

AFTER RECORDING RETURN TO:
Jordan Ramis PC
Attn: James D. Howsley
1499 S.E. Tech Center Place, Suite 380
Vancouver, WA 98683

Space above for recording information only.

**FIRST AMENDED AND RESTATED
DEVELOPMENT AGREEMENT**

This FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this “Agreement”) is entered into by and among CLARK COUNTY, a political subdivision of the State of Washington (the “County”) and M & H WASHINGTON PROPERTY, LLC (“Owner”), a Washington limited liability company, and HINTON DEVELOPMENT CORP. (“Hinton”), a Washington corporation on this ___ day of _____, 2019. Owner and Hinton are together referred to as the “Developer”, and those three terms include any successor in interest to the Property during the term of this Agreement.

RECITALS

FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT
AMONG CLARK COUNTY, M & H WASHINGTON PROPERTY, LLC, AND HINTON
DEVELOPMENT CORP.

A. Owner owns certain real property in unincorporated Clark County Washington (APN 181675000) totaling approximately 32.45 acres, which is more particularly described in Exhibit A, which attached hereto and incorporated by reference herein (together, the “Property”). Hinton has authority over and development control over the Property.

B. Clark County’s 20-Year Comprehensive Growth Management Plan 2015-2035, as adopted by Ordinance No. 2016-06-12 and most recently amended by Ordinance No. 2019-02-02 (“Comprehensive Plan”), provides that an Urban Holding Overlay Plan Designation and Zone (“UH Overlay”) may be applied to property with a specific underlying urban zone when development policies require a legislative action pursuant to the requirements of Clark County Code (“CCC”) Section 40.560.010 prior to urban development thereon.

C. The Comprehensive Plan applies the UH Overlay to certain property located within the Vancouver Urban Growth Area within the 179th Street Corridor (“179th Street Corridor”). The Property is within this 179th Street Corridor and is subject to the UH Overlay and a zoning overlay designation of Urban Holding-10 (“UH-10”), with underlying plan and zoning designations of Urban Low Density Residential (“UL”) and Single Family Residential (“R1-10”), respectively.

D. The Connecting Washington transportation funding package approved by the 2016 Washington Legislature is expected to provide money for the reconstruction of the Interstate 5/179th Interchange during the period from 2023 to 2025.

E. The 179th Street Corridor comprises an area lacking in and requiring said transportation improvements.

F. Other owners and developers of properties within the 179th Street Corridor (“Killian”, “Wollam” and “Holt”, collectively “179th Street Developers”), as specifically depicted and identified in the Exhibit F, attached hereto and incorporated herein, (the “Other 179th Street Developments”), have proposed development agreements and transportation improvement plans that would alleviate the transportation deficiencies within the Corridor and facilitate economic development, provided that the UH Overlay is removed to allow for the underlying urban use to be developed.

G. The County finds that approval and implementation of those development agreements related to the 179th Street Developments and removal of the UH Overlay would provide the private share contribution for the needed transportation improvements, including right-of-way and intersection and other improvements, thereby facilitating economic development within the area and its larger region.

H. CCC 40.560.010(I) provides that UH Overlay changes are processed through Type IV processes initiated by the County and consistent with the procedures and criteria under the Comprehensive Plan.

I. CCC 40.560.010.I.1 provides that plan map and rezone amendments removing the UH designation must be consistent with the procedures and criteria set forth in the Clark County 20-Year Comprehensive Growth Management Plan 2015-2035 (“Comprehensive Plan”). The Comprehensive Plan provides that to remove the UH overlay, the County must determine that the completion of localized critical links and intersection improvements are reasonably funded as shown on the County's 6-Year Transportation Improvement Plan or through a development agreement.

J. Pursuant to RCW 36.70B.170(1), any local government of the state of Washington 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 of the development of the real property during the specified term of the agreement.

K. The County has determined that the proposed mitigation contained within this Agreement will satisfy the Comprehensive Plan criteria requiring reasonable funding for the completion of localized critical links and intersection improvements, and therefore the UH Overlay will be removed from this Property.

L. The Developer has also proposed a Conceptual Plan for development of the Property, as depicted on Exhibit B and specifically described in Exhibit C, which are both attached hereto and incorporated herein. The Conceptual Plan shows the proposed public trails within the development that enhances pedestrian access to, from and within the Property and external properties.

M. The Parties desire to provide long-term predictability to both Developer and the County on various development issues through the implementation of this Agreement and its attendant Conceptual Plan. The Parties desire to plan for the development of the Property with advance funding for transportation improvements and predictable infrastructure and regulations.

N. Developer, the County, and the other 179th Developers have collaborated over a number of years through a public-private partnership to facilitate the implementation of the Comprehensive Plan through the improvement of transportation infrastructure in the area of the 179th Street Corridor. This area faces challenges to development in order to fully implement the Comprehensive Plan, including lack of capacity on existing local roadways and intersections, lack of access to underdeveloped properties, and resulting traffic safety problems. Each Party has dedicated significant resources to planning for that area, which provides a gateway to development of currently underutilized land in the 179th Street Corridor. It is necessary for the Parties to complete certain planning efforts in the area, so that public and private funding will be available to complete the needed infrastructure, and that development of the infrastructure can go forward. Completion of certain intersections and other transportation links in the area will further implement the Comprehensive Plan and allow certain properties to develop, thereby generating further resources for more transportation improvements, and addressing the continuing harm to the public because of the problems and challenges listed above. This Agreement will document the completion of planning relevant to the subject Property,

Developer's contributions to the completion of certain infrastructure in the area, and the County's assurances that Developer may proceed as set forth herein.

O. Developer's traffic engineer has prepared trip generation and distribution information based on the expected development of the Property in accordance with the Conceptual Plan (Exhibits B and C), and a copy of the trip generation estimates is attached hereto and incorporated herein as Exhibit E.

P. This Agreement addresses the Comprehensive Plan criteria to remove the UH plan and zoning overlays from the Property and includes Developer'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, which is attached hereto and incorporated herein.

Q. Clark County Council approved a prior version of this Agreement in an open public hearing on August 20, 2019; however, that version of the Agreement contained misstatements in Section 6.3.c, and it was never executed by the Parties. Those misstatements are corrected by amendment of Section 6.3.c, which was approved by the County Council in open public meeting on October 1, 2019. The initially approved Agreement has not been amended in any other respect as of that date, except for the correction of scrivener's errors and the addition of this Recital. The Parties have adequately reviewed this FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT, and agree that its terms reflect their intent.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

Section 1. Development Agreement. This Agreement is a development agreement 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.

Section 2. Effective Date; Term of Agreement. The Effective Date of this Agreement is the later of the following: (1) the date ten (10) days after the day of the County's approval by ordinance or resolution determining that the completion of critical links and infrastructure improvements necessary for development of the Property are reasonably funded, following a public hearing as provided for in RCW 36.70B.170, or (2) the date on which a fully executed version is recorded with the County Auditor. 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.

Section 3. Conceptual Plan.

3.1 Purpose. The Conceptual Plan, attached hereto as Exhibits B and C, provides for design mitigation with additional pedestrian connections not required by County Code for ease of use for public transportation and additional consideration of trail design within the project. The Conceptual Plan will provide the Parties with predictability regarding certain

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aspects of the future development of the Property, including public trails and walkways internal to the property and that can connect with offsite developments in the future..

3.2 Preliminary plat approval. Developer's application for preliminary plat approval may be filed and the County will process such applications upon execution of this agreement. No public hearing or decision will be made on any applications until the County removes the UH designation from the Property.

3.3 Engineering Plans. Concurrently with the County's review of any preliminary plat applications, Developer may submit engineering plans to the County and the County will review those plans in its normal course. If a preliminary plat is approved with design or conditions that are different from concurrently submitted and reviewed final engineering plans, then Developer will resubmit engineering plans that conform to the preliminary plat approvals. Any costs associated with such changes will be the responsibility of Developer. While the County agrees to allow concurrent review of land use applications and final engineering, nothing herein will be construed to require the County to provide expedited review that is different from the County's usual timelines for an application for land use or engineering review.

3.4 UH Designation Removal. No final engineering approval will be granted until the UH designation has been removed from the Property and a preliminary plat application has been approved. The application will be processed as a Type III land use application and reviewed by the County. Any approval criteria not addressed and found satisfied in this Agreement will be subject to the approval criteria in effect when the fully complete application is submitted, and will be addressed during the subdivision application and decision process.

3.5 Vesting. Except as set forth in this Agreement, future development of the Property is subject to the applicable provisions of the Clark County Code as of the Effective Date.

Section 4. 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 will 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 except as set forth in Paragraph 6.3 of this Agreement, the vesting granted by this Agreement will not apply to impact fees, taxes, land use or permit application fees, building code provisions, or environmental regulations that do not vest according to Washington State Law, which will be vested, determined or calculated consistent with the County's provisions applicable on the date such fee, charge, or tax is triggered or according to the generally applicable rules for vesting of building code regulations and such environmental regulations. 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.

Section 5. Environmental Review. For the purposes of this Agreement, no additional SEPA review is required. Any required project-level SEPA review for development at the Property and subject to this Agreement will be submitted during the preliminary plat application process.

Section 6. Traffic.

6.1 Traffic Study. Kittelson and Associates Transportation Engineers and the County have analyzed the transportation impacts of the full development (based on the conceptual set of future uses and square footages) of the Property as identified in the traffic study and the Conceptual Plan. Based upon this set of uses, the Property at full development will increase the existing number of PM peak hour trips on the transportation system by 129 trips. The trip generation estimates are set forth, attached hereto and incorporated herein as Exhibit E.

6.2 Anticipated Impacts. Based upon Kittelson's analysis as approved by the County, the future development of the Property will be conditioned upon the mitigation measures and timing of construction as provided for in Exhibit D. The Property will be vested during the term of this Agreement with 129 PM peak hour and 1,290 average daily trips and no off-site transportation mitigation or analysis, other than provided for in this Agreement, will be required in conjunction with development of the Property during the term of this Agreement; provided however that in the event Hinton 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 set forth in this Section 6.2, the increased trips will be subject to review and required mitigation under the County's concurrency ordinance in effect when the application vests. In the case of increased trips, vesting will occur no sooner than the Developer submits a fully complete application to the County. Except when the Developer proposes increased trips, the transportation vesting provided for in this Section will be subject to the mitigation measures and the timing provided in Exhibit D. Some of the transportation improvements may be on the County's Transportation Capital Facility Plan. Hinton upon construction of qualifying transportation improvement, will be eligible to apply for TIF Credits, but only if such improvements are eligible for credits under the County's applicable Capital Facilities Plan and TIF programs.

6.3 Traffic Impact Fees; Advance Payment. To increase the County's ability to fund and construct certain transportation improvements in the area that will provide systemic benefits in excess of the impacts that will be created through the implementation of the Conceptual Master Plan, Developer agrees to accelerate the manner in which Developer or a successor in interest to the Property would pay Transportation Impact Fees ("TIFs"). Developer will pay TIFs associated with the Property based on the TIF rate applicable at the time this Agreement becomes effective. In addition to the payment of TIF, Developer will also pay the Surcharge as described below. Instead of paying TIFs as the time of individual building permits, as it currently provided for by the County's Code, Developer, or its successor in interest, agrees to the following permit application and TIF payment schedule.

a. Developer will submit a fully complete application for preliminary plat approval of approximately 129 lots prior to February 15, 2020 with a phasing plan. Assuming Developer receives preliminary plat approval and no appeal is filed, Developer will pay within 30 days of receiving preliminary plat approval the sum of \$3,025.00 for each lot receiving preliminary plat approval.

b. Developer will submit an application for final plat for Phase I approval for 50 lots prior to December 31, 2021. Developer shall submit a fully complete application for final plat for Phase II approval for 50 lots prior to December 31, 2022. Developer

shall submit a fully complete application for final plat for Phase III approval for 29 lots prior to July 15, 2023. If Developer submits an application for final plat approval for all lots, assuming Developer receives final plat approval, Developer will pay \$3,025.00 for each lot receiving final plat approval. Developer may alternatively submit an application for final plat approval for the lots in phases. If Developer submits an application for final plat approval for a certain amount of lots in multiple phases, assuming Developer receives final plat approval for those respective phases, Developer will pay \$3,025.00 for each lot receiving final plat approval in the respective phase.

c. In addition to the TIF, Developer shall pay an additional surcharge in the amount of \$3,500 per lot (the “Surcharge”) for each building permit for each lot developed on the Property. Developer shall pay the Surcharge at the time of the issuance of the building permit. Developer anticipates building permits following the approvals of each phase as provided for in paragraph 6.3(b) above. Regardless of the schedule provided for in Section 6.3.a above, Developer agrees that by December 31, 2023, if the combined amount of TIF and Surcharge paid by Developer is less than \$600,000.00, then Developer shall, on or before December 31, 2023, pay to the County the difference between what Developer has paid in combined TIF and Surcharge and \$600,000.00 (the “Gap Amount”). The Gap Amount will be applied in the future to subsequent preliminary plat, final plat, or building permit applications on the Property as pre-paid TIF or prepaid Surcharge. Nothing in this Agreement limits to \$600,000.00 Developer’s total obligations to pay combined TIF and Surcharge that may arise from the Property’s future development approvals.

d. Notwithstanding any other provision of Section 6 of this Agreement relating to timing of the submission of a preliminary plat application or the submission of a final plat application, Developer need not submit any of the applications referenced in Section 6 of this Agreement, if Developer timely makes the payment that otherwise would be due if such application has been submitted and approved. Nothing in this paragraph will be construed to alter the dates upon which such TIF payments will be made to the County as provided for in Section 6 of this Agreement, regardless of whether Developer submits any land use applications.

e. If Developer fails to timely make any payment due pursuant to Section 6 of this Agreement, Developer may not submit, and County may not accept or process, any further land use or permit application relating to development of the Property until all payments then due in accordance with Section 6 have been fully made.

Section 7. Threat to Public Health. Nothing in this Section will preclude the County from requesting information on the potential adverse environmental impacts associated with a specific land use application that have not been previously analyzes as required under SEPA.

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MISCELLANEOUS PROVISIONS

Section 8. Recitals. The Recitals contained herein are agreed to be binding obligations of the Parties, as their terms provide.

Section 9. Counterparts. This Agreement may be executed in counterparts; however all signature pages will be recorded together, and the complete recorded Agreement, including Exhibits A-F, will constitute the final instrument.

Section 10. Amendments; Termination. The Parties may agree to any amendments to this Agreement to facilitate necessary infrastructure improvements and other matters; provided, however, that this Agreement may only be amended by mutual, written agreement of the Parties that is approved by the Clark County Councilors pursuant to a Type IV legislative process as set forth in the Clark County Code. 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.

Section 11. 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, however that traffic congestion is not a serious threat to public health and safety, and that such action will only be taken by legislative act of the Clark County Council after appropriate public process.

Section 12. 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.

Section 13. 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.

Section 14. Public Hearing. The Clark County Council has approved execution of this Agreement by resolution after a public hearing.

Section 15. 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.

Section 16. 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.

With a copy to: Christine Cook
Senior Deputy Prosecuting Attorney or
Taylor Halvik
Deputy Prosecuting Attorney
1013 Franklin Street
Vancouver, WA 98660

Developer M & H Washington Properties, LLC
Attn. Mark Hinton and Michael Menashe
333 NW 9th Avenue #1504
Portland, OR 97209

With a copy to: Jordan Ramis, PC
Attn: James D. Howsley
1499 SE Tech Center Place, Suite 380
Vancouver, WA 98683

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.

Section 26. 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 venturers, or any other similar relationship between the Parties.

Section 27. 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 according to the Schedule so as to carry out the intent of this Agreement.

Signatures appear on the following pages.

M & H Washington Property, LLC

By: Mark Hinton
Its: Governor

Date

By: Michael Menashe
Its: Governor

Date

Hinton Development Corp.

By: Mark Hinton
Its: President

Date

Clark County

By: Shawn Hennessee
Its: County Manager

Date

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

By:
Deputy Prosecuting Attorney

State of Washington)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that Mark Hinton 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 _____ (title) of M & H Washington Property, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 2019.

Signature
My Commission Expires: _____

(Seal or stamp)

State of Washington)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that Michael Menashe 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 _____ (title) of M & H Washington Property, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 2019.

Signature
My Commission Expires: _____

(Seal or stamp)

EXHIBIT INDEX

EXHIBIT A – LEGAL DESCRIPTIONS

EXHIBIT B – CONCEPTUAL PLAN DEPICTION

EXHIBIT C – CONCEPTUAL PLAN NARRATIVE

EXHIBIT D – MITIGATION MEASURES AND TIMING OF CONSTRUCTION

EXHIBIT E – TRIP GENERATION ESTIMATES

EXHIBIT F – OTHER 179TH STREET DEVELOPMENTS

DRAFT

EXHIBIT A

Legal Description

DRAFT

EXHIBIT B

Title

DRAFT

EXHIBIT C

Title

DRAFT