

MEMORANDUM OF AGREEMENT
REGARDING JOINT PLANNING, INTERIM ZONING,
PRE-ANNEXATION ZONING, AND FUTURE ANNEXATION OF
THE SUMMIT PIT PROPERTY

THIS AGREEMENT is made this 1st day of October, 2008 by and among the City of Maple Valley ("City"), a Washington municipal corporation, King County ("County"), a political subdivision of the State of Washington, and Summit Place 156 LLC ("Developer"), a Washington limited liability company.

RECITALS

WHEREAS, the County owns and is in the process of selling to Developer, the real property legally described in the attached Exhibit A (the "Property"); and

WHEREAS, the Property is completely surrounded by the City but is located outside of the Urban Growth Area (UGA) within unincorporated King County; and

WHEREAS, the County seeks to have the Property brought within the UGA, as designated by King County pursuant to the Washington State Growth Management Act, Ch. 36.70A RCW (GMA); and

WHEREAS, the Countywide Planning Policies adopted, approved, and amended by the County Council and ratified by the cities within the County, establish a process for altering the UGA and rules for designating a city's potential annexation areas within the countywide urban growth boundary; and

WHEREAS, the City has opposed the County's proposal to bring the Property within the UGA because the County had not completed a joint planning process with the City; and

WHEREAS, the Growth Management Planning Council deferred making a recommendation on the County's UGA proposal until October 2, 2008 to give the City and the County an opportunity to negotiate a joint planning agreement; and

WHEREAS, the City is willing to withdraw its opposition to the County's UGA proposal in exchange for the Parties' willingness to enter into this joint planning agreement; and

WHEREAS, the Developer desires to acquire the Property to develop it for residential and non-residential uses, and the Developer and the County have finished

negotiating a Real Estate Purchase and Sale Agreement concerning the Property (the "PSA"); and

WHEREAS, the City desires to annex the Property in the event it is brought into the UGA; and

WHEREAS, the City and the County have a significant interest in the manner in which the Property may be developed; and

WHEREAS, because of the Property's location, the development of the Property should be consistent with the land use plan resulting from the joint planning process and the impacts of such development upon the surrounding property should be appropriately mitigated; and

WHEREAS, all parties acknowledge that it is in their best interests to cooperate with regard to the adoption of the comprehensive plan land use designations, development regulations, environmental analysis and permit application processing for the development of the Property, so that the above concerns are addressed, and public money is not wasted in unnecessary administrative or judicial appeals or other litigation; and

WHEREAS, the parties acknowledge that the development of the Property could become a significant source of revenue to the City, in terms of property taxes, real estate excise tax, sales taxes, and impact fees if annexed to the City in a timely manner; and

WHEREAS, all parties desire to describe and implement an orderly procedure that will accomplish the above goals, to be consistent with applicable law; and

WHEREAS, all parties acknowledge the need to accomplish the above goals in a short time frame, so this Agreement is intended to be the first in a series of formal agreements that will address the land use planning, annexation, and development of the Property;

NOW, THEREFORE, in consideration of the terms and conditions contained herein, the City, the County, and the Developer agree as follows:

1. Purpose Statement. The purposes of this Agreement are as follows:
 - a. For the County and the Developer:
 - i. To obtain the City's support for and withdrawal of opposition to the pending UGA amendment that would urbanize the Property; and
 - b. For the City:

- i. To obtain assurances from the County and the Developer that they will negotiate with the City in good-faith with the goal of achieving annexation of the Property to the City before the Developer submits an application for development of the Property.
2. Executive's Advocacy of Revised Planning and Zoning Proposal. In addition to signing this Agreement, the County Executive shall make every reasonable effort to express to the County Council, in writing, his support for the comprehensive plan and area zoning designations described in Paragraph 3, below.
3. Description of Revised Planning and Zoning Proposal. The County Executive shall make every reasonable effort to encourage the County Council to introduce and adopt an amendment to the Executive's proposed 2008 Comprehensive Plan and zoning amendments for the Property so that the comprehensive plan designation for the Property shall be Urban Planned Development, and the zoning for the Property shall be Urban Reserve (UR) with an Urban Planned Development (UPD) overlay.
4. Urban Growth Area. The Parties contemplate that the County Executive's current proposal to bring the Property within the Urban Growth Area and the City's Potential Annexation Area will proceed forward for simultaneous consideration with the UR / UPD zoning referenced above. Any amendment of the UGA boundary that renders the Property urban without simultaneous adoption of the Comprehensive Plan and zoning designations described in Paragraph 3, above, shall defeat the goals and purposes of this Agreement. If the County Council adopts a Comprehensive Plan designation or zoning for the property other than what is contemplated in this Agreement, the Parties expect that the City will, among other available remedies, seek to have the cities within the County take affirmative action to not ratify the inclusion of the Property within the UGA. The Parties acknowledge that the City's withdrawal of its opposition to the proposed UGA change before the Growth Management Planning Council is predicated upon the terms of this Agreement and, specifically, the County's adoption of the Comprehensive Plan designation and zoning described herein. If the County Council adopts, and the County Executive thereafter approves, the Urban Planned Development comprehensive plan designation, the UR / UPD zoning, and the placement of the Property within the City's UGA and Potential Annexation Area, then the City agrees that it shall not challenge or otherwise seek review of such legislative action before the Central Puget Sound Growth Management Hearings Board pursuant to RCW 36.70A.280 and .290.
5. Joint Planning Interlocal. Within fifteen (15) days after execution of this Agreement, planning staff from the City and County shall begin to negotiate a joint planning agreement that will cover the general goals, principles, and policies to be considered when adopting future land use designations and zoning for the Property. City and County planning staff shall meet in person at least twice per month until a joint planning interlocal agreement has been transmitted to their respective Councils for consideration and action. The Developer's representatives

shall be invited to attend these meetings, but their attendance shall not be required. The parties have established a goal to have a joint planning interlocal agreement adopted by both legislative bodies by June 30, 2009. In order to effectuate the purpose of this Agreement, the parties understand that any future zoning for the Property, including the pre-annexation zoning contemplated by Paragraph 6, must be consistent with the joint planning agreement that is adopted by the parties.

6. City's Pre-annexation Zoning. Concurrently with the joint planning negotiations described above, the City shall evaluate and adopt pre-annexation zoning for the Property.
 - a. As of the date of this Agreement, the City Council has directed the Planning Commission to analyze and consider application of the City's R-6 zoning regulation to the Property upon annexation.
 - b. As part of the pre-annexation zoning process, the Developer, the County, and/or any other member of the public, may propose an alternative zoning classification on the Property. If an alternative zoning classification is proposed, then on or before December 31, 2008, the following materials must be provided to the City in order to initiate the process: (1) Draft zoning regulation that is being proposed by the Developer, County, and/or any other member of the public; and (2) SEPA Checklist.
 - c. The City agrees to consider employing two-stage phased SEPA review of development of the Property pursuant to WAC 197-11-060(5), with the first phase being broader SEPA review at the nonproject pre-annexation zoning stage, and the second phase being narrower, more detailed SEPA review at the time that a specific development proposal for the Property is submitted to the City.
 - d. The City Council shall make every reasonable effort to take final action on the pre-annexation zoning ordinance on or before June 30, 2009.
7. City's Comprehensive Plan. Concurrently with the joint planning and pre-annexation zoning described above, the City shall prepare a set of comprehensive plan amendments for the Property. These comprehensive plan amendments shall take the form of a subarea plan for the Property, which may be adopted outside of the City's annual GMA update process pursuant to RCW 36.70A.130(2)(a)(i).
8. Annexation.
 - a. If the County Council includes the Property within the City's UGA and Potential Annexation Area, then, within thirty (30) days after adoption of the UGA amendment, the Executive shall transmit to the County Council for consideration and action a proposal to commence negotiations for an interlocal agreement to annex the Property to the City pursuant to RCW

35A.14.460(1). The City Manager shall transmit a resolution to the City Council proposing the same.

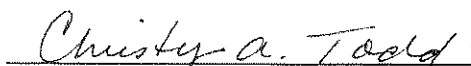
- b. If both Councils adopt their respective actions as referenced above in 8(a) to commence negotiations, then appropriate City and County staff shall meet in person at least twice per month until an interlocal agreement to annex has been negotiated and transmitted to their respective Councils for consideration and action. The Developer's representatives shall be invited to attend these meetings, but their attendance shall not be required. The Parties have established a non-binding goal to have annexation occur by November 1, 2009.
 - c. The commencement of such negotiations shall not in any way bind the Parties to approve an annexation agreement.
 - d. The Parties' goal is to effect annexation of the Property to the City at a time that allows the City to fully realize all excise and sales tax revenue generated by the development of the Property.
9. Waiver of Right to Submit Development Applications. The County, in its capacity as owner of the Property, and the Developer, in its capacity as the prospective purchaser of the Property, in consideration of the terms of this Agreement, temporarily waive their rights to submit and vest applications for development of the Property. This temporary waiver shall expire upon the latter of (i) twelve (12) months after the Effective Date or (ii) December 31, 2009. For the purposes of this waiver, "applications for development" shall include, but not be limited to, any application for any project permit as that term is defined in RCW 36.70B.020, as well as any land use proposal for legislative action such as a comprehensive plan amendment or area-wide rezone and specifically including an urban planned development application. For the purposes of this Paragraph, Paragraph 8, above, and Paragraph 12, below, the Effective Date shall be the effective date of the County ordinance that authorizes the terms and conditions set forth in the PSA between the County and the Developer. This waiver shall not apply to the following applications for development of the Property:
- a. Applications for development of the Property that are submitted to the City after annexation; and
 - b. Applications submitted by the County for the sole purpose of allowing the County to operate its road maintenance facilities and/or consolidate its road maintenance operations on the Property with the Developer.
 - c. An application for a short subdivision, provided that such an application may be submitted only for the sole purpose of facilitating the phased-takedown closing set forth in the PSA.

10. Purchase and Sale Agreement. The County and the Developer hereby represent that the terms of the PSA will not materially frustrate or be inconsistent with the Purpose Statement set forth in Paragraph 1 of this Agreement.
11. Ratification. Within thirty (30) days of the execution of this Agreement, the County Executive and City Manager shall transmit a request to ratify this Agreement to their respective Councils for consideration at the soonest possible Council meeting.
12. Mediation. If an interlocal agreement between the City and the County, providing for annexation of the Property to the City, has not been executed by November 1, 2009, or within 300 days after the Effective Date, whichever comes first, the Parties shall attempt to resolve any disputes that are preventing immediate annexation by mediating with a mediator appointed by DCTED. If necessary, any such mediation shall commence sometime in November 2009.
13. Interpretation. This Agreement was drafted by negotiation by counsel for the parties, and there shall not be a presumption or construction against either party. Any titles or captions of paragraphs contained in this Agreement are for convenience and reference only.
14. Binding Nature of Agreement. Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the parties and their successors.
15. Severability. If any portion of this Agreement is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect any other portion of this Agreement.
16. Recording. This Agreement may be recorded against the Property to ensure that prospective purchasers are notified of its terms.

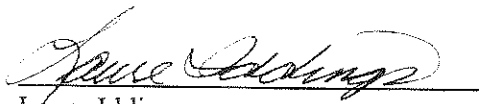
AGREED TO THIS 1st DAY OF OCTOBER, 2008 BY:



Ron Sims
King County Executive




Christy A. Todd
Interim City Manager, City of Maple Valley



Laure Iddings
Mayor, City of Maple Valley

Summit Place 156 LLC,
a Washington limited liability company

By: BRNW, Inc., its Member

By: 
Brian Ross, President

APPROVED AS TO FORM BY:



Darren Carnell
Senior Deputy Prosecuting Attorney

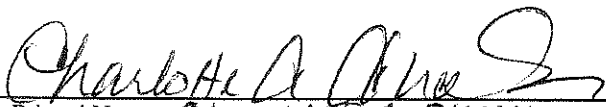


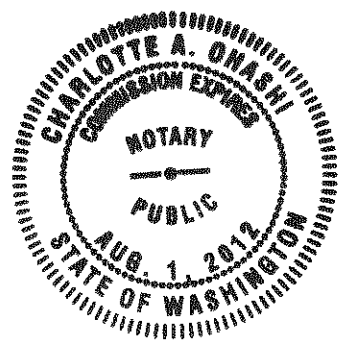
Jeff Taraday
Interim City Attorney

STATE OF WASHINGTON }
COUNTY OF KING } ss.

On this day personally appeared before me Brian Ross, the President of BRNW, Inc., managing member of Summit Place 156 LLC, known to me to be the Developer that executed the foregoing instrument, and acknowledged such instrument to be his free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 2ND day of October, 2008.


Printed Name CHARLOTTE A. ONASHI
NOTARY PUBLIC in and for the State of Washington,
residing at SEATTLE
My Commission Expires 8/01/12

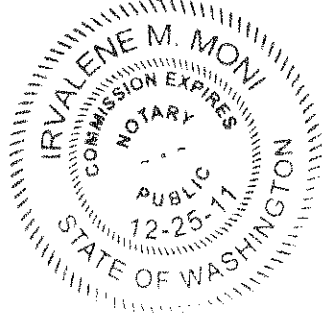


STATE OF WASHINGTON }
COUNTY OF KING } ss.

On this day personally appeared before me Christy Todd, the Interim City Manager of the City of Maple Valley, known to me to be the City that executed the foregoing instrument, and acknowledged such instrument to be her free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated that she was duly authorized to execute such instrument.

OFFICIAL

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 1st day of October, 2008.



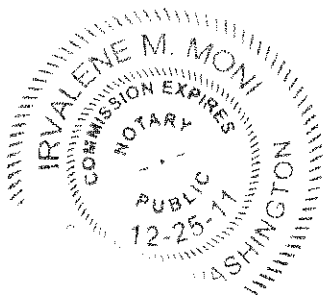
Irvalene M. Moni
Printed Name IRVALENE M. MONI
NOTARY PUBLIC in and for the State of Washington,
residing at KING COUNTY
My Commission Expires 12-25-2011

STATE OF WASHINGTON }
COUNTY OF KING } ss.

On this day personally appeared before me Laure Iddings, the Mayor of the City of Maple Valley, known to me to be the City that executed the foregoing instrument, and acknowledged such instrument to be her free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated that she was duly authorized to execute such instrument.

OFFICIAL

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 1st day of October, 2008.



Irvalene M. Moni
Printed Name IRVALENE M. MONI
NOTARY PUBLIC in and for the State of Washington,
residing at KING COUNTY
My Commission Expires 12-25-2011

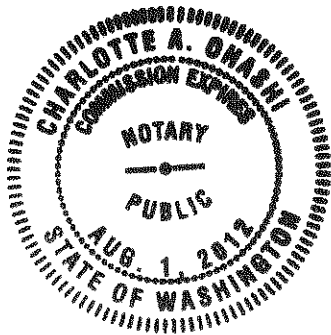
STATE OF WASHINGTON

} ss.

COUNTY OF KING

On this day personally appeared before me Ron Sims, the Executive of King County, known to me to be the County that executed the foregoing instrument, and acknowledged such instrument to be his free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 2ND day of October, 2008.



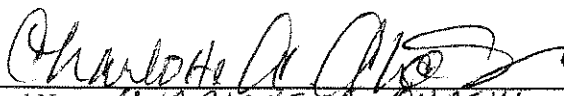

Printed Name CHARLOTTE A. OHASHI
NOTARY PUBLIC in and for the State of Washington,
residing at SEATTLE
My Commission Expires 8/01/12

Exhibit A

Legal Description of Summit Pit Property

The northwest quarter of Section 34, Township 22 North, Range 6 East, W.M., in King County, Washington; EXCEPTING there from that portion conveyed by instrument recorded under Recording Number 8905110590, in King County, Washington; AND EXCEPT that portion conveyed to the city of Maple Valley by deed under Recorder's No. 20040824000981. And SUBJECT TO: Easement for Slope and Sidewalk conveyed to the city of Maple Valley under Recorder's No. 20040824000980 and Easement for Slope conveyed to the city of Maple Valley under Recorder's No. 20040824000982.

