by a serious threat to public health and safety.

**Section 8. Minor Modifications.**

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

**Section 9. Further Discretionary Actions.**

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

**Section 10. Remedies.**

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

**Section 11. Performance.**

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, The waiver by a party of the breach of this Agreement shall not be held to be a waiver of any succeeding breach or a waiver of this non-waiver clause.

**Section 12. Venue.**

This Agreement shall be construed in accordance 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.

**Section 13. Notices.**

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

Notices to the County: Clark County Council  
Clark County Public Service Center  
1300 Franklin Street  
6<sup>th</sup> Floor

Vancouver, WA 98660

With copies to:

Chief Civil Deputy  
Prosecuting Attorney – Civil Division  
Post Office Box 5000  
Vancouver, WA 98666

Notice to Owner:

Touchstone Ventures, Inc.  
Jeff Wriston  
15700 NW 31<sup>st</sup> Ct.  
Vancouver, WA 98685

With copies to:

LeAnne Bremer  
Miller Nash Graham & Dunn  
500 Broadway Street, Suite 400  
Vancouver, WA 98660

**Section 14. Severability.**

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.

**Section 15. Inconsistencies.**

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

**Section 16. Binding on Successors and Recording.**

This Agreement shall run with the land and be binding upon and inure to the benefit of the owner(s), the parties, and their respective heirs, successors and assigns during the term of this agreement. This Agreement shall be recorded against the real property indicated on "Exhibit A" with the Clark County Auditor.

Any Owner may sell or otherwise lawfully dispose of any portion of the Property to another person who, unless otherwise released by all parties, shall be subject to the applicable provisions of this Agreement and entitled to all rights provided for herein.

**Section 17. Recitals.**

Each of the recitals contained herein is intended to be, and is incorporated as, a covenant between the Parties and shall be so construed.

**Section 18. Amendments.**

Except as provided in Section 8, above, this Agreement may only be amended by mutual



agreement of the Parties.


**Section 19. No Third-Party Beneficiaries.**

This Agreement represents the entire Agreement between the Owner and the County with regard to development of the Property, and all prior agreements, oral or written, are superseded hereby. This Agreement is for the benefit of the County in its duty to provide for public health, safety, and welfare, and for the Owner. No third-party rights or obligations are intended or created by this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Development Agreement to be executed as of the dates set forth below.

**OWNERS(S)**

Date: June 26, 2018

By   
Jeffrey P. Wriston  
President

Date: July 17, 2018

By \_\_\_\_\_


**CLARK COUNTY**

Attest:

  
County Clerk

By 

Approved as to form only:  
ANTHONY F. GOLIK, Prosecuting Attorney

By   
Taylor Hallvik  
Deputy Prosecuting Attorney

**EXHIBIT A**

**TAX PARCELS: 168617000; 168618000; 168619000; 168623000**

**The Southwest quarter of the Southeast quarter of Section 6, Township 2 North, Range 3 East of the Willamette Meridian, Clark County, Washington.**