

After recording, return to:

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Space Above for Recording Information Only

### **DEVELOPMENT AGREEMENT**

This Development Agreement (the “Agreement”) is made and entered into by and between the CITY OF CAMAS, a Washington Municipal Corporation (hereinafter referred to as the “City”) and Green Mountain Land LLC (hereinafter referred to as the “Owner”) (and collectively referred to as “Parties”).

#### **RECITALS**

**WHEREAS**, Owner owns or controls certain real property which is located within the City’s municipal boundary and which is more fully described in the attached Exhibit “A”, (hereinafter referred to as the “Property”); and,

**WHEREAS**, the City and the Owner recognize the area of the City known as the North Urban Growth Area (“NUGA”), will develop over a period of many years; and,

**WHEREAS**, the Owner has applied to the City for a Planned Residential Development for the Property which is located within the NUGA and will require significant investment in sewer infrastructure to develop the Property; and,

**WHEREAS**, it is anticipated that certain conditions in the approved Planned Residential Development for the Property will require the Owner to complete specific sewer improvements which will be considered together with this Agreement; and

**WHEREAS**, the City and the Owner wish to provide predictability and efficiency about the design, cost and delivery of sewer service to the Property and other properties in NUGA; and,

**WHEREAS**, the City intends to construct trunk line sewer improvements identified in the City's Capital Facilities Plan ("the Phase B Improvements") across the NUGA to provide a more efficient and less costly way to maintain sewer system; the improvements are identified on Exhibit B, which is attached hereto and incorporated by reference herein; and

**WHEREAS**, the City intends to issue Water and Sewer Revenue Bonds ("Bonds") to finance design and construction of the Phase B Improvements; and

**WHEREAS**, the City and the Owner recognize that financial contributions from the Owner to the City will benefit not only the Property, but also other properties in the NUGA served by the Phase B Improvements to be constructed by the City; and,

**WHEREAS**, the City is a Washington Municipal Corporation with annexation powers, and land use planning and permitting authority over all land within its corporate limits; and,

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

**WHEREAS**, pursuant to RCW 36.70B.170, 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 real property for the duration specified in the agreement; which statute 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 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 as

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

**NOW, THEREFORE, THE PARTIES HERETO 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 through RCW 36.70B.210. It shall become a contract between the Owner and the City upon its approval by ordinance or resolution following a public hearing as provided for in RCW 36.70B.170; and upon execution by all parties.

**Section 2. Term of Agreement.** This Agreement shall commence upon the Effective Date, and shall be valid for a period of fifteen (15) years; unless extended or terminated by mutual consent of the Parties.

**Section 3.** As soon as reasonably practical, the City shall begin the process to fund, design, permit, publically bid and construct the Phase B Improvements shown in Exhibit B. The City will exercise its best efforts to complete construction of the Phase B Improvements by September 30<sup>th</sup>, 2017 and to complete any sewer improvements “down stream” of Phase B (Down Stream Improvements”), at the time when such sewer services are needed to provide sufficient capacity for the full build out of the currently approved Green Mountain PRD. In the event the City fails to have the Phase B Improvements constructed such that the Property may be connected to the Phase B Improvements for sewer service by September 30, 2019, or the Down Stream Improvements at the time when needed for the continued build out of the Green Mountain PRD as currently approved, then the Owner shall have the right to suspend payment of the Annual Payment, until such time as the Phase B or Down Stream Improvements are operational and available for use by the Property. Any Annual Payments that had not been paid would then be due prior to Owner’s connection to the Phase B Improvements or the Down Stream Improvements. In the event that the City does not complete the Phase B Improvements by December 31, 2021, then the Owner shall have no further obligation to make any remaining Annual Payments under this Agreement and the City shall refund all Annual Payments made to date and release to the Owner, any security provided for under this Agreement.

**Section 4.** In lieu of the Owner constructing all of the Phase B Improvements (which are provided for in the City's Capital Facilities Plan to serve the North Urban Growth Area), the City shall be paid by the Owner the amounts provided for in Exhibit C at the times provided for in Exhibit C (the "Annual Payments").

**Section 5.** In order to secure Owner's Annual Payments under this Agreement, Owner agrees to provide security to the City (the "Security") in the amount of a minimum of two Annual Payments as shown on Exhibit C. The Security may be in one of the following forms: (1) cash deposited into a segregated sub-account with a bank designated by the City with escrow provisions mutually agreeable to the Parties; (2) a surety bond from a company acceptable to the City, or (3) an irrevocable letter of credit. The City shall be the beneficiary of any Security and the City may draw on the security in the amount of any Annual Payment or portion of any Annual Payment not paid by the Owner by its due date upon receipt by the bank or issuer of the Security of a written certificate of the City Finance Director demanding payment of the sum identified in the certificate. The City may make consecutive demands for payment under the Security until its entire principal balance has been paid to the City. If the surety bond is for a term less than 15 years, the surety bond shall provide that the City may draw on the surety bond 30 days prior to its expiration if the Owner has not provided a substitute surety bond or other acceptable security prior to the termination of the letter of credit. If the letter of credit is for a term less than 15 years, the letter of credit shall provide that the City may draw on the letter of credit 30 days prior to its expiration if the Owner has not provided a substitute letter of credit or other acceptable security prior to the termination of the letter of credit. Security in the form of cash may be invested by the City in any permitted investments for City funds and interest earnings shall be retained by the City. Any cash remaining in this sub account at the termination of this Agreement shall be returned to Owner.

Any of the Annual Payment amounts not secured as provided for in the preceding paragraph, shall be secured by Owner granting the City a first lien position on a portion of the Property legally described in Exhibit D under the terms and conditions of Exhibit D (the "Initially Liened Property"). The Initially Liened Property shall have a 2015 assessed value, or appraised value based on an appraisal acceptable to the City (where such acceptance shall not be unreasonably withheld), whichever is greater, not less than \$3,724,948.50 (which upon execution of this Agreement will be approximately equal to 175% of 13 estimated Annual Payments as shown on Exhibit C). Periodically, the Owner may substitute a different portion of the Property at Owners discretion, to replace the Initially Liened Property then subject to the lien ("Substituted Liened Property"). The Substituted Liened Property must have an assessed or appraised value based on an appraisal acceptable to the City, (where such Acceptance shall not be unreasonably withheld) of at least 175% of the Annual Payments remaining to be paid minus two payments (the "Remaining Payments"). For example, if there are ten Annual Payments remaining to be paid, the Substituted Liened Property must have an appraised or assessed value of 175% of eight (8) Annual Payments. Upon the Owner identifying any Substituted Liened Property and once the City deems the appraisal acceptable, the City shall release the Initially Liened Property from the lien and deed of trust; and shall

replace it with the Substituted Liened Property. The Owner shall be responsible for any costs associated with the substitution of any security under this section. The City will not consent to release any Liened Property if the Owner is in default of any obligations under this Agreement.

At any time during this Agreement, the Owner shall have the right to prepay any or all of the Annual Payments remaining to be paid, under this Agreement.

The City shall provide the Owner with notice of default and an opportunity to cure a default under this Section in the following manner: City shall provide written notice to the Owner of the amount and type of any default under this Section. Upon receipt of such notice of default by the Owner under this Section, the Owner shall within 30 days cure such default, subject to a late payment charge of 9% per annum on any Annual Payment amount unpaid as of the due date thereof.

**Section 6.** The Owner intends (but is not required) to construct interim sewer improvements on Goodwin Road to provide service to the Property until such time that Phase B improvements are completed (“Phase A Improvements”). These Phase A improvements are also identified on Exhibit B. The approximate capacity of the Phase A Improvements is 350 Equivalent Residential Dwelling Units (“ERUs”). The City agrees that the Owner may utilize the capacity in the Phase A Improvements or the City may allow others (“Latecomers”) to utilize the remaining actual capacity above 201 ERU’s until such time that the permanent Phase B improvements are completed. The Owner may request and apply to the City for a Latecomer Agreement which would obligate the City to collect from the Latecomer a latecomers fee that is equal to the cost of the design, permitting and construction of the Phase A Improvements multiplied by the percentage of 350 ERUs utilized by the Latecomer. Should the Owner apply for a Latecomer Agreement, it will be considered separately by the City from this Agreement.

In the event that the City has not completed construction of the Phase B Improvements prior to the exhaustion of the capacity in the Phase A Improvements, the Owner shall have ability at its sole cost and expense, to construct and utilize any additional, lawfully available capacity in the Phase A system (“Additional Phase A Improvements”) utilizing a reasonable design approved by the City. The Owner shall be responsible for completing all analyses and investigations to document that there is available capacity in the Phase A system and the City will need to approve all analyses prior to the Owner starting design on any Additional Phase A Improvements.

If Additional Phase A Improvements are constructed by the Owner and the City allows such capacity to be used to serve property other than Owners Property, the Owner may request and apply to the City for a Latecomer Agreement which would obligate the City to collect from the Latecomer a latecomers fee that is equal to the pro rata share of the cost of the design, permitting and construction of the Additional Phase A Improvements based upon the

percentage of capacity of the Additional Phase A improvements utilized by the Latecomer. Should the Owner apply for a Latecomer Agreement, it will be considered separately by the City from this Agreement.

The Owner shall design and construct all temporary Phase A Improvements, Additional Phase A Improvements and all temporary sewer improvements on the Property such that they can be properly decommissioned or abandoned once the permanent Phase B Improvements are completed. Additionally, the Owner shall be responsible for decommissioning or abandoning all temporary improvements on the Property once the permanent Phase B improvements are completed.

The City shall issue to the Owner, Sewer System Development Charge Credits (SDC Credits) in an amount equal to thirty-three percent (33%) of the Annual Payment amount paid by the Owner under Exhibit "C". In the event the Owner constructs any portion of the Phase B Improvements, in addition to any SDC credits authorized to be paid to Owner under this section, the Owner shall be entitled to thirty-three percent (33%) of the cost of the Phase B Improvements constructed by the Owner as estimated in the City's Capital Facilities Plan in effect on the date of this Agreement. .

**Section 7. Remedies.** Should a disagreement arise between the City and Developer regarding the interpretation and application of this Agreement, 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 judicial action filed in the Clark County Superior Court. The remedies provided for in Section 3, shall be in addition to any other remedies the Owner may have for failing to construct the Phase B or Down Stream Improvements.

**Section 8. 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, nor shall any waiver by a party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this non-waiver clause.

**Section 9. 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 10. 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 11. Inconsistencies.** If any provisions of the Camas Municipal Code are deemed inconsistent with the provisions of this Agreement, the provisions of this Agreement shall prevail.

**Section 12. Binding on Successors and Recording.** The rights and obligations created by this Agreement are assignable and shall be binding upon and inure to the benefit of Owner, the City, and their respective heirs, successors and assigns, with the exception that any assignment by Owner shall be consented to by the City, which consent shall not be unreasonably withheld. If Owner properly assigns its rights and obligations under this Agreement and no longer owns any portion of the Property, the City shall release Owner from any further obligation or liability under this Agreement. The rights and obligations created by this Agreement shall also run with the land, but only with respect to those portions of the Property that have not received final plat approval for a subdivision or Site Plan approval for a commercial or multi family development. Only Owner and the City or their assigns shall have the right to enforce the terms of this Amendment. This Agreement shall be recorded against the real property indicated on Exhibit "A" with the Clark County Auditor.

**Section 13. Recitals.** Each of the recitals contained herein are intended to be, and are incorporated as, covenants between the parties and shall be so construed.

**Section 14. Amendments.** This Agreement may only be amended by mutual agreement of the parties. Pursuant to RCW 36.70B.170(4), the City reserves the authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

Exhibits:

Exhibit "A": Legal Description of Property

Exhibit "B": Phase B Improvements to be constructed by the City and Phase A Improvements to be constructed by Owner.

Exhibit "C": Annual Payment Schedule

Exhibit "D": Legal Description of Initially Liened Property.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the dates set forth below:

CITY OF CAMAS

GREEN MOUNTAIN LAND LLC

By \_\_\_\_\_  
Title \_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_

STATE OF WASHINGTON             )  
   ) ss.  
County of Clark                             )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute this instrument and acknowledged it as the \_\_\_\_\_ of GREEN MOUNTAIN LAND, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_, 2015.

\_\_\_\_\_  
NOTARY PUBLIC for the State of Washington,  
Residing in the County of Clark  
My Commission Expires: \_\_\_\_\_

STATE OF WASHINGTON             )  
   ) ss.  
County of Clark                             )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute this instrument and acknowledged it as the \_\_\_\_\_ of the CITY OF CAMAS, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_, 2015.

\_\_\_\_\_  
NOTARY PUBLIC for the State of Washington,  
Residing in the County of Clark  
My Commission Expires: \_\_\_\_\_