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## CARNATION CITY COUNCIL AGENDA Special Meeting

*Mayor Jim Ribail, Deputy Mayor Tim Harris, Ryan Burrell, Dustin Green, Adair Hawkins*

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**DATE:** August 22<sup>nd</sup>, 2023

**TIME:** 6:30 P.M.

**JOIN ONLINE VIA ZOOM:** <https://bit.ly/3DMTfe9>

**Meeting ID:** 859 4357 9573

**Passcode:** 665313

**Dial by location:** (253) 215 - 8782

For inquiries and/or assistance regarding how to use the City's online meeting format please email [clerk@carnationwa.gov](mailto:clerk@carnationwa.gov), or call (425) 333-4192.

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- 1. CALL TO ORDER:** Mayor Jim Ribail
- 2. APPROVAL OF AGENDA:** Mayor and Council

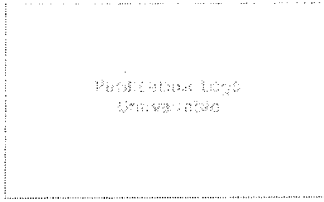
**3. PUBLIC HEARING:**

**NOTICE IS HEREBY GIVEN** that the Carnation City Council will hold a public hearing to receive and consider public comment regarding a potential Development Agreement with The Remlinger Group for the Property referred to as King County Parcel No. 1625079073 (The Schefer Property). A copy of the Proposed Developers Agreement can be found in the Agenda Packet, on our website, or at City Hall. The hearing is open to the public. All interested persons are encouraged to listen and/or attend the public hearing and to provide oral and/or written comments. Oral comment will be limited to 3 minutes per person.

- 4. ADJOURNMENT:** Mayor Jim Ribail



**Seattle Times**



Publication Name:  
**Seattle Times**

Publication URL:

Publication City and State:  
**Seattle, WA**

Publication County:  
**King**

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Notice Popular Keyword Category:

Notice Keywords:

Notice Authentication Number:  
**202308171914107016370**  
**2457990594**

Notice URL:

[Back](#)

Notice Publish Date:  
Monday, July 24, 2023

**Notice Content**

LEGAL NOTICE CITY OF CARNATION -PUBLIC HEARING- NOTICE IS HEREBY GIVEN that the Carnation City Council will hold a public hearing to receive and consider public comment regarding a potential Development Agreement. The hearing will be conducted during the regular meeting of the Carnation City Council on August 3rd, 2023 at 6:30 PM or soon thereafter. The hearing is open to the public. All interested persons are encouraged to listen and/or attend the public hearing and to provide oral and/or written comments. Oral comment will be limited to 3 minutes per person. For inquiries and/or assistance regarding how to attend or participate in this hearing using the City's remote electronic format, please visit [www.carnationwa.gov](http://www.carnationwa.gov) or contact the city clerk. This notice is published pursuant to CMC 1.14.010 & 15.100.040(B). CITY OF CARNATION Lora Wilmes, City Clerk Publish in the Seattle Times

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**Snoqualmie Valley Record**



Publication Name:

**Snoqualmie Valley Record**

Publication URL:

[www.valleyrecord.com](http://www.valleyrecord.com) (<http://www.valleyrecord.com>)

Publication City and State:

Snoqualmie, WA

Publication County:

King

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Notice Popular Keyword Category:

Notice Keywords:

Notice Authentication Number:

202308171912572030604

2457990594

Notice URL:

[◀ Back \(Search.aspx#searchResults\)](#)

Notice Publish Date:


Friday, August 11, 2023

**Notice Content**

**LEGAL NOTICE CITY OF CARNATION -PUBLIC HEARING- NOTICE IS HEREBY GIVEN** that the Carnation City Council will hold a public hearing to receive and consider public comment regarding a potential Development Agreement with The Remlinger Group for the Property referred to as King County Parcel No. 1625079073. A copy of the Proposed Developers Agreement can be found on our website or City Hall. The hearing will be conducted during the Special meeting of the Carnation City Council on August 22rd, 2023 at 6:30 PM or soon thereafter. The hearing is open to the public. All interested persons are encouraged to listen and/or attend the public hearing and to provide oral and/or written comments. Oral comment will be limited to 3 minutes per person. The Responsible Official for the City of Carnation issued a Mitigated Determination of Non-significance (MDNS) for this proposed Business Park and Development Agreement effective August 11, 2023, pursuant to WAC 197-11-340(2) and WAC 197-11-350. The comment period ends August 25th, 2023. For inquiries and/or assistance regarding how to attend or participate in this hearing using the Citys remote electronic format, please visit [www.carnationwa.gov](http://www.carnationwa.gov) or contact the city clerk. This notice is published pursuant to CMC 1.14.010 & 15.100.040(B). CITY OF CARNATION Lora Wilmes, City Clerk Publish in the Sno Valley Record #981930 8/11/23 ad+#981930]

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**Schefer Park Property Purchase Agreement (PSA)**

**REAL PROPERTY PURCHASE AGREEMENT**

THIS REAL PROPERTY PURCHASE AGREEMENT ("**Agreement**") is hereby made and entered into as of the Effective Date (as defined in Section 16 below) by and between **THE CITY OF CARNATION**, a political subdivision of the State of Washington ("**Seller**"), and [**REMLINGER ENTITY**], a Washington limited liability company ("**Purchaser**"), with reference to the following facts:

A. Seller is the owner of that certain real property consisting of approximately 7.24 acres, being a portion of the land located at 4301 Larsen Avenue, Carnation, WA, King County Tax Parcel Number 1625079073 ("**Parent Parcel**"), which portion is currently identified as Lot 2 of the Short Plat (defined in subsection 12(a)(xiii) below) and legally described on **Exhibit "A-1"** (the "**Land**"). Following legal segregation from the Parent Parcel, as described herein, Purchaser desires to acquire the Land, together with all improvements, rights, privileges, easements, buildings, leases, tenements, hereditaments, rights of way and appurtenances that belong or appertain to the Land and are owned by Seller (collectively, the "**Property**").

B. Purchaser desires to purchase the Property from Seller, and Seller desires to sell the Property to Purchaser, upon the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are all hereby acknowledged by each of the parties hereto, the parties hereto agree as follows:

1. Purchase Price.

Subject to and pursuant to the following terms and conditions, Seller shall sell and transfer the Property to Purchaser and Purchaser shall purchase the Property from Seller and pay to Seller the sum of Two Million Four Hundred Thousand Dollars (\$2,400,000.00) ("**Purchase Price**"). At Closing (as defined in Section 3 below), the Earnest Money (as defined in Section 2 below) shall be paid to Seller and credited against the Purchase Price, and Purchaser shall deliver to Seller immediately available and collectible funds equal to the balance of the Purchase Price, plus or minus Purchaser's share of closing costs, prorations, credits and charges payable pursuant to this Agreement.

2. Earnest Money. Within three (3) business days after the Effective Date (as defined below), Purchaser shall open an escrow with Chicago Title Insurance Company ("**Title Company**"), 3002 Colby Avenue, Suite 200, Everett, Washington, Attention: Lorrie Thompson, and shall deposit with Title Company a note in the amount of One Hundred Twenty Thousand Dollars (\$120,000.00) (the "**Earnest Money Note**") substantially in the form attached hereto as **Exhibit "B"**.

(a) Unless Purchaser elects to terminate this Agreement in accordance with the provisions of Section 7 below (or this Agreement otherwise has sooner terminated in accordance

Remlinger/City of Carnation

with its terms), Purchaser shall, on or before the Feasibility Expiration Date defined in Section 7(a) below, (sometimes referred to herein as the "**Earnest Money Deposit Date**") convert the outstanding principal amount of the Earnest Money Note to cash ("**Earnest Money Deposit**," which shall be deemed to include any Extension Deposit(s), as defined in Section 7 below) (and Title Company shall return the Earnest Money Note to Purchaser), which shall be deemed non-refundable and released to seller (except for a default by Seller, failure of a Purchaser Condition, casualty, condemnation or in the event any material representation or material warranty of Seller shall not be substantially true and correct at the Closing).

Commented [A1]: Language added

(b) The Earnest Money Deposit shall be applicable to the Purchase Price and, upon conversion to cash, shall be deposited into a federally insured interest bearing account by the Title Company and all interest shall accrue for the benefit of Purchaser. "**Business Days**" shall mean each Monday through Friday, excluding United States and State holidays, and "**Business Day**" shall mean any one of the days otherwise comprising Business Days.

(c) If Purchaser does not timely make the Earnest Money Deposit, Purchaser shall be deemed to have elected to terminate this Agreement, in which case Title Company shall immediately return the Earnest Money Note to Purchaser whereupon this Agreement shall terminate and neither party shall have any further rights, obligations or liabilities hereunder, except for matters that, by the terms of this Agreement, expressly survive termination of this Agreement.

### 3. Closing.

(a) The consummation of the purchase and sale of the Property contemplated under this Agreement ("**Closing**") shall be defined as the date that the statutory warranty deed, the form of which is attached hereto as **Exhibit "C"** (the "**Deed**"), conveying the Property to Purchaser is recorded. The Closing shall occur on or before the date ("**Closing Date**") that is thirty (30) days following the later of (i) Purchaser's written notice to Seller that Purchaser has received any and all permits from any and all governmental entities, agencies, and/or departments having jurisdiction over the Property, as necessary or appropriate, in Purchaser's sole and absolute discretion for the construction of the Project and/or any portion thereof; and (ii) recording of the final Short Plat, unless mutually extended.

(d) Consistent with the foregoing, Closing shall occur on or prior to the Closing Date. Seller agrees to deliver vacant possession of the Property to Purchaser at Closing in substantially the same condition existing as of the Effective Date (except as may be expressly provided to the contrary in this Agreement), normal wear and tear excepted, free of any right of possession or claim to right of possession by any party other than Purchaser.

4. Closing Costs. Seller shall pay its own attorneys' fees, the costs of recording the Deed, all real estate or other excise taxes, and the premium for the issuance to Purchaser of a standard form ALTA Standard Coverage Owner's Policy of Title Insurance. Purchaser shall pay its own attorneys' fees, the additional premium charges for the issuance of an ALTA Extended Coverage Owner's Policy of Title Insurance ("**Title Policy**"), the cost of any Survey (defined below) Purchaser chooses to obtain or which is required by the Title Company for extended

coverage and any endorsements required by Purchaser, as well as the cost of any premiums charged for any amount of title insurance desired by Purchaser in excess of the Purchase Price. Any closing costs not otherwise provided for herein shall be paid by the party legally responsible therefor or, if no law applies, according to prevailing custom for commercial transactions in County.

5. Prorations.

(a) Seller shall be responsible for and shall promptly pay all utility charges and similar charges with respect to the Property attributable to the period up to and including the Closing Date. All real property ad valorem taxes, special taxes, assessments, deposits, rents and security deposits with regard to any leases, and personal property taxes shall be prorated (employing a 365-day year) between Purchaser and Seller as of the Closing Date based upon the most recently available property assessment. If such assessment is not available for the year in question, taxes shall be re-prorated when the amount thereof can be ascertained. All assessments levied against the Property shall be paid in full by Seller on or before Closing, even if said assessments are due in installments subsequent to Closing. If increased taxes are, after Closing, determined to be due for any year prior to the year in which Closing occurs, Seller shall be obligated for the payment of such additional taxes.

(b) If any errors or omissions are made regarding adjustments and prorations pursuant to this Section 5, the parties shall make the appropriate corrections promptly upon the discovery thereof. If any estimates are made at the Closing regarding adjustments or prorations, the parties shall make the appropriate correction promptly when accurate information becomes available. Any corrected adjustment or proration shall be paid in cash to the party entitled thereto.

(c) The provisions of this Section 5 shall survive the Closing for one year.

6. Inspections Prior to Closing.

(a) Purchaser and its representatives, consultants and contractors shall at all times before the Closing have the privilege, opportunity and right of entering upon the Property, including, without limitation, any buildings and other improvements located thereon, in order to inspect and examine same and perform boundary, topographic and like surveys and inspections of the Property, as well as other tests and inspections of same (including, without limitation, geotechnical and environmental tests, studies and examinations, soil tests, borings, percolation tests and other tests needed to determine surface, subsurface and topographic conditions). Purchaser hereby releases, indemnifies, holds harmless and agrees to defend Seller from all liability, including, without limitation, lien claims or personal injury or damage suits, arising directly out of or relating to any testing or inspection carried out by Purchaser and/or its authorized agents for this purpose; provided that Purchaser shall have no liability or obligation in connection with the discovery or release of any material, or any condition, on, in, or about the Property, unless any such material was brought onto the Property, or any such condition was created solely, by Purchaser. Purchaser will give Seller at least two (2) business days' notice before any materially invasive testing or inspection, and shall promptly return the Property to its prior condition after completion of any such work, subject to applicable law. Purchaser's obligations under this section 6(a) survive termination of this Agreement.

(b) Seller represents and warrants to Purchaser that (i) Seller has the authority to allow Purchaser to enter upon the Property to perform the tests, studies and examinations contemplated hereby or have been obtained by Seller, (ii) Purchaser has the right to such entry by virtue of such authority, and (iii) Seller will hold Purchaser harmless from and against any claim, damage, expense or liability suffered by Purchaser with respect to any claim made against Purchaser as a result of any breach of such representations and warranties, provided that, without expanding by implication the scope of the foregoing covenant, the foregoing agreement to hold harmless shall not apply to any loss, cost, damage, expense or liability arising out of or related to Purchaser's negligence or willful misconduct.

7. Feasibility Contingency.

(a) It is specifically understood that Purchaser presently contemplates construction of, among other improvements, a light industrial project on the Property ("**Project**"), with density, design, improvements, and uses conceptually depicted on **Exhibit "D"** ("**Project Concept Drawing**"). It is, therefore, specifically agreed that Purchaser's obligation to close hereunder is conditioned upon the satisfaction of each of the following conditions ("**Purchaser Conditions**") within the Feasibility Period, or by such later date as may be provided below (any of which conditions may be waived by Purchaser upon giving written notice of such waiver to Seller) ("**Feasibility Contingency**"). For purposes of this Agreement, the "**Feasibility Period**" shall mean the period of time between and including the Effective Date and the first Business Day ("**Feasibility Expiration Date**") after the date that is one full calendar year following the later of (i) the Effective Date or (ii) the date that Seller delivers all of the Property Materials (defined in Section 7(b) below); provided that the Feasibility Expiration Date will be delayed for so long as the conditions set forth in Section 7(c) are not satisfied. If any of the Purchaser Conditions have not been satisfied as of the then-current Feasibility Expiration Date, then Purchaser shall have the right to extend the Feasibility Period until the date that is the next Business Day following the ninety (90) day period after said Feasibility Expiration Date by converting ~~Ten-Fifty~~ Thousand and No/100 Dollars (\$50,000.00) of the principal amount of the Earnest Money Note to cash ("**Extension Deposit**"), which Extension Deposit, along with any previous Extension Deposits, shall be deemed to be part of the Earnest Money Deposit and shall be non-refundable (except for a default by Seller, failure of a Purchaser Condition, casualty, condemnation or in the event any material representation or material warranty of Seller shall not be substantially true and correct at the Closing). Purchaser shall have the right extend the Feasibility Period as provided in this paragraph up to ~~four-two~~ (42) times.

Commented [A2]: Changes: \$50,000 and two extension periods

(b) Within ~~ten-twenty~~ (42) Business Days after the Effective Date, Seller shall furnish to Purchaser the following to the extent in Seller's possession or control, whether in paper, electronic, film or other medium or format: true and correct copies of all documents and records relating to the Property, including, without limitation, leases; appraisals; engineering, environmental, and other preliminary or completed, planning or site studies; surveys; plans; development agreements, licenses, permits, maps, certificates of occupancy, tax statements, delineations; reports; applications; memoranda (interagency or otherwise); meeting minutes; ordinances; and other materials related to the Property ("**Property Materials**"). Further to this, Seller shall furnish any other documentation reasonably requested by Purchaser which might assist Purchaser in its investigation, to the extent in Seller's possession or control. The Purchaser Conditions are as follows:

Commented [A3]: Change: 20 business days

(i) Purchaser obtaining at its expense (a) a boundary and a topographic survey of the Property (collectively, "Survey"), prepared by a Washington Registered Land Surveyor, (b) inspection reports and certifications respecting such Survey prepared by the surveyor as reasonably required by Purchaser and/or the Title Company, and (c) feasibility studies and any other appraisals, inspections, assessments, reports, tests, or studies desired by Purchaser, showing that the Property is satisfactory to Purchaser, as determined in its sole and absolute discretion.

(ii) Purchaser receiving confirmation that all utility lines necessary for the construction and operation of the Project, including but not limited to water, telephone, sanitary sewer, storm sewer, natural gas and electricity lines, will be available at the boundaries of the Property and will be available, sufficient and satisfactory, in Purchaser's sole discretion, for Purchaser's use in connection with the construction and operation of the Project, and that Purchaser's ability to obtain all such utility services will be conditioned solely upon the payment of such tap-on fees and user charges as are normally and uniformly imposed by the utility companies or governmental agencies supplying such services in King County.

(iii) Without limiting clause (i) above, Purchaser's receipt, at Purchaser's sole cost and expense, of (1) soil test studies with regard to the Property confirming that suitable soil conditions exist for construction of the Project; and (2) such tests and studies as Purchaser may deem necessary or appropriate to determine the environmental condition of the Property, such tests and studies to include, without limitation, so-called "Phase I" environmental site assessments and such additional testing, including so-called "Phase II" environmental site assessments, as determined by Purchaser to be necessary, in Purchaser's sole and absolute discretion, and all of which tests, studies, assessments, audits and reports confirm the absence of any and all forms of environmental surface, subsurface, groundwater and/or other contamination and are in all other respects acceptable to Purchaser.

(iv) Seller delivering to Purchaser an estoppel certificate from Seller's existing tenants, if any, in form and substance satisfactory to Purchaser attesting to such tenants waiver or satisfaction of any existing right of first refusal or option.

(v) Mutual execution of the Development Agreement (defined in Section \_\_ below) and full and final approval thereof by the City Council of the City of Carnation, including approval as to form by the city attorney.

(vi) The Title Company being irrevocably and unconditionally committed to issue an ALTA extended coverage owner's policy of title insurance insuring fee title to the Property in Purchaser in an amount equal to the Purchase Price, subject only to the Permitted Exceptions.

(vii) Purchaser satisfying itself as to such other matters as Purchaser, in its sole discretion, deems to be necessary or desirable for the construction and operation of the Project.



In the event Purchaser in its sole and absolute discretion is not satisfied with the Property, in its sole and absolute discretion, Purchaser shall either (i) terminate this Agreement by giving written notice to Seller on or before the end of the Feasibility Period, whereupon Title Company shall distribute to Seller, as applicable, the Earnest Money Deposit, to the extent previously made by Purchaser (and, if prior to full conversion, return the Earnest Money Note to Purchaser) and this Agreement shall be null and void and of no further force or effect with Purchaser and Seller having no further rights, obligations or liabilities hereunder except as otherwise set forth herein, or (ii) waive the Feasibility Contingency and consummate the purchase of the Property as set forth herein.

(c) In addition, Purchaser Conditions shall include the following (unless Purchaser waives any waivable conditions):

(i) Seller's performance of all of its obligations under this Agreement in accordance with the provisions hereof;

(ii) The truth and accuracy of Seller's warranties and representations hereunder; and

(iii) Purchaser's receipt of any and all permits from any and all governmental entities, agencies, and/or departments having jurisdiction over the Property, as necessary or appropriate, in Purchaser's sole and absolute discretion for the construction of the Project and/or any portion thereof.

(vi) The absence of any material change in the status of the use, title, occupancy or physical condition of the Property (including, without limitation, any such change caused by casualty or condemnation), unless solely caused by Purchaser or its consultants or contractors, between the Effective Date and the Closing Date (inclusive) that has not been approved in writing by Purchaser.

Should any one or more of the conditions precedent listed in (c) above not be satisfied or waived in writing by Purchaser on or before the Closing Date, then Purchaser may terminate this Agreement by giving written notice to Seller, whereupon Title Company shall immediately refund to Purchaser all Earnest Money, which termination shall be in addition to exercising any other remedy available to Purchaser hereunder in the event of a failure of a condition precedent due to Seller's acts or omissions.

8. Title Review and Title Policy.

(a) Within five (5) Business Days of the Effective Date, Seller will cause the Title Company to issue to Purchaser, a preliminary commitment for an ALTA owner's policy of title insurance covering the Property, together with a copy of (or electronic link to) each recorded document referred to in the exceptions to title identified in such title commitment (the "**Title Commitment**"). During the period beginning on the Effective Date and ending at 5:00 p.m. (Pacific Time) on the date that is twenty (20) Business Days after Purchaser's receipt of the Title Commitment (the "**Title Review Period**"), Purchaser may give Seller a notice in writing

("Purchaser 's Title Notice"), identifying those matters, if any, appearing in the Title Commitment or Survey to which Purchaser objects ("**Disapproved Exceptions**").

(b) If Purchaser timely objects to any title exceptions in Purchaser 's Title Notice, Seller shall have ten (10) Business Days after receipt of Purchaser 's Title Notice to notify Purchaser in writing that Seller will remove the Disapproved Exceptions prior to Closing or that Seller will not remove the exceptions ("**Seller's Title Response**"). Seller's failure to deliver a Seller's Title Response shall be deemed an election not to remove any disapproved exceptions set forth in Purchaser 's Title Notice.

(c) If Seller elects, or is deemed to have elected, not to remove any Disapproved Exception, Purchaser shall have until the Feasibility Expiration Date, to either:

- (i) terminate this Agreement by giving notice of termination to Seller, in which event the Earnest Money Note shall be returned to Purchaser, or
- (ii) waive its disapproval of those exceptions which Seller will not remove and agree to purchase the Property subject to such disapproved exceptions.

Without limiting Purchaser 's right to object to additional exceptions appearing in an Updated Title Commitment or Updated Survey as provided in Section 8(g) below, Purchaser 's delivery of the entire Earnest Money Deposit shall be deemed to be an election pursuant to (ii) immediately above.

(d) All exceptions that Purchaser has approved hereunder, either by Purchaser 's actual or deemed approval or its actual waiver of a disapproval, as well as (A) non-delinquent general property taxes (which shall be subject to proration as provided herein); (B) exceptions created by or resulting from the acts or omissions of Purchaser; and (C) the customary pre-printed general exceptions contained in the ALTA extended coverage owner's policy form, except to the extent Title Company agrees to delete or modify said exceptions prior to expiration of the Feasibility Period (or such later date as may be provided in Section 8(g)) below) shall be deemed to be "**Permitted Exceptions**" upon issuance of the Title Policy (as defined in Section 8(i) below).

(e) Should Seller fail to remove any Disapproved Exceptions or cause Title Company to commit to irrevocably and unconditionally issue the Title Policy free and clear of such Disapproved Exceptions at or prior to Closing, Purchaser will be entitled to terminate this Agreement and receive a full refund of the Earnest Money Deposit or in the event such Disapproved Exceptions are monetary liens, cure and remove such liens, and all of Purchaser 's cost and expense reasonably incurred in connection with such cure shall be deducted from and credited against the Purchase Price.

(f) Purchaser may elect to obtain such endorsements as Purchaser requires; provided, however, that Seller shall only be responsible for the premium for the standard coverage portion of any title insurance policy and Purchaser shall be responsible for all costs for extended coverage that exceed the cost of the standard policy and for any endorsements requested by Purchaser.

(g) If the Title Company issues an updated title commitment ("**Updated Title Commitment**"), or if Purchaser obtains an updated survey ("**Updated Survey**") of the Property



prior to expiration of the Feasibility Period, in either case setting forth new exceptions for matters which were not included in the original Title Commitment or original Survey or new matters affecting title to the Property are otherwise discovered, then the foregoing process shall be repeated; provided, however that Purchaser will have ten (10) days after receipt of the Updated Title Commitment or Updated Survey (as the case may be), to give written notice of disapproval of any such exception.

(h) Seller shall accomplish any cure that Seller has agreed or is obligated to complete pursuant to this Section 8 on or before the Closing Date and such cure shall become a condition precedent to Closing in favor of Purchaser. If such cure is not accomplished by the Closing Date, Purchaser shall have the following options: either to (i) terminate this Agreement and treat such failure to cure as a Seller's Breach (as defined in Section 15 below) or (ii) waive its objections to the items that Seller did not cure and agree to purchase the Property subject to those items, which shall be deemed Permitted Exceptions.

(i) It shall be a condition to Purchaser's obligation to close, the Title Company shall issue to Purchaser an ALTA standard coverage Owner's Policy of Title Insurance at the Closing in the amount of the Purchase Price showing fee title to the Property vested in Purchaser as the insured (including extended coverage and such endorsements as the Purchaser requests the Title Company issue to Purchaser) for the full amount of the Purchase Price showing no exceptions other than the Permitted Exceptions and otherwise in accordance with the Title Commitment ("Title Policy"). Seller shall pay the premium for an ALTA owner's standard coverage policy of title insurance with the same liability amount and subject to the same exceptions and Purchaser will pay the difference in premium to obtain extended coverage and any endorsements or other additional costs (including without limitation any costs of required surveys) attributable to such coverage.

9. Casualty and Condemnation. If, at any time between the Effective Date and Closing (inclusive), all or any portion of the Property is materially damaged by casualty or condemned by any legally constituted authority for any public use or purpose, then Purchaser may elect either: (i) to terminate this Agreement, in which event Title Company shall immediately refund to Purchaser all Earnest Money, and neither Purchaser nor Seller shall have any further liabilities, obligations or rights with regard to this Agreement (except for matters that by the express terms hereof survive termination); or (ii) to collect at Closing (or at Closing receive a credit against the Purchase Price for) all proceeds from any condemnation or from any insurance policies insuring the Property from damage or destruction and have the terms of this Agreement remain in full force and effect and binding on the parties hereto (with Purchaser receiving a credit against the Purchase Price for any deductibles and the amount of any uninsured casualty). In the event of a condemnation in which Purchaser does not elect to terminate this Agreement pursuant to the foregoing terms, then the term Property, as used herein, shall thereafter refer to the Property less and except any portion thereof taken by such condemnation.

10. Assignment. Neither Seller nor Purchaser shall assign its interest hereunder, except to a related entity, without the prior written consent of the other party.

11. Survival of Closing. All warranties, covenants and representations made herein by either Seller or Purchaser shall survive Closing for one (1) year.

12. Seller's Representations, Warranties and Covenants.

(a) Seller represents, warrants and covenants to Purchaser that:

(i) Seller (x) has complete and full authority to execute this Agreement and to convey to Purchaser good and marketable fee simple title to the Property, in accordance with Section 8 of this Agreement, (y) will execute and deliver such other documents, instruments, agreements, including (but not limited to) affidavits and certificates, as are reasonably necessary to effectuate the transaction contemplated herein, and (z) will take all such additional action reasonably necessary or appropriate to effect and facilitate the consummation of the sale and purchase transaction contemplated herein. Each of the persons executing this Agreement on behalf of Seller further represents and warrants that the persons signing this Agreement on behalf of Seller are duly qualified and appointed representatives of Seller and have all requisite power and authority on behalf of Seller to enter into this Agreement as the valid, binding and enforceable obligation of Seller.

(ii) There are no material defects in or about the Property that would affect Purchaser's ability to develop the Project.

(iii) All assessments that are liens against the Property are shown in the official records of the taxing authorities in whose jurisdiction the Property is located; no improvements (site or area) have been constructed or installed by any public authority, the cost of which may be assessed in whole or in part against any part of the Property in the future; and Seller has not been notified of any possible future improvements that might create an assessment against any part of the Property.

(iv) Seller has not received any notice of, and has no knowledge of, any pending or threatened taking or condemnation of the Property or any portion thereof.

(v) Seller can and will deliver sole and exclusive possession of the Property to Purchaser at Closing, subject to the Permitted Title Exceptions. Seller will not further sell, encumber, convey, assign, pledge, or contract to sell, convey, assign, pledge, or encumber all or any part of the Property, nor restrict the use of all or any part of the Property, nor take or cause or allow to be taken any action in conflict with this Agreement at any time between the Effective Date and (x) Closing, or (y) the earlier termination of this Agreement pursuant to its terms.

(vi) The Property has legal access to and from all street fronts and adjoining rights-of-way.

(vii) Neither the entering into of this Agreement nor the consummation of the transactions contemplated hereby will constitute or result in a violation or breach by Seller of any judgment, order, writ, injunction or decree issued against or imposed upon it, or will result in a violation of any applicable law, order, rule, code, ordinance, or regulation of any governmental authority. There is no action, suit, proceeding or investigation

pending or threatened that creates a lien or that would become a cloud on the title to the Property or any portion thereof or that questions the validity or enforceability of the transaction contemplated by this Agreement or any action taken pursuant hereto in any court or before or by any Federal, district, county, or municipal department, commission, board, bureau, agency or other governmental instrumentality. Seller agrees to indemnify, defend (with counsel satisfactory to Purchaser) and hold harmless Purchaser, its employees, officers, members, attorneys, directors, agents, contractors, assigns and successors-in-interest, from any claims, liabilities or other actions that may arise as a result of the entering into this Agreement by Purchaser with Seller on account of the falsity of this representation.

(viii) Seller has no knowledge of, nor has Seller received any notice of, any actual or threatened action, litigation, or proceeding by any organization, person, individual or governmental agency (including governmental actions under condemnation authority or proceedings similar thereto) against the Property or Seller, nor has any such organization, person, individual or governmental agency communicated to Seller anything that Seller believes to be a threat of any such action, litigation or proceeding.

(ix) Seller has received no notice of and has no knowledge of any violations of law, municipal or county ordinances, or other legal requirements with respect to the Property or with respect to the use, occupancy or construction thereon.

(x) (1) none of the Property has been excavated, (2) no landfill was deposited on, or taken from, the Property, (3) no construction debris or other debris (including, without limitation, rocks, stumps, or concrete) was buried upon any of the Property, (4) no Hazardous Materials (as hereinafter defined) have been deposited on or about the Property, and (5) no asbestos-containing materials have been placed or introduced in any buildings or other improvements on the Property. "**Hazardous Materials**" or similar terms shall mean and include asbestos, asbestos-containing materials, petroleum and petroleum products, the group of organic compounds known as polychlorinated biphenyls, and any substances or materials that are regulated, controlled or prohibited under the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 690, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Sections 9601-9657, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Washington Model Toxics Control Act, Ch. 70A.305 RCW, or any similar State law or local ordinance or any other environmental law, the Federal Water Pollution Control Act, 33 U.S.C. §1251, the Clean Air Act, 42 U.S.C. § 7401, the Toxic Substances Control Act ("TCSA"), 15 U.S.C. § 2601, or any similar State law or local ordinance, or any other Federal, State or local environmental statutes, regulations, ordinances or other environmental regulatory requirements. If any Hazardous Materials that existed on the Property as of Closing shall be discovered and Seller notified prior to Closing, Seller covenants to have same at its sole cost and expense, remediated, removed or cleaned to the satisfaction of all appropriate governmental authorities, such obligation to survive Closing.

(xi) There are no billboards or other signs nor are there cemeteries, grave sites or burial sites or grounds or other sites of historic significance, located on the Property.

(xii) There is no pending or threatened rezoning of, or change of any development regulations or building moratorium affecting, all or any part of the Property.

(xiii) On or before the Feasibility Expiration Date, Seller shall complete and record the short subdivision, City of Carnation Preliminary Short Subdivision Application Number SHP22-0003 ("**Short Plat**"), which Short Plat shall formally segregate the Property from any and all other real property, such that the closing of the transaction contemplated hereby shall not violate the provisions of Ch. 58.17 RCW or other applicable law regulating the segregation of land.

In addition to all other rights and remedies of Purchaser set forth herein, Seller shall indemnify, defend (with counsel satisfactory to Purchaser), and hold harmless Purchaser, its employees, officers, shareholders, attorneys, directors, agents, contractors, assigns and successors-in-interest, from and against any and all claims, actions, loss, cost, damage and expense (including reasonable attorneys' fees, including fees on appeal) resulting from a breach by Seller of any of the representations, warranties and covenants contained in this Agreement.

(b) At all times prior to Closing, and without limiting the provisions of subparagraph (a) above or any other provision of this Agreement, Seller shall maintain the Property free from waste and neglect, shall maintain its existing insurance coverages thereon and shall keep and perform or cause to be performed all obligations of the owner of the Property under any recorded title documents, applicable laws and any mortgage affecting the Property. Seller shall tender possession of the Property to Purchaser in the same condition the Property was in when last inspected by Purchaser, normal wear and tear and casualty damage excepted, to the end that Seller shall not in any way take any action, permit or acquiesce in any action or fail to take any action that will cause a material increase in Purchaser's site development costs or otherwise delay or adversely affect any construction activities contemplated by Purchaser in connection with the Project. Without limitation, from the Effective Date to the Closing Date or earlier termination of this Agreement, Seller shall not do, suffer or permit, or agree to do, any of the following: (i) enter into any transaction with respect to or affecting the Property that would in any way prevent Seller's full performance hereunder, or limit or adversely affect Purchaser's rights hereunder or as an owner of the Property following Closing (including, without limitation, anything that may subject Purchaser to any cost, liability or expense or otherwise interfere with, delay or increase the cost of Purchaser's acquisition, development, construction and operation of the Project on the Property); (ii) sell, encumber or grant any interest in the Property or any part thereof in any form or manner whatsoever; (iii) enter into, amend, waive any rights under, terminate or extend any document or instrument affecting the Property without the prior written consent of Purchaser, or (iv) without limiting the foregoing, change the grade or other physical characteristics of the Property in any respect unless Purchaser has given its prior written approval to any such change. Seller shall indemnify, defend (with counsel satisfactory to Purchaser) and hold harmless Purchaser, its employees, officers, shareholders, attorneys, directors, agents, contractors, assigns and successors-in-interest, from and against any loss, cost, damage, expense or liability (including reasonable attorneys' fees, including fees on appeal) suffered or incurred as a result of Seller's breach of the foregoing covenant (such covenant to survive Closing), and, without limiting any of Purchaser's rights and remedies hereunder, Purchaser shall have the unconditional right, at its option, to extend the Feasibility Period and/or the Closing Date by up to one hundred eighty (180)

days as a result of any such breach by Seller.

(c) Seller shall not enter into, amend, waive any rights under, terminate or extend any document or instrument affecting the Property without the prior written consent of Purchaser,

13. **Notices.** All notices shall be personally delivered, sent via a nationally recognized overnight courier service (such as Federal Express, UPS or DHL) or sent by certified United States mail (return receipt requested), with a courtesy copy concurrently

sent via electronic mail. Notices sent via personal delivery, overnight courier service and electronic mail will be effective upon receipt, and notices sent by mail will be effective three (3) Business Days after being deposited with the United States Post Office, postage prepaid. Seller and Purchaser agree that notice may be given on behalf of each party by the counsel for each party and notice by such counsel in accordance with this Section 13 shall constitute notice under this Agreement. The addresses to be used in connection with such correspondence and notices are the following, or such other address as a party shall from time to time direct in writing by notice given pursuant to this Section 13, but any such notice of a new address shall not be effective until actually received by the other party:

Seller: City of Carnation  
4621 Tolt Avenue, P.O. Box 1238  
Carnation, WA 98014  
[ana.cortez@carnationwa.gov](mailto:ana.cortez@carnationwa.gov)

with a copy to: \_\_\_\_\_

Purchaser: [Remlinger Entity]  
32610 NE 32<sup>nd</sup> Street  
Carnation, WA 98014  
Phone: (206) 300-0772  
Email: [gary@remlingerfarms.com](mailto:gary@remlingerfarms.com)

with a copy to: The Remlinger Group  
Attn: Drake Remlinger  
Phone: (425) 330-1160  
Email: [drake@remlingergroup.com](mailto:drake@remlingergroup.com)

with a copy to: Ojala Law, Inc., P.S.  
PO Box 211  
Snohomish, WA 98291  
Attn: Nate R. Veranth

Phone: (425) 788-2222  
Email: [nate@ojalalaw.com](mailto:nate@ojalalaw.com)

14. Brokers.

(a) Each party represents and warrants to the other that neither has employed, retained or consulted a broker, agent or finder in carrying on the negotiations in connection with this Agreement or the purchase and sale referred to herein. Seller and Purchaser each hereby indemnifies and agrees to defend and hold the other harmless from and against any and all claims, demands, causes of action, debts, liabilities, judgments and damages (including, without limitation, court costs and attorneys' fees, inclusive of fees incurred in connection with enforcement of this indemnity and fees on appeal) that may be asserted or recovered against the indemnified party on account of any brokerage fee, commission or other compensation arising by reason of the indemnitor's breach of these representations and warranties the foregoing indemnities being herein referred to as the "**Brokerage Indemnities**"). The Brokerage Indemnities shall survive Closing or any sooner termination of this Agreement, notwithstanding any contrary provision of this Agreement.

(b) Drake Remlinger is a member of Purchaser and is a licensed real estate broker in the State of Washington.

15. Default.

(a) Seller's Default. If the purchase and sale contemplated by this Agreement is not consummated because of the default of Seller, Title Company shall immediately refund to Purchaser the Earnest Money Deposit without prejudice to any other legal or equitable right or remedy of Purchaser against Seller, including (but not limited to) specific performance. In addition, if the failure to close was based on a breach of warranty or intentional default by Seller, **Seller shall immediately reimburse Purchaser all of Purchaser's out-of-pocket due diligence costs up to 350,000.00.**

Commented [A4]: No changes here

(b) Purchaser's Default. If Purchaser fails or refuses to perform its obligations under this Agreement, and such failure or refusal is not cured within ten (10) Business Days after Purchaser's receipt of notice of such failure from Seller, then Seller may as its sole and exclusive remedy have, and Title Company shall deliver to Seller, the Earnest Money actually paid in cash to Title Company prior to the default, as full, complete and final liquidated damages, and not as a penalty. Seller and Purchaser hereby agree that it would be difficult, if not impossible, to ascertain the damages accruing to Seller as a result of a default by Purchaser under this Agreement, but that the parties have agreed upon the Earnest Money paid prior to the default as a reasonable estimate thereof. The payment of said liquidated damages, therefore, shall constitute Seller's sole and exclusive remedy against Purchaser at law and in equity and shall be in lieu of the exercise by Seller of any other legal or equitable right or remedy that Seller may have against Purchaser as a result of Purchaser's default.

16. Date of Agreement; Dates. If this Agreement is not signed simultaneously by both parties, it shall be considered to be an offer made by the party first executing it to the other party. In such event, said offer shall expire, unless sooner revoked, at midnight on the fifth (5th) Business

Day following execution by the offering party, unless by that time one copy executed by the party to whom the offer has been made shall have been placed in the mail or personally delivered to the party making the offer. The "**Effective Date**" of this Agreement shall be the date upon which it is accepted by the party to whom the offer is made. Whenever the last day for the exercise of any privilege or the discharge of any duty hereunder shall fall upon a Saturday, Sunday or any United States or State holiday, the party having such privilege or duty shall have until 11:59 p.m. Local Time on the next succeeding Business Day to exercise such privilege or to discharge such duty.

17. Miscellaneous.

(a) Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Washington.

(b) Waiver. Failure of either Purchaser or Seller to exercise any right given hereunder or to insist upon strict compliance with regard to any term, condition or covenant specified herein, shall not constitute a waiver of Purchaser's or Seller's right to exercise such right or to demand strict compliance with any term, condition or covenant under this Agreement.

(c) Counterparts. This Agreement may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Agreement.

(d) Captions. All captions, headings, paragraph and subparagraph numbers and letters are solely for reference purposes and shall not be deemed to be supplementing, limiting, or otherwise varying the text of this Agreement.

(e) Severability. The invalidity or unenforceability of a particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

(f) Time of the Essence. Time is of the essence of this Agreement.

(g) No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties hereto, to any person or entity other than the parties hereto.

(h) Exhibits and Schedules. The exhibits attached hereto are hereby incorporated herein by this reference.

(i) Amendment to this Agreement. Neither this Agreement nor any provision hereof may be changed, amended, modified, waived or discharged orally or by any course of dealing, but only by an instrument in writing signed by the party against which enforcement of the change, amendment, modification, waiver or discharge is sought.

(j) Fees and Other Expenses. Except as otherwise provided herein, each of the parties shall pay its own fees and expenses in connection with this Agreement.

(k) Entire Agreement. This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Purchaser and Seller as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of either party, shall be of any effect unless it is in writing and executed by the party to be bound thereby.

(l) Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto (as permitted pursuant to the provisions of this Agreement).

(m) Attorneys' Fees. If either party brings or commences any legal action or proceeding to enforce any of the terms of this Agreement (or for damages by reason of an alleged breach of this Agreement), the substantially prevailing party, if any, in such action shall be entitled to recover from the other party all reasonable attorneys' fees that may have been incurred, including any and all costs and expenses incurred in enforcing, perfecting and executing such judgment, and including all costs of appeal.

18. Development Agreement. The parties acknowledge and agree that Purchaser is purchasing the Property for purposes of constructing the Project in accordance with a development agreement, in the form attached hereto as Exhibit "E" and incorporated herein by this reference.

19. Moratoria. If, at any time prior to Closing, the City of Carnation, or any other governmental entity having jurisdiction over the Property, shall impose any development restrictions, including, without limitation, any moratorium, that materially inhibits, interferes with, or stops Purchaser's ability to apply for and/or receive final approval of, Purchaser's development permits ("**Development Restrictions**"), then the Feasibility Period shall be extended (or reinstated, as applicable) until the date that is one hundred eighty (180) days following the date that the Development Restrictions are repealed or expire. In such event, all relevant dates and timelines hereunder shall be adjusted accordingly.

20. Force Majeure. If, through no fault of Purchaser or Seller, and by reason of a Force Majeure Event (defined below), any contingency or condition in the Agreement cannot be timely completed, then all time periods relative to the applicable contingency or condition, including the time periods for the related notices and responses thereto, shall be extended for a reasonable time under the circumstances, up to one hundred eighty (180) days, and the contingency or condition shall be satisfied as soon as reasonably practicable. "**Force Majeure Event**" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence, making the means of performance objectively impossible. Force Majeure Events included acts of God, war, riots, strikes, fire, floods, epidemics, pandemics.

*[signatures on following page]*



IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year written below.

**SELLER:**

**CITY OF CARNATION**, a  
Political subdivision of the State of Washington

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date of Execution by Seller: \_\_\_\_\_

**PURCHASER:**

**[REMLINGER ENTITY]**  
a Washington limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date of Execution by Purchaser: \_\_\_\_\_

Remlinger/City of Carnation

EXHIBITS TO BE ADDED

- EXHIBIT "A" – Legal Description of Property
- EXHIBIT "B" – Earnest Money Note
- EXHIBIT "C" – Form of Deed
- EXHIBIT "D" – Project Concept Drawing
- EXHIBIT "E" – Form of Development Agreement

DRAFT

EXHIBIT "A-1"

Legal Description of the Land:

**[Formal legal description of Lot 2 of the Short Plat to be provided]**

DRAFT

## **Exhibit A-1**

### **Legal Description of the Property**

#### Site Description:

- a. Location: The subject property is located at 4300 Larson Avenue, Carnation WA 98014, and identified as Assessor's Parcel No. 162507-9073.
- b. Size and Description: The subject site is located on the west side of Larson Avenue, south of Entwistle Street. The property is configured as an irregular rectangle being approximately 7.52 acres in area. In its flag shaped configuration, the main body of the property is approximately 588 east to west and 550 feet north to south, and a 160 wide extension (flag) along its west boundary to the north for an additional 240 feet. The topography is relatively level, being at grade with the Larson Avenue right-of-way along its east boundary and having a slight downward slope to the west. The property has a street frontage of 155 feet along the Larson Avenue right-of-way (currently unimproved) which dead ends at the southern extent of the property's frontage. The depth of the property extends 560 feet to the west where it abuts King County's Tolt McDonald Park. Vegetation on the site consists of a maintained grass surface.

EXHIBIT "B"

Form of Earnest Money Note

*[see attached]*

DRAFT

EARNEST MONEY PROMISSORY NOTE

\$120,000.00

Seattle, Washington

\_\_\_\_\_, 2023

FOR VALUE RECEIVED, [**REMLINGER ENTITY**], a Washington limited liability company ("**Maker**"), promises to pay to Chicago Title Insurance Company, 3002 Colby Avenue, Suite 200, Everett, Washington ("**Title Company**"), the sum of ONE HUNDRED TWENTY THOUSAND AND NO/100ths DOLLARS (\$120,000.00) to be held in escrow for the benefit of both Maker and THE CITY OF CARNATION, a political subdivision of the State of Washington ("**Seller**").

The indebtedness evidenced by this promissory note (this "**Note**") is the Earnest Money described in the Real Property Purchase Agreement between Maker, as "Purchaser", and Seller dated effective \_\_\_\_\_, 2023 ("**Purchase Agreement**"). Title Company will hold this Note in escrow. This Note is not subject to interest.

The indebtedness evidenced by this Note will only be due as provided by the terms and conditions of the Purchase Agreement.

Upon Maker's payment in full of the indebtedness evidenced by this Note, the entire amount so paid will be conclusively deemed to be the "Earnest Money" under the Purchase Agreement, and Title Company will deposit, hold, pay and refund such Earnest Money in accordance with the terms of the Purchase Agreement. Title Company's acceptance of this Note will be conclusively deemed to be Title Company's agreement to the terms of this Note.

This Note will be construed and enforced in accordance with the laws of the State of Washington, and venue for any action to enforce or collect this Note will be in Seattle, King County, Washington.

[**REMLINGER ENTITY**],  
a Washington limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

EXHIBIT "C"

Form of Statutory Warranty Deed

Recording Requested by and  
After Recording Return to:

[ ]  
[ ]  
[ ]

STATUTORY WARRANTY DEED

**Grantor:** THE CITY OF CARNATION, a political  
subdivision of the State of Washington

**Grantee:** [REMLINGER ENTITY], a Washington limited  
liability company ("Purchaser"),

**Abbreviated Legal  
Description:** [ ]  
Complete legal description on Exhibit A.

**Assessor's Tax Parcel  
ID#:** [ ]

For the consideration of [Ten and no/100 Dollars], and other valuable consideration, THE CITY OF CARNATION, a political subdivision of the State of Washington ("Grantor"), does hereby convey and warrant to [REMLINGER ENTITY], a Washington limited liability company ("Grantee"), the real property situated in King County, Washington, legally described on Exhibit A attached hereto and incorporated herein.

SUBJECT TO: Items listed on Exhibit B attached hereto and incorporated herein.

[Signatures Follow]

DATED: This \_\_\_\_ day of \_\_\_\_\_, 2024.

GRANTOR:

CITY OF CARNATION, a political  
subdivision of the State of Washington

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney for the City of  
Carnation, WA, a political subdivision  
of the State of Washington

DRAFT



STATE OF WASHINGTON

COUNTY OF \_\_\_\_\_

ss.

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of **THE CITY OF CARNATION**, a political subdivision of the State of Washington, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington,  
residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_

DRAFT

EXHIBIT A  
TO STATUTORY WARRANTY DEED

Legal Description

[TO COME]

DRAFT

RECEIVED THIS DAY

AFTER RECORDING PLEASE RETURN TO:

APR 6 8 27 AM '99

City of Carnation  
P.O. Box 267  
Carnation, WA 98014  
Attn: D. Hunter

BY THE  
REC'D 10:49

**SPECIAL WARRANTY DEED**

Grantor: Val Roney, Personal Representative  
Grantee: City of Carnation  
Abbreviated  
Legal: Ptn. Govt. Lot 8 and NE 1/4 SW 1/4, 16-25-07.  
Parcel Nos.: 1625079073 and 1625079071

FILED BY PNWT  
366560-12

10/3


9904050001

THE GRANTOR, VAL RONEY, as Personal Representative of the Estate of Leah Kathleen Schefer, Deceased, King County Cause No. 98-4-04719-1SEA, for and in consideration of \$10.00 and other valuable consideration, grants, bargains, sells, conveys, and confirms to the CITY OF CARNATION, a Washington municipal corporation, GRANTEE, the following described real estate, situated in the County of King, State of Washington:

As described on Exhibit A, attached hereto and incorporated herein by reference.

The Grantor for herself and for her successors in interest does by these presents expressly limit the covenants of the deed to those herein expressed, and excludes all covenants arising or to arise by statutory or other implication, and does hereby covenant that against all persons whomsoever lawfully claiming or to claim by, through or under said Grantor and not otherwise, she will forever warrant and defend the said described real estate.

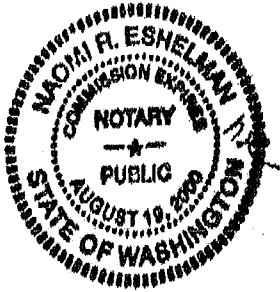
DATED: April 2, 1999.

  
VAL RONEY, Personal Representative of the  
Estate of Leah Kathleen Schefer, Deceased

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that Val Roney is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the **Personal Representative** of the Estate of Leah Kathleen Schefer to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

DATED: April 2, 1999



*Naomi R. Eshelman*  
Naomi R. Eshelman (Print Name)  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at Castroville  
My commission expires: 8/19/2000

9904060001

COPY

The land referred to in this commitment is situated in the county of King, state of Washington, and described as follows:

PARCEL A:

The east 588 feet of Government Lot 8, Section 16, Township 25 North, Range 7 East, W.M., in King County, Washington; EXCEPT the south 525 feet thereof; AND EXCEPT the east 30 feet of the north 393 feet, more or less, thereof; AND EXCEPT that portion thereof lying northeast of the southwesterly margin of an abandoned Great Northern Railway Company spur track.

PARCEL B:

The south 30 feet of the east 120 feet of the east 150 feet of the northeast quarter of the southwest quarter, and that portion of Government Lot 8 lying northeast of the southwesterly margin of an abandoned Great Northern Railway Company spur track; EXCEPT the east 30 feet thereof, all in Section 16, Township 25 North, Range 7 East, W.M., in King County, Washington.

END OF SCHEDULE A

NOTE FOR INFORMATIONAL PURPOSES ONLY:

The following may be used as an abbreviated legal description on the documents to be recorded, per amended RCW 65.04. Said abbreviated legal description is not a substitute for a complete legal description within the body of the document.

Ptn. Govt. Lot 8 and NE 1/4 SW 1/4, 16-25-07.

9904060001

EXHIBIT B  
TO STATUTORY WARRANTY DEED

Permitted Exceptions

---

DRAFT

RECEIVED THIS DATE

AFTER RECORDING PLEASE RETURN TO:

APR 6 8 21 AM '99

City of Carnation  
P.O. Box 267  
Carnation, WA 98014  
Attn: D. Hunter

BY THE  
REC'D 10/3

**SPECIAL WARRANTY DEED**

Grantor: Val Roney, Personal Representative **FILED BY PNWT**  
Grantee: City of Carnation **366560-12**  
Abbreviated  
Legal: Ptn. Govt. Lot 8 and NE 1/4 SW 1/4, 16-25-07. **10/3**  
Parcel Nos.: 1625079073 and 1625079071

9904060001

THE GRANTOR, VAL RONEY, as Personal Representative of the Estate of Leah Kathleen Schefer, Deceased, King County Cause No. 98-4-04719-ISEA, for and in consideration of \$10.00 and other valuable consideration, grants, bargains, sells, conveys, and confirms to the CITY OF CARNATION, a Washington municipal corporation, GRANTEE, the following described real estate, situated in the County of King, State of Washington:

As described on Exhibit A, attached hereto and incorporated herein by reference.

The Grantor for herself and for her successors in interest does by these presents expressly limit the covenants of the deed to those herein expressed, and excludes all covenants arising or to arise by statutory or other implication, and does hereby covenant that against all persons whomsoever lawfully claiming or to claim by, through or under said Grantor and not otherwise, she will forever warrant and defend the said described real estate.

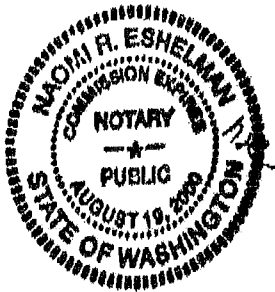
DATED: April 2, 1999.

  
VAL RONEY, Personal Representative of the  
Estate of Leah Kathleen Schefer, Deceased

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that Val Roney is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the **Personal Representative of the Estate of Leah Kathleen Schefer** to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

DATED: April 2, 1999



*Naomi R. Eshelman*  
Naomi R. Eshelman (Print Name)  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at Corvaton  
My commission expires: 8/19/2000

9904060001

COPY



The land referred to in this commitment is situated in the county of King, state of Washington, and described as follows:

PARCEL A:

The east 588 feet of Government Lot 8, Section 16, Township 25 North, Range 7 East, W.M., in King County, Washington;  
EXCEPT the south 525 feet thereof;  
AND EXCEPT the east 30 feet of the north 393 feet, more or less, thereof;  
AND EXCEPT that portion thereof lying northeast of the southwesterly margin of an abandoned Great Northern Railway Company spur track.

PARCEL B:

The south 30 feet of the east 120 feet of the east 150 feet of the northeast quarter of the southwest quarter, and that portion of Government Lot 8 lying northeast of the southwesterly margin of an abandoned Great Northern Railway Company spur track;  
EXCEPT the east 30 feet thereof, all in Section 16, Township 25 North, Range 7 East, W.M., in King County, Washington.

END OF SCHEDULE A

NOTE FOR INFORMATIONAL PURPOSES ONLY:

The following may be used as an abbreviated legal description on the documents to be recorded, per amended RCW 65.04. Said abbreviated legal description is not a substitute for a complete legal description within the body of the document.

Ptn. Govt. Lot 8 and NE 1/4 SW 1/4, 16-25-07.

9904060001

EXHIBIT "D"

Project Concept Drawing



Site Plan Rendering

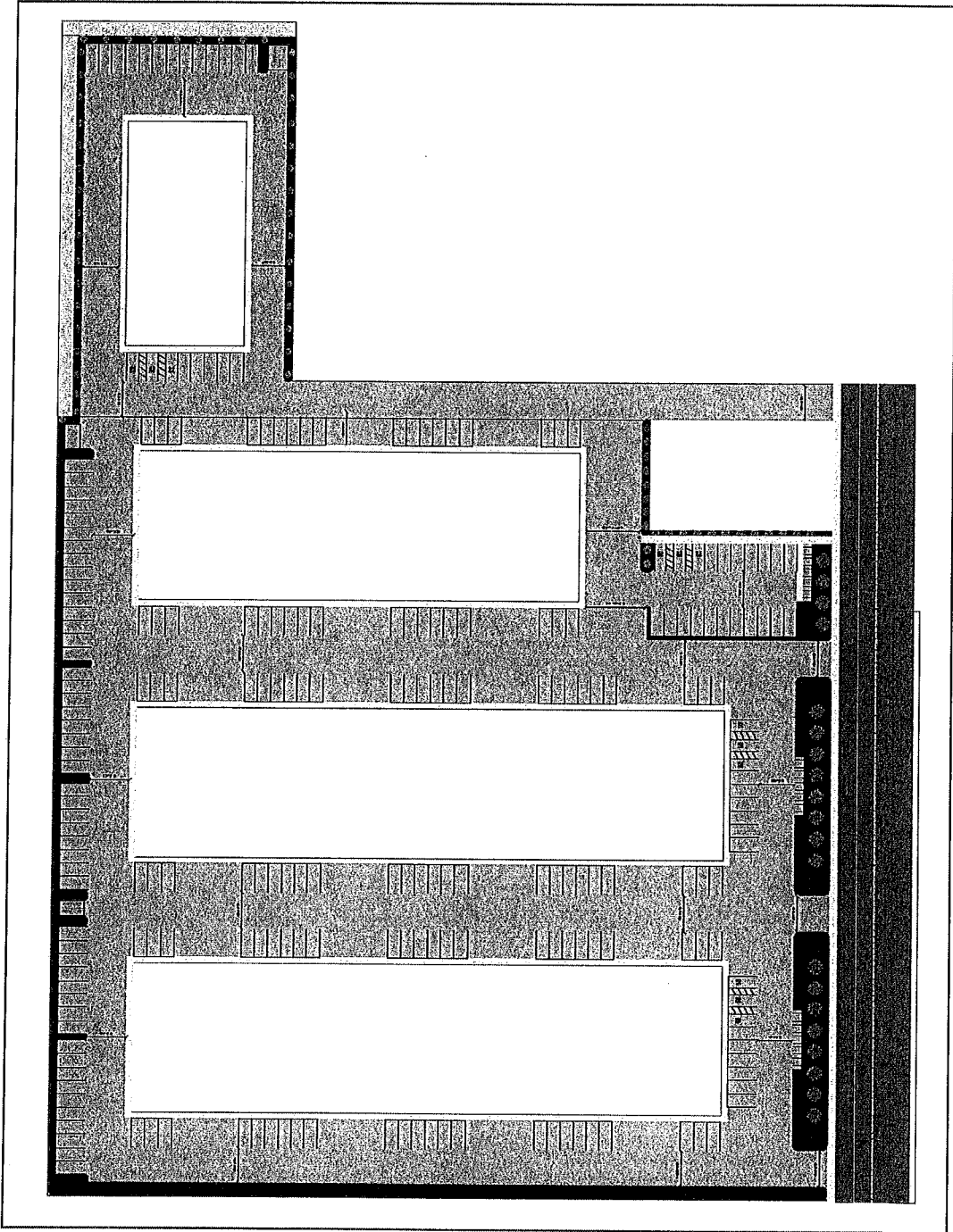


EXHIBIT "E"

Form of Development Agreement—Attached  
[TBD]

And Exhibit "B" for Ordinance XXXX

DRAFT

## DEVELOPMENT AGREEMENT

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This Development Agreement ("**Agreement**") is entered into on this \_\_\_ day of \_\_\_\_\_, 2023 ("**Effective Date**"), by and between the CITY OF CARNATION, a municipal corporation under the laws of the State of Washington ("**City**"), and [REMLINGER ENTITY], a Washington limited liability company ("**Developer**") (City and Developer are each sometimes referred to herein individually as a "**Party**" and, together, as the "**Parties**").

### RECITALS

- A. The City and Developer are parties to that certain Real Property Purchase Agreement ("**PSA**"), of even date herewith, pursuant to which the City has agreed to sell, and Developer has agreed to purchase, the real property located in the City of Carnation, County of King, State of Washington, and legally described on **Exhibit A** ("**Property**").
- B. The City has commenced a land segregation process, City of Carnation Preliminary Short Subdivision Application Number SHP22-0003, pursuant to which the City intends to legally segregate the Property from its Parent Parcel (King County Parcel No. 1625079073).
- C. Developer desires to develop the Property as a project to be used in a manner consistent with the light industrial/manufacturing zone established pursuant to Section 15.36.030 ("**LI/M Zone**"), City of Carnation Municipal Code ("**CMC**"), and the uses permissible therein ("**Project**"), and the City has determined that the Project will provide significant public benefit to the City and the broader community.
- D. The City's most important interest in the development of this property is to activate the parcels for future development which will provide employment opportunities, access to services locally, road and infrastructures improvements, and diversification of municipal revenues.
- E. The City has the authority to enter this Agreement pursuant to RCW 36.70B.170 *et seq.* and CMC Title 15.
- F. Capitalized terms used, but not defined herein, shall have the meanings given to them in the PSA.

### AGREEMENT

#### 1. Introduction.

Upon approval of the PSA and this Agreement, the provisions of this Agreement, in addition to the provisions of the PSA, as applicable, shall govern the development of the Property. The Parties recognize that the development of the Project, including conformance with the conditions in this Agreement, is subject to third party permits and approvals outside of the control of the City or Developer. Nothing in this Agreement is intended to, or shall, in any way limit, expand, impair or otherwise amend any of the terms, conditions, rights, remedies or obligations of the Parties under the PSA.

## 2. Project Description.

The Project that is the subject of this Agreement is a high-quality development light industrial development, as conceptually depicted in the site plan ("*Site Plan*") attached hereto as **Exhibit B** and incorporated herein by this reference. The Parties contemplate that the Project shall comprise at least 80,000 square feet intended to serve uses consistent with the LI/M Zone. The ultimate scope and mix of specific uses constructed will be determined by Developer based on market demand and the land use capacity of the Property, subject to the development standards set forth in this Agreement. A maximum of 20% of the total building square feet may be developed as storage space. In the event Developer wants to develop more than 20% of the total building's square footage as any form of storage space, Developer shall pay City \$50,000.00 annually. The total square feet of storage space may not exceed 33% of the buildings' total square footage.

Storage in this section is defined as passive use of building space such as that used for parked vehicles, boats, equipment, sedentary inventory and or other similar uses; this definition excludes use of footage for inventory required for periodic business, commercial, professional activity.

## 3. Development Plan.

3.1 Development Elements. The City and Developer contemplate a development plan for the Property and Project. The plan contemplates, among other things, a development that balances economic development, including employment opportunities, revenue generation for the City, community connectivity and wayfinding, and environmental protection. The plan includes the following elements:

(i) Economic Development: creating at least 80,000 square feet of LI/M Zone space envisioned to provide meaningful employment opportunities within the community and revenue generation to the City. In a mutual effort maximize the footprint of the Project and complete the Larson Road Extension (defined below) in a timely manner, the City shall permit Developer, and grant to Developer any rights necessary, to expand and/or alter the existing infiltration system(s) serving the existing vacuum station on the Parent Parcel to fulfill stormwater management requirements.

~~Additionally, the City and Developer will exercise diligent good faith efforts to work with King County Department of Natural Resources and Parks ("*King County Parks*") to obtain permission and/or rights to use portions of King County Parcel No. 1625079016 (owned by King County) ("*King County Property*"), for the purposes of constructing stormwater flow control and treatment facilities. If King County agrees to provide sufficient rights therefor, as determined by the City and Developer, each in their reasonable discretion, then both the City and Developer will exercise good faith efforts to determine whether it is fiscally, commercially reasonable to design stormwater facilities that can adequately serve the planned growth and development of the contributory drainage basin with each Party contributing an equitable share of the total cost; provided that in no event shall Developer be obligated to design or construct stormwater facilities beyond what is necessary to serve the Project. If the Parties mutually agree,~~



~~each in their sole and absolute discretion, to cooperatively design and construct stormwater facilities on the King County Property as described, the existing stormwater facility serving the vacuum station would be removed, and the Developer, will have permission to utilize the current footprint of the facility to best serve the Project.~~

(ii) Larson Road Extension. Design and Construction of Larson Road: The terms of this Agreement satisfies the requirements set forth in CMC 15.56.190. In lieu of transportation impact fees otherwise collectible by the City in connection with the Project, and in full satisfaction of Developer's off-site traffic mitigation obligation, including, without limitation, those set forth in CMC Section 15.56.190. Developer shall design and construct an extension of Larson Road along the eastern and western boundaries, to the southern boundary, of the Property ("**Larson Road Extension**"). Within ninety (90) days following the Effective Date, the City and Developer will work diligently to prepare mutually acceptable design and construction standards and specifications for the Larson Road Extension that are consistent with the nature of the Project.

(iii) South Larson Extension. In addition, the City anticipates the possibility to obtain the properties directly south of, and adjacent to the Property, and directly south of Larson Road, ("**South Larson Property**") for purposes of extending Larson Road to a controlled stop-sign intersection with NE 40<sup>th</sup> Street, which includes extending Larson Road from East Entwistle St. to 40<sup>th</sup> Street including road, sidewalks and gutters.

In lieu of transportation impact fees otherwise collectible by the City in connection with the Project, Developer will, at its sole cost, design and engineer a further extension of Larson Road to the south boundary of the South Larson Property.

(iv) In addition, if the City acquires the South Larson Properties within five (5) years of the Closing Date (per the Purchase and Sale Agreement dated [REDACTED]), then Developer will construct at its own cost, such extension of Larson Road ("**South Larson Extension**");

For the avoidance of doubt, Developer's obligations to (i) design, engineer, and construct the Larson Road Extension; and (ii) design and engineer the South Larson Extension shall fully satisfy any and all obligations Developer may have to pay any transportation impact fees, under any applicable law or legal theory, regardless of whether the City acquires the South Larson Properties and/or Developer constructs the South Larson Extension. Finally, Developer will exercise good faith efforts to facilitate a meeting between the owner of the South Larson Properties and the City in connection with the City's efforts to acquire that property.

In the event the City does not obtain the properties directly south of, and adjacent to the Property within 5 years of closing in order to further extend Larson Road from East Entwistle St. to 40<sup>th</sup> Street, then Developer will provide City with all design, CAD and engineering files for the design, engineering and construction of the extension.

(v) **Soft Surface Trail Easement:** A soft surface trail connecting Tolt MacDonald Park to East Entwistle Street traverses the northwesterly portion of the Property ("**Soft Surface Trail**"). In an effort to maximize the footprint of the Project, the City and Developer will exercise diligent good faith efforts to work with King County to relocate the Soft Surface Trail on the King County Property. However, if King County is not willing to accept and establish the Soft Surface Trail on the King County Property, then as a condition to Developer's construction permits for the Project, Developer will dedicate a five (5) foot strip of land along the northern boundary of the Property as a permanent easement for this trail for public use. Notwithstanding the forgoing, the Soft Surface Trail shall be designed in conjunction with, and shall be contained within, the minimum perimeter landscape buffers, if any, as may be required for the Project. The dedication of the Soft Surface Trail shall not result in any additional increases to landscape and buffering requirements.

(vi) **Connectivity and Wayfinding:** Developer shall design and fund signage as part of the Project on the Property that will enhance connectivity and wayfinding along Route 203 to areas such as City Hall, the Business Park, Tolt Commons, Memorial Park and other destinations, all subject to City design standards.

(vii) **Artwork:** Developer shall include public artwork dedicated to the Schefer family legacy along the soft surface trail within King County's property (King County Parcel Number: 162507-9016). The final design for the soft surface trail and artwork will be a joint decision by City and Developer.

### 3.2 Development Schedule.

(i) Developer will submit to the City a complete application for permits to construct the Project conceptually consistent with the Site Plan on or before August 31, 2024 and will exercise diligent best efforts to complete construction of the Project no later than the third (3<sup>rd</sup>) anniversary of the Closing ("**Completion Timeline**"), subject to the City's compliance with the terms of this Agreement.

Developer shall be expected to meet 100% completion by the 3<sup>rd</sup> anniversary of closing. If Developer delays longer than the 3<sup>rd</sup> anniversary of closing due to its own delays, and not due to City, county or state regulatory agencies, then the following penalties will apply:

For every 15 calendar day delays beginning on the 91<sup>st</sup> day after the 3<sup>rd</sup> anniversary, the Developer shall pay the City \$25,000.00.

(ii) To the best of the City's ability all permit applications in connection with the Project shall be processed on an expedited basis. The Parties understand that there may be permits, decisions, and/or approvals from third parties necessary to the permitting of the Project ("**Third Party Approvals**") and the issuance of which the City does not control. However, the City shall, in all cases, respond to Developer's requests for review of submittals and inspection of work, with a complete set of comments and/or approval, within seven (10) business days:



provided that in no event shall be foregoing be construed to provide the City more time to review the Project, or any element thereof, than is provided for by applicable law. Additionally, upon written request of Developer, the City shall exercise reasonable good faith efforts to assist Developer in obtaining Third Party Approvals. Due to the Completion Timeline proposed by the City, the City's diligent commitment to expedited review is fundamental hereto, and without which Developer would not have entered this Agreement.

#### 4. Permitted Uses.

The uses permitted on the Property ("*Permitted Uses*") shall include all of those uses that are consistent with the LI/M Zone as set forth in the use tables in CMC Section 15.36.030, as the same exists on the Effective Date and a copy of which is attached hereto as **Exhibit C** and incorporated herein by this reference; provided that the Permitted Uses for this Project do not include indoor, or outdoor, self-serve public storage or mini-storage ("*Prohibited Storage*"), except as a use that does not occupy more than 20% of the total building square feet indoors or as allowed by code, whichever is less; provided that the term "Prohibited Storage" shall not include any warehouse use or storage of items, such as materials, inventory, equipment, vehicles, and other property in connection with a use that is permitted in the LI/M Zone. Adult entertainment establishments or marijuana retailers are not permitted uses at this Development.

#### 5. Development Standards.

5.1 Development of the Property shall be subject to the development standards set forth in this Agreement and, in the absence of a standard in this Agreement, the provisions of the CMC, as the same exists on the Effective Date; ~~provided that, at Developer's request, the City will modify those standards to the maximum extent permitted in the table set forth in CMC 15.17.030, as it exists on the Effective Date,~~ and a copy of which is attached hereto as **Exhibit D** and incorporated herein by this reference (as may be modified, "*Development Standards*").

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5.2 In the event of a conflict between the Development Standards specified in this Agreement and the requirements of the CMC, the Development Standards of this Agreement shall prevail. In no event shall any of the Development Standards set forth herein supersede or control over any contrary provision or contractual requirement set forth in the PSA.

5.3 Any decision by the City or any representative thereof to reject a plan or permit based on inconsistency with the Development Standards must be made in writing within the timeframe specified in Section 3.2(ii) hereof and must be supported by findings outlining the identified inconsistency.

5.4 Design Standards. Development of the Property shall be subject to the design standards set forth in this Agreement and, in the absence of a standard in this Agreement, the provisions of the CMC, as the same exists on the Effective Date. The City will provide Developer with updated design standards no later than February 2, 2024

#### 6. Environmental and Traffic

6.1 Floodplain Issues. Given that the entire Property is located within the Federal Emergency Management Agency ("*FEMA*") 100-year floodplain, the construction of the Project will be subject to CMC Ch.15.64 – (Floodways, Floodplains, Drainage, and Erosion) and will require approvals from FEMA. Although Developer must investigate and secure all local, regional, state, and federal permits related to the Project at its own expense, the City shall exercise diligent good faith efforts to assist Developer in doing so, including, without limitation, providing continuing political support, writing letters, and participating in the meetings as reasonably necessary and appropriate to ensure that Developer obtains all such Third Party Approvals as quickly as possible.

Furthermore, the Parties will work in good faith to identify offsite opportunities that can provide sufficient flood plain storage in order to maximize the footprint of the Project and to prove, through industry standard flood plain modeling, that any rises to the flood plain caused by the Project will be mitigated. Upon providing evidence of this result, the City will support a Conditional Letter of Map Revision (CLOMR) demonstrating the same to FEMA, and, post-construction, a final Letter of Map Revision (LOMR) demonstrating the same.

6.2 Shoreline Jurisdiction & Critical Areas. A strip along the western portion of the Property lies within the shoreline jurisdiction and any development or improvements within that area will be subject to the Carnation Shoreline Master Program. The City represents to Developer that, to the best of the City's knowledge, other than the described shoreline area, there are no known or mapped wetlands or other critical areas on the Property. In order to permit the Project, Developer would need to hire a qualified professional to complete a survey of the Property and prepare a Critical Areas Report.

6.3 As part of the Project, Developer will prepare AM and PM peak-hour weekday and weekend intersection analysis that studies the amount of traffic to be generated by the Project during AM and PM peak-hour, the potential transportation effects of the Project during such times, and showing acceptable operations (Level Of Service D or better) of the study intersections or providing for adequate intersection improvements to meet such peak-hour level of service standards (Level Of Service D). For the avoidance of doubt, the Parties acknowledge that Developer's obligations as set forth in Section 3.1(ii) hereof constitute material off-site traffic mitigation and Developer will have no further traffic mitigation obligations, except to the extent necessary to achieve a Level of Service D or better in the applicable study intersections. Developer's traffic analysis shall be limited to existing transportation infrastructure within the city limits of Carnation and the City agrees that such analysis shall fully satisfy the City's traffic-related permit requirements for the Project.

## **7. Additional Community Benefits.**

7.1 Ombudsperson. The City will designate a City staff person to serve as a conduit between the community, Developer and various City departments, residential organizations, and neighbors beginning no later than two weeks from fully executed documents. The Ombudsperson will ensure all Parties fulfill all terms of this Agreement and the PSA. The



Ombudsperson will also work cooperatively in good faith with Developer and community organizations on community engagement activities during construction.

7.2 Schefer Riverfront Coordinating Group. Developer and the City shall exercise good faith efforts to convene the Schefer Riverfront Coordinating Group ("**CG**") at least every two months during calendar years 2023 through 2025 to develop public messaging and information to keep Carnation residents informed about the Project. CG will include one representative from the following organizations: Carnation City Council, CED Committee, , Puget Sound Energy, Planning Board, King County Waste Water, Carnation City Manager's Office, Developer, and King County Parks.

## 8. Claw Back Provision

8.1 Generally. The Parties intend that Developer will complete the design, entitlement and construction of the Project within three (3) full calendar years of Closing. If Developer fails to exercise diligent best efforts to so timely complete the Project, then, subject to the City's compliance with this Agreement, the City will have the option to purchase the Property from Developer for a purchase price equal to one hundred percent (100%) of the fair market value of the Property, which shall consider all relevant factors, including, without limitation, any entitlement obtained, and/or development completed on, the Property ("**Fair Market Value**"), as provided in this Section 8 ("**Purchase Option**").

8.2 Exercise of Option. If the City has the right to exercise a Purchase Option and elects to do so, the City shall hire an MAI certified appraiser representing the City, which appraiser shall have not less than five (5) years experience appraising industrial property in the Greater Seattle Area comparable to the Property ("**City's Appraiser**"), who shall determine the Fair Market Value of the Property. The City shall notify Developer by written notice of its election to exercise a Purchase Option ("**Option Notice**"), which Option Notice shall state with particularity the basis for the City's right to exercise a Purchase Option and the City's opinion of the Fair Market Value of the Property, as determined by this City's Appraiser. If Developer agrees with the City's statement of the Fair Market Value, then Developer shall so notify the City thereof within ten (10) business days following receipt of the Option Notice ("**Developer Response**") and the Parties shall work in good faith to prepare definitive documents governing the sale of the Property to the City on an as-is, where is basis within sixty (60) days following the City's receipt of the Developer Response. If Developer does not agree that the City has the right to exercise a Purchase Option, then it shall so notify the City in the Developer Response and then either party shall have the right to submit the question for adjudication in the Superior Court for King County. If the Developer agrees that the City has the right to exercise the Purchase Option, but does not agree with the City's statement of the Fair Market Value, then it will so notify the City in the Developer Response (referred to below as the "**Developer Arbitration Notice**") and the question will be subject to arbitration as provided in this Section 8.

In the event the City exercises the Claw Back Provision, Developer will provide City with all feasibility studies, engineering, CAD and design files related to the project.

The City's most important interest in the development of this property is to activate the parcels to maximize employment benefits, access to services locally, road/infrastructure improvements, and diversification of municipal revenues. For this reason, the Developer's ability to reach milestones is imperative. The Developer shall meet the following completion goals:

Within one year of anniversary of closing: 30% completion

Within two years of anniversary of closing: 60% completion

Within three years of anniversary of closing: 100% completion

If Developer delays longer than the 3<sup>rd</sup> anniversary of closing due to its own delays, and not due to City, county or state regulatory agencies, then the following penalties will apply:

For every 15 calendar day delays beginning on the 91<sup>st</sup> day after the 3<sup>rd</sup> anniversary, the Developer shall pay the City \$25,000.00.

In the event Developer sells this project at any stage of development or construction, the new owner will abide by this Development Agreement, ~~or negotiate a new development agreement with City.~~

8.3 Arbitration. The Developer Arbitration Notice shall specifically state Developer's opinion of the Fair Market Value and shall hire an MAI certified appraiser representing Developer, which appraiser shall have not less than five (5) years experience appraising industrial property in the Greater Seattle Area comparable to the Property ("**Developer's Appraiser**"). who shall determine the Fair Market Value of the Property. Within ten (10) business days following the City's receipt of the Developer Arbitration Notice, the City's Appraiser and the Developer's Appraiser shall appoint an independent MAI certified appraiser, which appraiser shall have not less than five (5) years experience appraising industrial property in the Greater Seattle Area comparable to the Property ("**Third Appraiser**"). Within thirty (30) days following his or her appointment, the Third Appraiser shall select either the City's or the Developer's determination of the Fair Market Value of the Property as the closest approximation of the actual Fair Market Value of Property and that shall be the purchase price for the Property. The sale of the Property shall be as-is, where-is, and shall be closed within sixty (60) days following the issuance of the Third Appraiser's opinion.

## 9. General Provisions

9.1 Notices. All notices shall be personally delivered, sent via a nationally recognized overnight courier service (such as Federal Express, UPS or DHL) or sent by certified United

States mail (return receipt requested), with a courtesy copy concurrently sent via electronic mail. Notices sent via personal delivery, overnight courier service and electronic mail will be effective upon receipt, and notices sent by mail will be effective three (3) Business Days after being deposited with the United States Post Office, postage prepaid. The City and Developer agree that notice may be given on behalf of each party by the counsel for each party and notice by such counsel in accordance with this Section 9.1 shall constitute notice under this Agreement. The addresses to be used in connection with such correspondence and notices are the following, or such other address as a party shall from time to time direct in writing by notice given pursuant to this Section 9.1, but any such notice of a new address shall not be effective until actually received by the other party:

The City: City of Carnation  
4621 Tolt Avenue, P.O. Box 1238

Carnation, WA 98014  
ana.cortez@carnationwa.gov

with a copy to:

\_\_\_\_\_

Developer: [Remlinger Entity]  
10422 NE 37<sup>th</sup> Cir, Suite 100  
Kirkland, WA 98033  
Phone: (425) 330-1160  
Email: drake@remlingergroup.com

with a copy to:

Remlinger Farms

\_\_\_\_\_  
Attn: Gary Remlinger  
Phone: (206) 300-0772  
Email: gary@remlingerfarms.com

with a copy to:

Ojala Law, Inc., P.S.  
PO Box 211  
Snohomish, WA 98291  
Attn: Nate R. Veranth  
Phone: (425) 788-2222  
Email: nate@ojalalaw.com



9.2 Recording. Either Party may arrange for the recording of a memorandum of this Agreement with the King County Recorder's Office, as necessary to disclose this Agreement on title documents for the Property. This Agreement shall run with the land as binding on the Parties and their successors and assigns. It is mutually agreed that the terms of this Agreement touch and concern the land and shall be covenants running with the land.

9.3 Counterparts. This Agreement may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Agreement.

9.4 Captions. All captions, headings, paragraph and subparagraph numbers and letters are solely for reference purposes and shall not be deemed to be supplementing, limiting, or otherwise varying the text of this Agreement.

9.5 Severability. The invalidity or unenforceability of a particular provision of this Agreement shall not render this Agreement invalid or unenforceable as a whole and, in such event, the Parties shall exercise diligent good faith efforts to reform the Agreement in a manner that is fully valid and enforceable and that reflects the Parties' intentions as to their relative benefit and bargain hereunder.

9.6 Time of the Essence. Time is of the essence of this Agreement.

9.7 No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties hereto, to any person or entity other than the parties hereto.

9.8 Exhibits and Schedules. The exhibits attached hereto are hereby incorporated herein by this reference.

9.9 Amendment to this Agreement. Neither this Agreement nor any provision hereof may be changed, amended, modified, waived or discharged orally or by any course of dealing, but only by an instrument in writing signed by the party against which enforcement of the change, amendment, modification, waiver or discharge is sought.

9.10 Fees and Other Expenses. Except as otherwise provided herein, each of the parties shall pay its own fees and expenses in connection with this Agreement.

9.11 Entire Agreement. Except for the PSA this Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Developer and The City as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of either party, shall be of any effect unless it is in writing and executed by the party to be bound thereby.

9.12 Attorneys' Fees. If either party brings or commences any legal action or proceeding to enforce any of the terms of this Agreement (or for damages by reason of an alleged breach of this Agreement), the substantially prevailing party, if any, in such action shall be entitled to recover from the other party all reasonable attorneys' fees that may have been incurred, including any and all costs and expenses incurred in enforcing, perfecting and executing such judgment, and including all costs of appeal.

9.13 Term. Pursuant to RCW 36.70B.170 et seq., the Development Standards and other provisions of this Agreement shall apply to and govern and vest the development and use of the Property for a period of twenty (20) years from the Effective Date. After the Effective Date, the City may adopt new or modified laws and regulations relating to a particular subject matter specified in this Agreement or presently existing development regulations, but these new or modified standards will not apply to the Project unless Developer chooses. This Agreement shall remain in force throughout the twenty (20) year vesting period unless the City repurchases the Property, in which case this Agreement shall immediately and automatically terminate and neither Party shall have any further obligation hereunder.

9.14 Force Majeure. If, through no fault of the City or Developer, and by reason of a Force Majeure Event (defined below), any obligation in this Agreement cannot be timely completed, then all time periods relative to the applicable contingency or condition, including the time periods for the related notices and responses thereto, shall be extended for a reasonable time under the circumstances, up to one hundred eighty (180) days, and the obligation shall be satisfied as soon as reasonably practicable. "**Force Majeure Event**" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence, making the means of performance objectively impossible. Force Majeure Events included acts of God, war, riots, strikes, fire, floods, epidemics, pandemics.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year written below.

**CITY OF CARNATION**, a  
political subdivision of the State of Washington

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date of Execution by Seller: \_\_\_\_\_

**[REMLINGER ENTITY]**  
a Washington limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution by Purchaser: \_\_\_\_\_

STATE OF WASHINGTON )

COUNTY OF \_\_\_\_\_ )

I hereby certify that before me personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_ of THE CITY OF CARNATION, political subdivision of the State of Washington, and said person did acknowledge before me that said instrument is the free act and deed by said entity for the purpose therein expressed.

Witness my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Name of Notary)

NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

STATE OF WASHINGTON )

COUNTY OF \_\_\_\_\_ )

I hereby certify that before me personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_ of [REMLINGER ENTITY] LLC, a Washington limited liability company, and said person did acknowledge before me that said instrument is the free act and deed by said limited liability company for the purpose therein expressed.

Witness my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Name of Notary)

NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_



**Exhibit A**  
**Legal Description of the Property**

**Exhibit B**  
**Conceptual Site Plan**



**Exhibit C**

**LI/M Zone Permitted Uses Table—Attached**

**Exhibit D**

**Development Standard Modification Table—Attached**

## **Exhibit A**

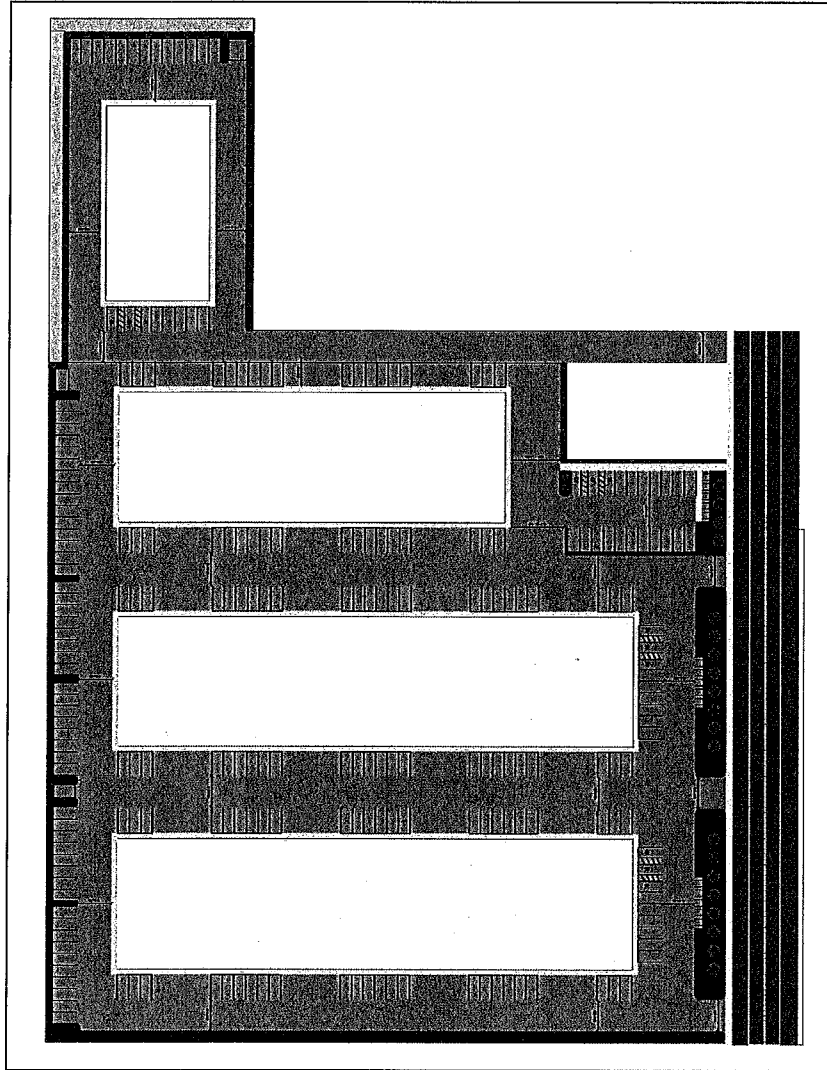
### **Legal Description of the Property**

#### **Site Description:**

- a. **Location:** The subject property is located at 4300 Larson Avenue, Carnation WA 98014, and identified as Assessor's Parcel No. 162507-9073.
- b. **Size and Description:** The subject site is located on the west side of Larson Avenue, south of Entwistle Street. The property is configured as an irregular rectangle being approximately 7.52 acres in area. In its flag shaped configuration, the main body of the property is approximately 588 east to west and 550 feet north to south, and a 160 wide extension (flag) along its west boundary to the north for an additional 240 feet. The topography is relatively level, being at grade with the Larson Avenue right-of-way along its east boundary and having a slight downward slope to the west. The property has a street frontage of 155 feet along the Larson Avenue right-of-way (currently unimproved) which dead ends at the southern extent of the property's frontage. The depth of the property extends 560 feet to the west where it abuts King County's Tolt McDonald Park. Vegetation on the site consists of a maintained grass surface.

**Exhibit B**  
**Conceptual Site Plan**

## Site Plan Rendering





# Project Overview

## DEVELOPMENT SUMMARY

<b>SITE AREAS</b>		
Building Area	119,070	
SF		
Parking and Walkway Area	156,880	
SF		
SF Landscaping Area	49,665	
SF Total Site Area	318,615	
SF		
<b>PARKING REQUIRED</b>		
Accounting 10% Office	30	
Spaces, Remaining Warehouse	107	
Total Parking Required	137	
Spaces		
<b>PARKING PROVIDED</b>		
Total Standard	155	
Spaces Total Oversize	26	
Spaces		
<b>REQUIRED LANDSCAPE AREA</b>	5,435 SF	
<b>LANDSCAPE AREA PROVIDED</b>	6,700 SF	



The proposed development consists of three buildings that will be designed to accommodate multiple configurations and suite sizes. The three buildings combine for a total of 119,070 SF of building area with more than required parking. The flexible building design is necessary in attracting a wide range of business users and manufacturers with their own size requirements. Dividing walls can easily be added or removed. The development will be accessed by Lanson Avenue through the new road extension, which will be designed to extend to NE 40th Street.



**Exhibit C**

**LI/M Zone Permitted Uses Table**

Note that the properties adjacent to SR-203 lie outside of the R12 zone. Live-work townhouses refer to units that have high floor to ceiling heights along the street-front portions of the units that allow for ground level commercial use and a live + work arrangement.

(Ord. No. 957, § 2(Exh. A), 6-21-2022)

**15.40.110 RMHP zone uses.**

A. Permitted uses.

1. Class A, B, and C mobile home.
2. Single-family detached (no permanent foundation allowed).

(Ord. No. 957, § 2(Exh. A), 6-21-2022)

**15.40.120 Uses permitted in non-residential zones.**

**Chapter 15.40 Table 2  
Table of Permitted Uses in Non-Residential Zones**

Note: For non-residential development in the MU zone, refer to CMC 15.40.140. "P" = Use is permitted

"S" = Use is allowed and subject to the special use permit criteria in CMC 15.18.040

"C" = Use is allowed and subject to the conditional use permit criteria in CMC 15.18.040

" " = Use is prohibited

Use	CBD	MU	SC	LI/M	HC	AGI	Conditions/Reference
Dwelling Units							
Single-family detached					S	P	
Caretaker residence	S	S	S	P	P	P	
Cottage housing							
Townhouse		P (X)					No more than 5 units per building.  CMC 15.40.150  (X) A permitted non-residential use must front Tolt Avenue on the ground floor. Residential entryways are permitted on Tolt Avenue.
Duplex							
Multifamily		P (X)					CMC 15.40.150  (X) A permitted non-

						residential use must front Tolt Avenue on the ground floor. Residential entryways are permitted on Tolt Avenue.
Mixed use	P (x)	P (x)				CMC 15.40.150 CMC 15.44.190  (x) A permitted non-residential use must front Tolt Avenue on the ground floor. Residential entryways are permitted on Tolt Avenue.
Senior housing		P (x)				CMC 15.40.150  CMC 15.44.180  Must be designed as one of the other dwelling unit types permitted in the zone.  (x) A permitted non-residential use must front Tolt Avenue on the ground floor. Residential entryways are permitted on Tolt Avenue.
Permanent supportive housing	P (x)	P (x)				CMC 15.40.150  (x) A permitted non-residential use must front Tolt Avenue on the ground floor. Residential entryways are permitted on Tolt Avenue.
Group Living						
Adult family homes		P (x)				(x) A permitted non-residential use must front Tolt Avenue on the ground floor. Residential entryways

							are permitted on Tolt Avenue.
Assisted living		P (X)					CMC 15.40.150  (X) A permitted non-residential use must front Tolt Avenue on the ground floor. Residential entryways are permitted on Tolt Avenue.
Nursing home		C					4,000 GSF maximum
Agriculture							
Crop production					P	P	
Forestry and logging							
Animal production and pasture							
Animals							Title 6 CMC
Animal care	C	C	C	P	P	P	
Pet day care	C	C	C	P		P	CMC 15.44.130
Veterinary services		C	P		P	P	
Automotive							
Automotive service and repair	C (X)	C (X)	P (X)	P			(X) All activities enclosed within structure. No accessory storage structures.
Beverage stands	S (X)		S (X)	S (X)		P	CMC 15.72.110  500 GSF maximum  (X) No vehicle access from Tolt Avenue
Fuel station			P				
Parking lots and garages (as a principal use)	P		P				
Transportation service				P	P	P	
Vehicle sales/rental			P (X)	P (Y)			(X) All activities enclosed within structure.  (Y) No accessory storage structures.
Civic							

Public safety facility	P	P	P	P			CMC 15.120
Public service facility	P (X)	P (X)	P	P	P	P	(X) Excluding maintenance shops.
Religious facility	P (X)				P (Y)		(X) 10,000 GSF maximum (Y) 20,000 GSF maximum
Secure community transition facilities				C			RCW 71.09.285
School, preschool, elementary, and junior high/middle		P					CMC 15.120
School, high school		C					
Colleges, universities, and professional schools		P					CMC 15.120
State or regional transportation facilities				C			RCW 47.06.140 CMC 15.120
Day Care							
Family day care provider	P	P	P			P	CMC 15.44.110
Child day care center	P	P	P				CMC 15.44.110
Industrial							
Industrial, heavy							
Industrial, light				P			
Manufacturing, artisan	P	P	P	P	P	P	4,000 GSF maximum
Manufacturing, light				P		P (X)	(X) Food and drink manufacturing only
Marijuana producers, processors					P		CMC 15.110  Location restrictions: RCW 69.50.331(8)  Cooperatives per RCW 69.51A.250 are prohibited
Research and development		C (X)	C (X)	P			(X) May not be located on the ground floor along Tolt Avenue.

Self-service storage				P		P	CMC 15.44.160 20,000 GSF maximum
Warehousing				P		P	
Wholesale trade				P (X)		P	(X) No accessory storage structures.
Medical							
Hospital							CMC 15.120
Medical office/clinic	P	P	P				
Office							
Professional office	P (X)	P (X)	P (X)			P	(X) May not be located on the ground floor along Tolt Avenue, except for financial, insurance, and real estate services
Private educational services	P	C	P		P	P	2,000 GSF maximum
Overnight Lodging							
Bed and breakfast inns	S	P			P	P	
Hotel/motel	P	P (X)	P		P (X)	P	(X) 4,000 GSF maximum
Recreation							
Adult entertainment establishments				P			CMC 15.44.100
Gambling industries						P	
Fitness/sport centers	P (X) (Y)	P (Y)	P (Z)	P	P		(X) Parking: CMC 15.72.010(A)(1) (Y) 2,000 GSF maximum (Z) 4,000 GSF maximum
Indoor recreation	P	P (X)	P	P		P (Y)	(X) 5,000 SF maximum (Y) 10,000 SF maximum
Indoor theater	P	S (X)	P				(X) 10,000 SF maximum
Outdoor recreation			S	C	C	P	
Recreational camps						P	

Retail and Restaurants							
Retail sales	P	P	P		P (X)	P	(X) 2,000 GSF maximum
Heavy retail sales		P (X)	P (X)(Y)	P	P		(X) No accessory storage structures.  (Y) CMC 15.44.170
Restaurants and cafes	P	P	P	P	P	P	
Bars	P	P	P		S	S	
Marijuana retailer			P	P	P	P	CMC 15.110  Location restrictions: RCW 69.50.331(8)
Service							
General service	P (X)	P (X)	P (X)		P	P	(X) No accessory storage structures or outdoor storage or display of merchandise.
Consumer goods service	P (X)	P (X)	P (X)	P			(X) No accessory storage structures or outdoor storage or display of merchandise.
Personal care service	P	P	P				
Funeral home		P					
Utilities							
Utility facilities, regional				C			
Utility facilities, neighborhood		C (X)	P	P	P	P	(X) 2,000 GSF maximum facility footprint
Wireless telecommunications facility	C	C	C	C	C	C	CMC 15.98

(Ord. No. 957, § 2(Exh. A), 6-21-2022)

**15.40.130 PR zone uses (parks).**

A. Permitted uses:

1. Parks.

**Exhibit D**

**Development Standard Modification Table—Attached**



### 15.17.030 - Development standards—Flexibility.

- A. A development agreement shall be consistent with applicable development regulations. Provided, however, that a development agreement may allow for modification of certain development standards otherwise required under this code in order to provide flexibility to achieve public benefits, to respond to changing community needs, and/or which provide the functional equivalent or adequately achieve the purposes of otherwise applicable development standards.
- B. The following table sets forth the types of development standards for which modifications may be approved pursuant to a development agreement, together with the corollary range of permissible modifications:

Standard	Permissible Range of Modification
Minimum lot size	25%
Minimum lot width*	10%
Maximum residential density	10% <sup>1</sup>
Maximum building height*	40% with 35' maximum <sup>2</sup>
Front setback*	33%
Side setback	25% with 5' minimum

Rear setback*	33% with 10' minimum
Parking spaces	25%
Integrated Mixture of Housing Types (Chapter <u>15.40</u> CMC, Table 1, Residential Use Note <u>6</u> )	100%

\* Any measurements may be rounded up or down to the nearest whole number.

C. A development agreement shall not authorize modifications to development standards except as expressly provided in subsection (B). Without prejudice to the foregoing, a development agreement shall not authorize modifications of the following development standards:

1. CMC Title 16, Building and Construction;
2. CMC Title 14, Environmental Protection;
3. CMC 15.48.070, Special design standards for the R6 zone; provided that this exclusion shall only apply to the R6 zone within the "Tolt Townsite Company Plat of Tolt" filed for record January 17, 1912 in Volume 20, Page 43, Records of King County, Auditor's File No. 787268.
4. Chapter 15.88, CMC, Critical Areas;
5. Chapter 15.64 CMC, Floodways, Floodplains, Drainage, and Erosion et seq.;
6. Chapter 15.36 CMC, Zoning map designations; or

7. Chapter 15.40 CMC, Permissible uses.

- D. The development standards approved through a development agreement shall apply to and govern the development and use of the property subject to the development agreement in lieu of any conflicting or different standards or requirements elsewhere in this code.
- E. Except as otherwise expressly provided by this chapter, modifications approved pursuant to a development agreement shall be without prejudice to any flexibility, bonuses and/or other adjustments to development standards authorized by other provisions of this title.

(Ord. No. 908, § 3(Exh. A), 10-16-2018)



**LEGAL NOTICE  
CITY OF CARNATION  
-PUBLIC HEARING-**

**NOTICE IS HEREBY GIVEN** that the Carnation City Council will hold a public hearing to receive and consider public comment regarding a potential Development Agreement with The Remlinger Group for the Property referred to as King County Parcel No. 1625079073. A copy of the Proposed Developers Agreement can be found on our website or City Hall.

The hearing will be conducted during the Special meeting of the Carnation City Council on August 22<sup>nd</sup>, 2023 at 6:30 PM or soon thereafter. The hearing is open to the public. All interested persons are encouraged to listen and/or attend the public hearing and to provide oral and/or written comments. Oral comment will be limited to 3 minutes per person.

The Responsible Official for the City of Carnation issued a Mitigated Determination of Non-significance (MDNS) for this proposed Business Park and Development Agreement effective August 11, 2023, pursuant to WAC 197-11-340(2) and WAC 197-11-350. The comment period ends August 25<sup>th</sup>, 2023.

For inquiries and/or assistance regarding how to attend or participate in this hearing using the City's remote electronic format, please visit [www.carnationwa.gov](http://www.carnationwa.gov) or contact the city clerk.

This notice is published pursuant to CMC 1.14.010 & 15.100.040(B).  
CITY OF CARNATION  
Lora Wilmes, City Clerk  
Publish in the Sno Valley Record

**SEPA ENVIRONMENTAL CHECKLIST**  
**City of Carnation/Remlinger Group**  
**Carnation Business Park Development Agreement**

***Purpose of checklist:***

Governmental agencies use this checklist to help determine whether the environmental impacts of your proposal are significant. This information is also helpful to determine if available avoidance, minimization or compensatory mitigation measures will address the probable significant impacts or if an environmental impact statement will be prepared to further analyze the proposal.

***Instructions for applicants:***

This environmental checklist asks you to describe some basic information about your proposal. Please answer each question accurately and carefully, to the best of your knowledge. You may need to consult with an agency specialist or private consultant for some questions. You may use "not applicable" or "does not apply" only when you can explain why it does not apply and not when the answer is unknown. You may also attach or incorporate by reference additional studies reports. Complete and accurate answers to these questions often avoid delays with the SEPA process as well as later in the decision-making process.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

***Instructions for Lead Agencies:***

Please adjust the format of this template as needed. Additional information may be necessary to evaluate the existing environment, all interrelated aspects of the proposal and an analysis of adverse impacts. The checklist is considered the first but not necessarily the only source of information needed to make an adequate threshold determination. Once a threshold determination is made, the lead agency is responsible for the completeness and accuracy of the checklist and other supporting documents.

***Use of checklist for nonproject proposals:***

For nonproject proposals (such as ordinances, regulations, plans and programs), complete the applicable parts of sections A and B plus the [SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS \(part D\)](#). Please completely answer all questions that apply and note that the words "project," "applicant," and "property or site" should be read as "proposal," "proponent," and "affected geographic area," respectively. The lead agency may exclude (for non-projects) questions in Part B - Environmental Elements –that do not contribute meaningfully to the analysis of the proposal.

## **A. Background**

1. Name of proposed project, if applicable:

**City of Carnation Development Agreement with the Remlinger Group for the proposed Carnation Business Center.**

2. Name of applicant:

**City of Carnation**

3. Address and phone number of applicant and contact person:

**Ana Cortez, City Manager  
4621 tolt Avenue  
P.O. Box 1238  
Carnation WA, 98014  
(425) 333-4192**

4. Date checklist prepared:

**August 10, 2023.**

5. Agency requesting checklist:

**City of Carnation.**

6. Proposed timing or schedule (including phasing, if applicable):

**It's anticipated that the project will be fully completed within 2 years following the closing of the purchase, which would be 2025 or 2026.**

7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.

**No.**

8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.

**The Lead Agency will conduct a phased environmental review for this proposal in accordance with WAC 197-11-060(5).**

**This first phase of the environmental review is limited to preliminary conceptual information for the Carnation Business Center proposed by the Remlinger Group. This initial Development Agreement phase of review is necessary for the project proponents to establish feasibility of the proposed project.**

Upon purchase of the property, the project proponents (Remlinger Group) will commence with the preparation of information to supplement the development permit submittal requirements which would include, but not be limited to, a floodplain habitat and mitigation plan, shoreline conditional use permit review, geotechnical studies/report, traffic impact analysis, and preliminary engineering for the project.

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.

**None known at this time.**

10. List any government approvals or permits that will be needed for your proposal, if known.

**Required permits include, but may not be limited to:**

- **Final Short Plat Approval**
- **Site Development Review**
- **Shoreline Conditional Use Permit**
- **Certificate of Sewer Availability**
- **Certificate of Water Availability**
- **Public Utility Extension**
- **Right-of-Way Permit**
- **Clearing, Filling and Grading Permit**
- **Drainage Permit**
- **Side Sewer Permit**
- **Building Permits**

11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)

**The Development Agreement would outline specific outcomes, dates and conditions attached to the sale of this property for the purpose of development of the proposed Carnation Business Center which will encompass approximately 7.10 acres. The proposed improvements would include three multi-tenanted warehouse/commercial buildings that will combine for approximately 110,000 SF with associated office space, and one multi-tenanted (or single-tenanted) warehouse/commercial building that will combine for approximately 12,000 SF with associated office space. The passenger vehicle parking and utility infrastructure will be constructed in conjunction with the buildings. It is anticipated that the proposal would create 241 additional parking spaces.**

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

The subject property is located at 4300 Larson Avenue, Carnation WA 98014, and is currently identified as Assessor's Parcel No. 162507-9073.

## **B. Environmental Elements**

### **1. Earth**

a. General description of the site:

(circle one): Flat, rolling, hilly, steep slopes, mountainous, other \_\_\_\_\_

**The topography is relatively level, being at grade with the Larson Avenue right-of-way along its east boundary and having a slight downward slope to the west.**

b. What is the steepest slope on the site (approximate percent slope)?

**Approximately 2 – 5%**

c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any agricultural land of long-term commercial significance and whether the proposal results in removing any of these soils.

**The USDA soils survey lists the soils on the site as "Oridia silt loam, 0 to 2 percent slopes". The vacant project site is not considered agricultural land of long term use.**

d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.

**There are no surface indications or history of unstable soils in the immediate vicinity.**

e. Describe the purpose, type, total area, and approximate quantities and total affected area of any filling, excavation, and grading proposed. Indicate source of fill.

**There will likely be imported fill; however, the quantity and source of fill is not available for this initial phase of environmental review. The city will require a Clearing, Filling and Grading permit for any such activities in excess of 50 cubic yards. A clearing, filling, and grading permit would not be issued prior to land use permit issuance and subsequent approval of engineered plans.**

f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.

**Limited erosion could occur as a result of the initial construction on-site. However, erosion control measures will be utilized during the construction phase to minimize potential erosion impacts. Temporary erosion and sedimentation control plans will be submitted to and approved by the City of Carnation prior to any clearing or grading activity.**

g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?

**The specific impervious surface coverage is unavailable at this first (Development Agreement) phase of environmental review. The underlying LI/M zone limits impervious surfaces to 75 percent.**



h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:

**A temporary erosion and sedimentation control plan, designed in accordance with City of Carnation standards, will be employed during the construction phase of this project.**

## **2. Air**

a. What types of emissions to the air would result from the proposal during construction, operation, and maintenance when the project is completed? If any, generally describe and give approximate quantities if known.

**During project construction, heavy equipment operation and workers' vehicles would generate exhaust emissions into the immediate vicinity. Construction activity on the site could also stir up exposed soils and generate dust and particulate matter into the local air. The completed project would result in a minor increase in the amount of emission-related pollutants in the local air typical of project related traffic.**

b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.

**There are no known off-site sources of emissions or odors that are likely to impact this project.**

c. Proposed measures to reduce or control emissions or other impacts to air, if any:

**To control dust emissions throughout construction, during dry periods the proponent shall employ the use of watering all dust generating surfaces a minimum of three times daily or more as needed during construction phase of the project. Alternative non-chemical methods would be considered for approval by the City of Carnation.**

## **3. Water**

a. Surface Water:

1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.

**The Snoqualmie River is approximately 960 feet west of the subject property. The Snoqualmie River is a Class I water and a shoreline of the state.**

2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.

**No. However, the project will occur adjacent to the 100 year floodplain of the Snoqualmie River and any portion within the floodplain is subject to the requirements of the Shoreline Master Program.**

- 3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.

**There will be no fill and dredge material that would be placed in or removed from the Snoqualmie River. Any fill material within the floodplain will be subject to the City of Carnation “floodways and floodplains” regulations and any other applicable state or federal regulations. Additional environmental review will occur at the land use permit submittal phase.**

- 4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.

**No.**

- 5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.

**Yes. The second phase of environmental review commencing with the submittal of required land use permits will provide detailed site plans with all features including floodplain.**

- 6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.

**No.**

b. Ground Water:

- 1) Will groundwater be withdrawn, or will water be discharged to ground water? Give general description, purpose, and approximate quantities if known.

**No. Potable water will be provided by the City of Carnation water system.**

- 2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals. .; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

**The wastewater from proposed development will be collected by extension and connection to the City's sanitary sewer system. Certificates of sewer and water availability will be required with land use permit submittal.**

c. Water runoff (including stormwater):

- 1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.

**Stormwater runoff from the new on-site impervious surfaces will be collected and and treated on site in a manner consistent with site drainage designs based on the 2012 Stormwater Management Manual for Western Washington (SWMWW), as Amended in December 2014. The storm water**

system design will be required with the submittal of land use permits and will be evaluated through the second phase of environmental review.

2) Could waste materials enter ground or surface waters? If so, generally describe.

It's always a possibility that minimal pollutants normally associated with this type of development could enter the surface water. However, the amount would be minimal since the on-site drainage will include the use of treatment facilities in conformance with current standards as described above. The required plans for stormwater and run-off control are expected to minimize entry of waste materials or pollutants to groundwater resources and/or surface waters.

3) Does the proposal alter or otherwise affect drainage patterns in the vicinity of the site? If so, describe.

The required plans for stormwater and run-off control should be designed to minimize any potential of affecting or altering drainage patterns in the vicinity.

d. Proposed measures to reduce or control surface, ground, and runoff water, and drainage pattern impacts, if any:

Engineered plans for the project's drainage/water quality system must be designed to remove pollutants and sediments from the runoff prior to discharge.

#### 4. Plants

Check the types of vegetation found on the site:

- deciduous tree: alder, maple, aspen, other
- evergreen tree: fir, cedar, pine, other
- shrubs
- grass
- pasture
- crop or grain
- Orchards, vineyards or other permanent crops.
- wet soil plants: cattail, buttercup, bullrush, skunk cabbage, other
- water plants: water lily, eelgrass, milfoil, other
- other types of vegetation

b. What kind and amount of vegetation will be removed or altered?

Most if not all of the site's grass surface will be altered by the development's impervious surfaces and new landscape areas.

c. List threatened and endangered species known to be on or near the site.

There are no known threatened or endangered plant species or critical habitat on or near the proposed project site.

- d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:

**Any areas temporarily disturbed during construction will be restored to existing or better conditions after construction is complete. Landscaping will be required to meet the standards required by the Carnation Municipal Code Chapter 15.76 – Screening, Landscaping and Trees.**

- e. List all noxious weeds and invasive species known to be on or near the site.

**No noxious weeds and invasive species are known to be on or near the site.**

## **5. Animals**

- a. List any birds and other animals which have been observed on or near the site or are known to be on or near the site.

**X Birds:** hawk, heron, eagle, songbirds, other: osprey

The following are typical avian species that may utilize this habitat: American crow (*Corvus brachyrhynchos*), American robin (*Turdus migratorius*), black-capped chickadee (*Parus atricapillus*), bushtit (*Psittacus minimus*), common raven (*Corvus corax*), dark-eyed junco (*Junco hyemalis*), European starling (*Sturnus vulgaris*), northern flicker (*Colaptes auratus*), rufous-sided towhee (*Pipilo erythrophthalmus*), song sparrow (*Melospiza melodia*), steller's jay (*Cyanocitta stelleri*), and winter wren (*Troglodytes troglodytes*).

**X Mammals:** species that easily adapt to urban and suburban environments such as bats (*Myotis spp.*), deer mice (*Peromyscus maniculatus*), eastern cottontail rabbits (*Sylvilagus floridanus*), moles (*Scapanus spp.*), raccoons (*Procyon lotor*), shrews (*Sorex spp.*), skunks (*Mephitis spp.*), squirrels (*Sciurus carolinensis*, *Tamiasciurus douglasii*), Virginia opossums (*Didelphis virginiana*), and black-tailed deer (*Odocoileus hemionus, columbianus*).

**X Fish:** Bull Trout (*Salvelinus confluentus*), Chinook salmon (*Oncorhynchus tshawytscha*), and Steelhead (*Oncorhynchus mykiss*).

- b. List any threatened and endangered species known to be on or near the site.

**The WDFW PHS database shows that the Snoqualmie River contains Bull Trout (*Salvelinus confluentus*), Chinook salmon (*Oncorhynchus tshawytscha*), and Steelhead (*Oncorhynchus mykiss*). The Snoqualmie River is approximately 960 feet away from this property and will not be affected by this proposal.**

- c. Is the site part of a migration route? If so, explain.

**The project site is located within the Pacific Flyway, which is a major north-south route of travel for migratory birds in America, extending from Alaska to Patagonia. Every year, migratory birds travel some or all of this distance both in spring and in fall, following food sources, heading to breeding grounds, or travelling to overwintering sites. Migrating and nesting birds within the project area will be protected under the Migratory Bird Treaty Act.**

- d. Proposed measures to preserve or enhance wildlife, if any:

**Where feasible, new vegetation and stormwater features should be designed on site with consideration of the enhancement of wildlife habitat. These designs will be evaluated during the second phase of environmental review for this proposal.**

e. List any invasive animal species known to be on or near the site.

**No invasive species are known to be on or near the site.**

## ***6. Energy and Natural Resources***

a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.

**Electricity and or possibly natural gas if available could be used for heating and lighting.**

b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.

**No.**

c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:

**The buildings within this proposed development would be constructed to meet adopted local, state, and international building codes to ensure compliance with energy conservation standards.**

## ***7. Environmental Health***

a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe.

**Under normal working conditions, it is unlikely that environmental health hazards would be encountered. All project related construction will meet all current local, county, state and federal regulations.**

1) Describe any known or possible contamination at the site from present or past uses.

**There is no known contamination at the site from present or past uses. Possible contamination at the site could include anything to the extent that normal construction activity poses or that of typical land use activity.**

2) Describe existing hazardous chemicals/conditions that might affect project development and design. This includes underground hazardous liquid and gas transmission pipelines located within the project area and in the vicinity.

**No existing hazardous conditions are expected to affect the project. A utility locate will be done to**

verify the location of the utilities. There is a water and sewer line running along Larson Avenue. There are also telephone, cable television, and other types of utilities present in the City of Carnation.

- 3) Describe any toxic or hazardous chemicals that might be stored, used, or produced during the project's development or construction, or at any time during the operating life of the project.

**Toxic or hazardous chemicals, such as fuel or hydraulic fluids, would be used in construction equipment during construction. The second phase of environmental review will evaluate toxic or hazardous chemicals in greater detail once the land use permits are submitted and reviewed. In any case, state regulations regarding safety and the handling of hazardous materials would be enforced during the construction process. Equipment refueling areas would be located in areas where a spill could be quickly contained, and where the risks of the hazardous material entering surface water are minimized.**

- 4) Describe special emergency services that might be required.

**Upon completion of the proposed project special emergency services should not be required. During construction, a construction foreman for the job is typically trained in spill response and construction Best Management Practices (BMPs) and could manage minor incidents.**

- 5) Proposed measures to reduce or control environmental health hazards, if any:

**State regulations regarding safety and the handling of hazardous materials would be enforced during the construction process. Equipment refueling areas would be located in areas where a spill could be quickly contained, and where the risks of the hazardous material entering surface water are minimized.**

#### b. Noise

- 1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?

**No noise exists in the area that will affect the project.**

- 2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.

**On a short term basis, construction and traffic noise would be created (6 am to 10 pm). This noise level is expected to range between 60 to 100 dBA. On a long term basis, traffic noise would be created from the allowed non-residential uses within the proposed development.**

- 3) Proposed measures to reduce or control noise impacts, if any:

**Limiting hours of construction from 7:00 am to 7:00 pm Monday through Saturday.**

## **8. Land and Shoreline Use**

- a. What is the current use of the site and adjacent properties? Will the proposal affect current land uses on nearby or adjacent properties? If so, describe.

**The current use of the site is vacant. On the adjacent property to the south there is a light industrial use, east of the property across Larson Avenue is vacant commercial zoned property and an industrial use, and north of the property is the City of Carnation sewer system vacuum station, and north of that is the King County wastewater treatment facility. West of the subject property is King County's Tolt McDonald Park.**

- b. Has the project site been used as working farmlands or working forest lands? If so, describe. How much agricultural or forest land of long-term commercial significance will be converted to other uses as a result of the proposal, if any? If resource lands have not been designated, how many acres in farmland or forest land tax status will be converted to nonfarm or nonforest use?

**The property may have historically been used as a small farm; however, this has not occurred since 1999 when it was purchased by the City of Carnation.**

- 1) Will the proposal affect or be affected by surrounding working farm or forest land normal business operations, such as oversize equipment access, the application of pesticides, tilling, and harvesting? If so, how:

**No.**

- c. Describe any structures on the site.

**The subject property currently has the city's sewer system's vacuum pump station which will be divided from the project site with the filing of a short plat which currently has preliminary approval. The "project" site is currently undeveloped.**

- d. Will any structures be demolished? If so, what?

**No.**

- e. What is the current zoning classification of the site?

**The property is currently zoned "Light Industrial Manufacturing" (LI/M).**

- f. What is the current comprehensive plan designation of the site?

**The current Comprehensive Plan designation is "Industrial".**

- g. If applicable, what is the current shoreline master program designation of the site?

**The current Shoreline Master Program designation is "Urban Conservancy"**

- h. Has any part of the site been classified as a critical area by the city or county? If so, specify.

**No. The property does have a portion of 100 year floodplain along its west boundary. Pursuant to Carnation Municipal Code Section 15.88.112, "Frequently flooded areas are considered critical areas"**

*under the Growth Management Act, but are not regulated under this chapter [ CMC 15.88 Critical Areas]. Frequently flooded areas are separately regulated by Chapter 15.64 CMC."*

i. Approximately how many people would reside or work in the completed project?

**The Remlinger Group (project proponents) anticipate that the proposed Carnation Business Center altogether would create approximately 192 to 240 jobs total.**

j. Approximately how many people would the completed project displace?

**The completed project would not displace any people.**

k. Proposed measures to avoid or reduce displacement impacts, if any:

**None.**

l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:

**The project will be developed in accordance with the applicable City of Carnation land use regulations and other development codes which have been adopted to implement the goals and policies of the adopted Comprehensive Plan.**

m. Proposed measures to reduce or control impacts to agricultural and forest lands of long-term commercial significance, if any:

**None. There are no anticipated impacts to agricultural and forest lands of long term significance.**

## **9. Housing**

a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.

**None. This will be a non-residential project.**

b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.

**None.**

c. Proposed measures to reduce or control housing impacts, if any:

**None.**

## **10. Aesthetics**

a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?



**The maximum allowed building height in the underlying LI/M zone is 35 feet, or 40 feet where the front yard setback is at least 30'. Additional review will occur in the second phase of environmental review with the submittal of the required land use permits which will have specific building details.**

b. What views in the immediate vicinity would be altered or obstructed?

**None.**

Proposed measures to reduce or control aesthetic impacts, if any:

**Utilizing materials and architectural features that are consistent with the City of Carnation Design Standards and Guidelines.**

### ***11. Light and Glare***

a. What type of light or glare will the proposal produce? What time of day would it mainly occur?

**There will be lights on the proposed buildings and in the parking lot consistent with the City of Carnation's standards for lighting. Additional review will occur in the second phase of environmental review with the submittal of the required land use permits which will have specific building details.**

b. Could light or glare from the finished project be a safety hazard or interfere with views?

**No.**

c. What existing off-site sources of light or glare may affect your proposal?

**None.**

d. Proposed measures to reduce or control light and glare impacts, if any:

**Use of non-reflective materials on buildings and the use of shielded lights directed in a manner that does not cast significant light onto adjacent properties or the night sky. Additional review will occur in the second phase of environmental review with the submittal of the required land use permits which will have specific building details.**

### ***12. Recreation***

a. What designated and informal recreational opportunities are in the immediate vicinity?

**The city of Carnation is a pedestrian oriented community and as such has amenities for walking and bicycling. West of and adjacent to the subject property is King County's Tolt McDonald Park with its system of trails.**

b. Would the proposed project displace any existing recreational uses? If so, describe.

**No. There is currently a trail connecting the western terminus of W. Entwistle Street with Tolt McDonald Park that runs diagonally through a portion of the property. Through review of the city's preliminary short subdivision of the property, it was required that an easement be provided that re-routes the trail to run along the boundary of the subject property to maintain the connection between the King County Park and W. Entwistle Street.**

- c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:

**Any future development of the property will be required to improve the re-routed trail to its current standard or better. This matter will be evaluated through the land use permit review process.**

### ***13. Historic and cultural preservation***

- a. Are there any buildings, structures, or sites, located on or near the site that are over 45 years old listed in or eligible for listing in national, state, or local preservation registers? If so, specifically describe.

**None known.**

- b. Are there any landmarks, features, or other evidence of Indian or historic use or occupation? This may include human burials or old cemeteries. Are there any material evidence, artifacts, or areas of cultural importance on or near the site? Please list any professional studies conducted at the site to identify such resources.

**None known.**

- c. Describe the methods used to assess the potential impacts to cultural and historic resources on or near the project site. Examples include consultation with tribes and the department of archeology and historic preservation, archaeological surveys, historic maps, GIS data, etc.

**It is likely that a cultural survey will be required as a requirement of land use application submittal. However, should any site disturbance relative to site exploration be necessary, the project proponents should contact the Snoqualmie Indian Tribe's Department of Archaeology and Historic Preservation and notify them of their intent.**

- d. Proposed measures to avoid, minimize, or compensate for loss, changes to, and disturbance to resources. Please include plans for the above and any permits that may be required.

**To mitigate any potential for adverse impacts to archaeological resources, the project proponent and/or their contractors are required to stop work and immediately notify the City of Carnation and the Washington State Office of Archaeology and Historic Preservation if any historical or archaeological artifacts are uncovered during development.**

### ***14. Transportation***

- a. Identify public streets and highways serving the site or affected geographic area and describe proposed access to the existing street system. Show on site plans, if any.

**The project site is currently served by Larson Avenue via W. Entwistle Street. Larson Avenue abuts the property's east boundary line.**

b. Is the site or affected geographic area currently served by public transit? If so, generally describe. If not, what is the approximate distance to the nearest transit stop?

**No.**

c. How many additional parking spaces would the completed project or non-project proposal have? How many would the project or proposal eliminate?

**The completed project would provide 241 additional parking spaces. The project would not eliminate any parking spaces.**

d. Will the proposal require any new or improvements to existing roads, streets, pedestrian, bicycle or state transportation facilities, not including driveways? If so, generally describe (indicate whether public or private).

**At a minimum, the proposal will require right-of-way dedication and improvements to Larson Avenue.**

e. Will the project or proposal use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.

**No.**

f. How many vehicular trips per day would be generated by the completed project or proposal? If known, indicate when peak volumes would occur and what percentage of the volume would be trucks (such as commercial and nonpassenger vehicles). What data or transportation models were used to make these estimates?

**The volume of traffic generated by the proposal is unknown at this time. With the second phase of this review a Traffic Impact Analysis will be required for the land use permit review.**

g. Will the proposal interfere with, affect or be affected by the movement of agricultural and forest products on roads or streets in the area? If so, generally describe.

**No.**

h. Proposed measures to reduce or control transportation impacts, if any:

**The assessment of traffic impact fees and right-of-way improvement requirements through the land use permit approval process. Additional measures may be considered during the second phase of this review commencing with the submittal of the land use permits for the proposed development.**

## **15. Public Services**

a. Would the project result in an increased need for public services (for example: fire protection, police protection, public transit, health care, schools, other)? If so, generally describe.

**Additional needs are not anticipated at this phase of review; however, it will be evaluated in greater depth in the second phase of environmental review commencing with the submittal of the required land use permits.**

b. Proposed measures to reduce or control direct impacts on public services, if any.

**None known at this phase of the review.**

**16. Utilities**

a. Circle utilities currently available at the site: electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other \_\_\_\_\_.

**Electricity, water, refuse service, telephone, and sanitary sewer are currently available at the site. It is not known if the extension of natural gas is available.**

b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.

**City of Carnation: Water and Sewer  
Puget Sound Energy: Natural Gas and Electric**

**C. Signature**

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature:  \_\_\_\_\_

Name of signee: Tim Woolett

Position and Agency/Organization: City Planner/Consultant, City of Carnation

Date Submitted: August 11, 2023

## ***D. Supplemental sheet for nonproject actions***

**Not applicable.**

**(IT IS NOT NECESSARY** to use this sheet for project actions)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

Proposed measures to avoid or reduce such increases are:

2. How would the proposal be likely to affect plants, animals, fish, or marine life?

Proposed measures to protect or conserve plants, animals, fish, or marine life are:

3. How would the proposal be likely to deplete energy or natural resources?

Proposed measures to protect or conserve energy and natural resources are:

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?

Proposed measures to protect such resources or to avoid or reduce impacts are:

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

Proposed measures to avoid or reduce shoreline and land use impacts are:

6. How would the proposal be likely to increase demands on transportation or public services and utilities?

Proposed measures to reduce or respond to such demand(s) are:

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.



## State Environmental Policy Act (SEPA) WAC 197-11 MITIGATED DETERMINATION OF NON-SIGNIFICANCE

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**Description of Current Proposal:** A proposed Development Agreement that would outline specific outcomes, dates and conditions attached to the sale of this property for the purpose of development of the proposed Carnation Business Center which will encompass approximately 7.10 acres. The proposed improvements would include three multi-tenanted warehouse/commercial buildings that will combine for approximately 110,000 SF with associated office space, and one multi-tenanted (or single-tenanted) warehouse/commercial building that will combine for approximately 12,000 SF with associated office space. The passenger vehicle parking and utility infrastructure will be constructed in conjunction with the buildings. It is anticipated that the proposal would create 241 additional parking spaces.

The Lead Agency will conduct a phased environmental review for this proposal in accordance with WAC 197-11-060(5). This first phase of the environmental review is limited to the terms of the Development Agreement and the preliminary conceptual information for the Carnation Business Center proposed by the Remlinger Group as described above. The second phase of environmental review will commence with submittal of the required land use permit applications.

**File Reference:** DA 23-0001

**Proponent/Owner:** City of Carnation  
**Project Contact:** Ana Cortez, City Manager

**Location of Current Proposal:** The subject property is located at 4300 Larson Avenue, Carnation WA 98014, and is currently identified as Assessor's Parcel No. 162507-9073.

**Lead Agency:** City of Carnation

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with Clallam County. This information is available to the public on request at the office of the Responsible Official as listed herein.

This **MDNS** is issued under WAC 197-11-340(2). Comments must be submitted by 5:00 pm on August 25, 2023.

**Staff Contact:** Lora Wilmes, Planner (425) 333-4192

**Responsible Official:** Tim Woolett, City Planner/Consultant  
City of Carnation  
4621 Tolt Avenue – P.O. Box 1238  
Carnation, WA 98014-1238

**Issuance Date:** **August 11, 2023.**

**Signature:**

  
Tim Woolett, City Planner/Consultant

Written comments must be submitted to the City of Carnation, Carnation City Hall, 4621 Tolt Avenue, P.O. Box 1238, Carnation, WA, 98014-1238. No determination made pursuant Chapter 14.04 Carnation Municipal Code (SEPA) shall be administratively appealable. Any appeal of a determination made pursuant to said chapter shall be filed in King County Superior Court pursuant to applicable state law. Contact Carnation City Hall at the address and phone number listed above to read or ask about the procedures for SEPA appeals.

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### **SEPA MITIGATION REQUIREMENTS CONCLUSIONS AND SUBSTANTIVE AUTHORITY**

The environmental review indicates that there may be a potential for adverse environmental impacts from the proposal which may not be mitigated through conditions imposed by authority of existing City of Carnation land use regulations. Therefore, a Mitigated Determination of Non-Significance should be required.

This authority is pursuant to Section *14.04.160 B. CMC - Substantive authority—Specific provisions* as follows:

The city may attach conditions to a permit or approval for a proposal so long as:

1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this chapter; and
2. Such conditions are in writing; and
3. The mitigation measures included in such conditions are reasonable and capable of being accomplished; and
4. The city has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and
5. Such conditions are based on one or more policies in subsection D of this section and cited in the license or other decision document.

#### **Potential Significant Environmental Impacts:**

Based on review of the Environmental Checklist and other available material provided on the subject proposal, the Responsible Official for the City of Carnation has considered the following as potential significant adverse environmental impacts as a result of the subject development proposal. These impacts cannot be decisively mitigated under the standards in the Carnation Municipal Code at this phase of the review and must be mitigated under the substantive authority of SEPA:

- The potential for adverse environmental impacts to cultural resources due to site disturbance.

#### **Proposed Mitigation Measures:**

The following mitigation measures are intended to address and mitigate to a point of non-significance the environmental impacts listed above.

1. To mitigate the potential for adverse environmental impacts to cultural resources, the proponent should work with the Snoqualmie Indian Tribe's DAHP to determine the need for a cultural survey. Should any site disturbance relative to site exploration be necessary, the project proponents must contact the Snoqualmie Indian Tribe's Department of Archaeology and Historic Preservation and notify them of their intent.
2. The project proponent and/or their contractors are required to stop work and immediately notify the City of Carnation and the Washington State Office of Archaeology and Historic Preservation if any historical or archaeological artifacts are uncovered during development.



**Supporting Policies:**

City policies which address the aforementioned probable impacts are contained in the specific policies outlined in the City of Carnation SEPA Ordinance under *Section 14.04.160 D.1. a – g CMC* are as follows:

- a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
  - b. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
  - c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
  - d. Preserve important historic, cultural, and natural aspects of our national heritage;
  - e. Maintain, wherever possible, an environment which supports diversity and variety of individual choices;
  - f. Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
  - g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.
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## DEVELOPMENT AGREEMENT

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This Development Agreement ("**Agreement**") is entered into on this \_\_\_ day of \_\_\_\_\_, 2023 ("**Effective Date**"), by and between the CITY OF CARNATION, a municipal corporation under the laws of the State of Washington ("**City**"), and [REMLINGER ENTITY], a Washington limited liability company ("**Developer**") (City and Developer are each sometimes referred to herein individually as a "**Party**" and, together, as the "**Parties**").

### RECITALS

- A. The City and Developer are parties to that certain Real Property Purchase Agreement ("**PSA**"), of even date herewith, pursuant to which the City has agreed to sell, and Developer has agreed to purchase, the real property located in the City of Carnation, County of King, State of Washington, and legally described on **Exhibit A** ("**Property**").
- B. The City has commenced a land segregation process, City of Carnation Preliminary Short Subdivision Application Number SHP22-0003, pursuant to which the City intends to legally segregate the Property from its Parent Parcel (King County Parcel No. 1625079073).
- C. Developer desires to develop the Property as a project to be used in a manner consistent with the light industrial/manufacturing zone established pursuant to Section 15.36.030 ("**LI/M Zone**"), City of Carnation Municipal Code ("**CMC**"), and the uses permissible therein ("**Project**"), and the City has determined that the Project will provide significant public benefit to the City and the broader community.
- D. The City's most important interest in the development of this property is to activate the parcels for future development which will provide employment opportunities, access to services locally, road and infrastructures improvements, and diversification of municipal revenues.
- E. The City has the authority to enter this Agreement pursuant to RCW 36.70B.170 *et seq.* and CMC Title 15.
- F. Capitalized terms used, but not defined herein, shall have the meanings given to them in the PSA.

### AGREEMENT

#### 1. Introduction.

Upon approval of the PSA and this Agreement, the provisions of this Agreement, in addition to the provisions of the PSA, as applicable, shall govern the development of the Property. The Parties recognize that the development of the Project, including conformance with the conditions in this Agreement, is subject to third party permits and approvals outside of the control of the City or Developer. Nothing in this Agreement is intended to, or shall, in any way limit, expand, impair or otherwise amend any of the terms, conditions, rights, remedies or obligations of the Parties under the PSA.

## 2. Project Description.

The Project that is the subject of this Agreement is a high-quality development light industrial development, as conceptually depicted in the site plan ("*Site Plan*") attached hereto as **Exhibit B** and incorporated herein by this reference. The Parties contemplate that the Project shall comprise at least 80,000 square feet intended to serve uses consistent with the LI/M Zone. The ultimate scope and mix of specific uses constructed will be determined by Developer based on market demand and the land use capacity of the Property, subject to the development standards set forth in this Agreement. A maximum of 20% of the total building square feet may be developed as storage space. In the event Developer wants to develop more than 20% of the total building's square footage as any form of storage space, Developer shall pay City \$50,000.00 annually. The total square feet of storage space may not exceed 33% of the buildings' total square footage.

Storage in this section is defined as passive use of building space such as that used for parked vehicles, boats, equipment, sedentary inventory and or other similar uses; this definition excludes use of footage for inventory required for periodic business, commercial, professional activity.

## 3. Development Plan.

3.1 Development Elements. The City and Developer contemplate a development plan for the Property and Project. The plan contemplates, among other things, a development that balances economic development, including employment opportunities, revenue generation for the City, community connectivity and wayfinding, and environmental protection. The plan includes the following elements:

(i) Economic Development: creating at least 80,000 square feet of LI/M Zone space envisioned to provide meaningful employment opportunities within the community and revenue generation to the City. In a mutual effort maximize the footprint of the Project and complete the Larson Road Extension (defined below) in a timely manner, the City shall permit Developer, and grant to Developer any rights necessary, to expand and/or alter the existing infiltration system(s) serving the existing vacuum station on the Parent Parcel to fulfill stormwater management requirements.

~~Additionally, the City and Developer will exercise diligent good faith efforts to work with King County Department of Natural Resources and Parks ("*King County Parks*") to obtain permission and/or rights to use portions of King County Parcel No. 1625079016 (owned by King County) ("*King County Property*"), for the purposes of constructing stormwater flow control and treatment facilities. If King County agrees to provide sufficient rights therefor, as determined by the City and Developer, each in their reasonable discretion, then both the City and Developer will exercise good faith efforts to determine whether it is fiscally, commercially reasonable to design stormwater facilities that can adequately serve the planned growth and development of the contributory drainage basin with each Party contributing an equitable share of the total cost; provided that in no event shall Developer be obligated to design or construct stormwater facilities beyond what is necessary to serve the Project. If the Parties mutually agree,~~



~~each in their sole and absolute discretion, to cooperatively design and construct stormwater facilities on the King County Property as described, the existing stormwater facility serving the vacuum station would be removed, and the Developer, will have permission to utilize the current footprint of the facility to best serve the Project.~~

(ii) Larson Road Extension. Design and Construction of Larson Road: The terms of this Agreement satisfies the requirements set forth in CMC 15.56.190. In lieu of transportation impact fees otherwise collectible by the City in connection with the Project, and in full satisfaction of Developer's off-site traffic mitigation obligation, including, without limitation, those set forth in CMC Section 15.56.190. Developer shall design and construct an extension of Larson Road along the eastern and western boundaries, to the southern boundary, of the Property ("**Larson Road Extension**"). Within ninety (90) days following the Effective Date, the City and Developer will work diligently to prepare mutually acceptable design and construction standards and specifications for the Larson Road Extension that are consistent with the nature of the Project.

(iii) South Larson Extension. In addition, the City anticipates the possibility to obtain the properties directly south of, and adjacent to the Property, and directly south of Larson Road, ("**South Larson Property**") for purposes of extending Larson Road to a controlled stop-sign intersection with NE 40<sup>th</sup> Street, which includes extending Larson Road from East Entwistle St. to 40<sup>th</sup> Street including road, sidewalks and gutters.

In lieu of transportation impact fees otherwise collectible by the City in connection with the Project, Developer will, at its sole cost, design and engineer a further extension of Larson Road to the south boundary of the South Larson Property.

(iv) In addition, if the City acquires the South Larson Properties within five (5) years of the Closing Date (per the Purchase and Sale Agreement dated [REDACTED]), then Developer will construct at its own cost, such extension of Larson Road ("**South Larson Extension**");

For the avoidance of doubt, Developer's obligations to (i) design, engineer, and construct the Larson Road Extension; and (ii) design and engineer the South Larson Extension shall fully satisfy any and all obligations Developer may have to pay any transportation impact fees, under any applicable law or legal theory, regardless of whether the City acquires the South Larson Properties and/or Developer constructs the South Larson Extension. Finally, Developer will exercise good faith efforts to facilitate a meeting between the owner of the South Larson Properties and the City in connection with the City's efforts to acquire that property.

In the event the City does not obtain the properties directly south of, and adjacent to the Property within 5 years of closing in order to further extend Larson Road from East Entwistle St. to 40<sup>th</sup> Street, then Developer will provide City with all design, CAD and engineering files for the design, engineering and construction of the extension.

(v) **Soft Surface Trail Easement:** A soft surface trail connecting Tolt MacDonald Park to East Entwistle Street traverses the northwesterly portion of the Property ("**Soft Surface Trail**"). In an effort to maximize the footprint of the Project, the City and Developer will exercise diligent good faith efforts to work with King County to relocate the Soft Surface Trail on the King County Property. However, if King County is not willing to accept and establish the Soft Surface Trail on the King County Property, then as a condition to Developer's construction permits for the Project, Developer will dedicate a five (5) foot strip of land along the northern boundary of the Property as a permanent easement for this trail for public use. Notwithstanding the forgoing, the Soft Surface Trail shall be designed in conjunction with, and shall be contained within, the minimum perimeter landscape buffers, if any, as may be required for the Project. The dedication of the Soft Surface Trail shall not result in any additional increases to landscape and buffering requirements.

(vi) **Connectivity and Wayfinding:** Developer shall design and fund signage as part of the Project on the Property that will enhance connectivity and wayfinding along Route 203 to areas such as City Hall, the Business Park, Tolt Commons, Memorial Park and other destinations, all subject to City design standards.

(vii) **Artwork:** Developer shall include public artwork dedicated to the Schefer family legacy along the soft surface trail within King County's property (King County Parcel Number: 162507-9016). The final design for the soft surface trail and artwork will be a joint decision by City and Developer.

### 3.2 Development Schedule.

(i) Developer will submit to the City a complete application for permits to construct the Project conceptually consistent with the Site Plan on or before August 31, 2024 and will exercise diligent best efforts to complete construction of the Project no later than the third (3<sup>rd</sup>) anniversary of the Closing ("**Completion Timeline**"), subject to the City's compliance with the terms of this Agreement.

Developer shall be expected to meet 100% completion by the 3<sup>rd</sup> anniversary of closing. If Developer delays longer than the 3<sup>rd</sup> anniversary of closing due to its own delays, and not due to City, county or state regulatory agencies, then the following penalties will apply:

For every 15 calendar day delays beginning on the 91<sup>st</sup> day after the 3<sup>rd</sup> anniversary, the Developer shall pay the City \$25,000.00.

(ii) To the best of the City's ability all permit applications in connection with the Project shall be processed on an expedited basis. The Parties understand that there may be permits, decisions, and/or approvals from third parties necessary to the permitting of the Project ("**Third Party Approvals**") and the issuance of which the City does not control. However, the City shall, in all cases, respond to Developer's requests for review of submittals and inspection of work, with a complete set of comments and/or approval, within seven (10) business days;



provided that in no event shall be foregoing be construed to provide the City more time to review the Project, or any element thereof, than is provided for by applicable law. Additionally, upon written request of Developer, the City shall exercise reasonable good faith efforts to assist Developer in obtaining Third Party Approvals. Due to the Completion Timeline proposed by the City, the City's diligent commitment to expedited review is fundamental hereto, and without which Developer would not have entered this Agreement.

#### 4. Permitted Uses.

The uses permitted on the Property ("*Permitted Uses*") shall include all of those uses that are consistent with the LI/M Zone as set forth in the use tables in CMC Section 15.36.030, as the same exists on the Effective Date and a copy of which is attached hereto as **Exhibit C** and incorporated herein by this reference; provided that the Permitted Uses for this Project do not include indoor, or outdoor, self-serve public storage or mini-storage ("*Prohibited Storage*"), except as a use that does not occupy more than 20% of the total building square feet indoors or as allowed by code, whichever is less; provided that the term "Prohibited Storage" shall not include any warehouse use or storage of items, such as materials, inventory, equipment, vehicles, and other property in connection with a use that is permitted in the LI/M Zone. Adult entertainment establishments or marijuana retailers are not permitted uses at this Development.

#### 5. Development Standards.

5.1 Development of the Property shall be subject to the development standards set forth in this Agreement and, in the absence of a standard in this Agreement, the provisions of the CMC, as the same exists on the Effective Date; ~~provided that, at Developer's request, the City will modify those standards to the maximum extent permitted in the table set forth in CMC 15.17.030, as it exists on the Effective Date,~~ and a copy of which is attached hereto as **Exhibit D** and incorporated herein by this reference (as may be modified, "*Development Standards*").

Commented [KF1]: Correct, verified with Tim 8/17/23

5.2 In the event of a conflict between the Development Standards specified in this Agreement and the requirements of the CMC, the Development Standards of this Agreement shall prevail. In no event shall any of the Development Standards set forth herein supersede or control over any contrary provision or contractual requirement set forth in the PSA.

5.3 Any decision by the City or any representative thereof to reject a plan or permit based on inconsistency with the Development Standards must be made in writing within the timeframe specified in Section 3.2(ii) hereof and must be supported by findings outlining the identified inconsistency.

5.4 Design Standards. Development of the Property shall be subject to the design standards set forth in this Agreement and, in the absence of a standard in this Agreement, the provisions of the CMC, as the same exists on the Effective Date. The City will provide Developer with updated design standards no later than February 2, 2024

#### 6. Environmental and Traffic

6.1 Floodplain Issues. Given that the entire Property is located within the Federal Emergency Management Agency ("*FEMA*") 100-year floodplain, the construction of the Project will be subject to CMC Ch.15.64 – (Floodways, Floodplains, Drainage, and Erosion) and will require approvals from FEMA. Although Developer must investigate and secure all local, regional, state, and federal permits related to the Project at its own expense, the City shall exercise diligent good faith efforts to assist Developer in doing so, including, without limitation, providing continuing political support, writing letters, and participating in the meetings as reasonably necessary and appropriate to ensure that Developer obtains all such Third Party Approvals as quickly as possible.

Furthermore, the Parties will work in good faith to identify offsite opportunities that can provide sufficient flood plain storage in order to maximize the footprint of the Project and to prove, through industry standard flood plain modeling, that any rises to the flood plain caused by the Project will be mitigated. Upon providing evidence of this result, the City will support a Conditional Letter of Map Revision (CLOMR) demonstrating the same to FEMA, and, post-construction, a final Letter of Map Revision (LOMR) demonstrating the same.

6.2 Shoreline Jurisdiction & Critical Areas. A strip along the western portion of the Property lies within the shoreline jurisdiction and any development or improvements within that area will be subject to the Carnation Shoreline Master Program. The City represents to Developer that, to the best of the City's knowledge, other than the described shoreline area, there are no known or mapped wetlands or other critical areas on the Property. In order to permit the Project, Developer would need to hire a qualified professional to complete a survey of the Property and prepare a Critical Areas Report.

6.3 As part of the Project, Developer will prepare AM and PM peak-hour weekday and weekend intersection analysis that studies the amount of traffic to be generated by the Project during AM and PM peak-hour, the potential transportation effects of the Project during such times, and showing acceptable operations (Level Of Service D or better) of the study intersections or providing for adequate intersection improvements to meet such peak-hour level of service standards (Level Of Service D). For the avoidance of doubt, the Parties acknowledge that Developer's obligations as set forth in Section 3.1(ii) hereof constitute material off-site traffic mitigation and Developer will have no further traffic mitigation obligations, except to the extent necessary to achieve a Level of Service D or better in the applicable study intersections. Developer's traffic analysis shall be limited to existing transportation infrastructure within the city limits of Carnation and the City agrees that such analysis shall fully satisfy the City's traffic-related permit requirements for the Project.

## **7. Additional Community Benefits.**

7.1 Ombudsperson. The City will designate a City staff person to serve as a conduit between the community, Developer and various City departments, residential organizations, and neighbors beginning no later than two weeks from fully executed documents. The Ombudsperson will ensure all Parties fulfill all terms of this Agreement and the PSA. The



Ombudsperson will also work cooperatively in good faith with Developer and community organizations on community engagement activities during construction.

7.2 Schefer Riverfront Coordinating Group. Developer and the City shall exercise good faith efforts to convene the Schefer Riverfront Coordinating Group ("**CG**") at least every two months during calendar years 2023 through 2025 to develop public messaging and information to keep Carnation residents informed about the Project. CG will include one representative from the following organizations: Carnation City Council, CED Committee, , Puget Sound Energy, Planning Board, King County Waste Water, Carnation City Manager's Office, Developer, and King County Parks.

## **8. Claw Back Provision**

8.1 Generally. The Parties intend that Developer will complete the design, entitlement and construction of the Project within three (3) full calendar years of Closing. If Developer fails to exercise diligent best efforts to so timely complete the Project, then, subject to the City's compliance with this Agreement, the City will have the option to purchase the Property from Developer for a purchase price equal to one hundred percent (100%) of the fair market value of the Property, which shall consider all relevant factors, including, without limitation, any entitlement obtained, and/or development completed on, the Property ("**Fair Market Value**"), as provided in this Section 8 ("**Purchase Option**").

8.2 Exercise of Option. If the City has the right to exercise a Purchase Option and elects to do so, the City shall hire an MAI certified appraiser representing the City, which appraiser shall have not less than five (5) years experience appraising industrial property in the Greater Seattle Area comparable to the Property ("**City's Appraiser**"), who shall determine the Fair Market Value of the Property. The City shall notify Developer by written notice of its election to exercise a Purchase Option ("**Option Notice**"), which Option Notice shall state with particularity the basis for the City's right to exercise a Purchase Option and the City's opinion of the Fair Market Value of the Property, as determined by this City's Appraiser. If Developer agrees with the City's statement of the Fair Market Value, then Developer shall so notify the City thereof within ten (10) business days following receipt of the Option Notice ("**Developer Response**") and the Parties shall work in good faith to prepare definitive documents governing the sale of the Property to the City on an as-is, where is basis within sixty (60) days following the City's receipt of the Developer Response. If Developer does not agree that the City has the right to exercise a Purchase Option, then it shall so notify the City in the Developer Response and then either party shall have the right to submit the question for adjudication in the Superior Court for King County. If the Developer agrees that the City has the right to exercise the Purchase Option, but does not agree with the City's statement of the Fair Market Value, then it will so notify the City in the Developer Response (referred to below as the "**Developer Arbitration Notice**") and the question will be subject to arbitration as provided in this Section 8.



In the event the City exercises the Claw Back Provision, Developer will provide City with all feasibility studies, engineering, CAD and design files related to the project.

The City's most important interest in the development of this property is to activate the parcels to maximize employment benefits, access to services locally, road/infrastructure improvements, and diversification of municipal revenues. For this reason, the Developer's ability to reach milestones is imperative. The Developer shall meet the following completion goals:

Within one year of anniversary of closing: 30% completion

Within two years of anniversary of closing: 60% completion

Within three years of anniversary of closing: 100% completion

If Developer delays longer than the 3<sup>rd</sup> anniversary of closing due to its own delays, and not due to City, county or state regulatory agencies, then the following penalties will apply:

For every 15 calendar day delays beginning on the 91<sup>st</sup> day after the 3<sup>rd</sup> anniversary, the Developer shall pay the City \$25,000.00.

In the event Developer sells this project at any stage of development or construction, the new owner will abide by this Development Agreement, ~~or negotiate a new development agreement with City.~~

8.3 Arbitration. The Developer Arbitration Notice shall specifically state Developer's opinion of the Fair Market Value and shall hire an MAI certified appraiser representing Developer, which appraiser shall have not less than five (5) years experience appraising industrial property in the Greater Seattle Area comparable to the Property ("**Developer's Appraiser**"), who shall determine the Fair Market Value of the Property. Within ten (10) business days following the City's receipt of the Developer Arbitration Notice, the City's Appraiser and the Developer's Appraiser shall appoint an independent MAI certified appraiser, which appraiser shall have not less than five (5) years experience appraising industrial property in the Greater Seattle Area comparable to the Property ("**Third Appraiser**"). Within thirty (30) days following his or her appointment, the Third Appraiser shall select either the City's or the Developer's determination of the Fair Market Value of the Property as the closest approximation of the actual Fair Market Value of Property and that shall be the purchase price for the Property. The sale of the Property shall be as-is, where-is, and shall be closed within sixty (60) days following the issuance of the Third Appraiser's opinion.

## 9. General Provisions

9.1 Notices. All notices shall be personally delivered, sent via a nationally recognized overnight courier service (such as Federal Express, UPS or DHL) or sent by certified United

States mail (return receipt requested), with a courtesy copy concurrently sent via electronic mail. Notices sent via personal delivery, overnight courier service and electronic mail will be effective upon receipt, and notices sent by mail will be effective three (3) Business Days after being deposited with the United States Post Office, postage prepaid. The City and Developer agree that notice may be given on behalf of each party by the counsel for each party and notice by such counsel in accordance with this Section 9.1 shall constitute notice under this Agreement. The addresses to be used in connection with such correspondence and notices are the following, or such other address as a party shall from time to time direct in writing by notice given pursuant to this Section 9.1, but any such notice of a new address shall not be effective until actually received by the other party:

The City: City of Carnation  
4621 Tolt Avenue, P.O. Box 1238

Carnation, WA 98014  
ana.cortez@carnationwa.gov

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_

Developer: [Remlinger Entity]  
10422 NE 37<sup>th</sup> Cir, Suite 100  
Kirkland, WA 98033  
Phone: (425) 330-1160  
Email: drake@remlingergroup.com

with a copy to:

Remlinger Farms

\_\_\_\_\_  
Attn: Gary Remlinger  
Phone: (206) 300-0772  
Email: gary@remlingerfarms.com

with a copy to:

Ojala Law, Inc., P.S.  
PO Box 211  
Snohomish, WA 98291  
Attn: Nate R. Veranth  
Phone: (425) 788-2222  
Email: nate@ojalalaw.com

9.2 Recording. Either Party may arrange for the recording of a memorandum of this Agreement with the King County Recorder's Office, as necessary to disclose this Agreement on title documents for the Property. This Agreement shall run with the land as binding on the Parties and their successors and assigns. It is mutually agreed that the terms of this Agreement touch and concern the land and shall be covenants running with the land.

9.3 Counterparts. This Agreement may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Agreement.

9.4 Captions. All captions, headings, paragraph and subparagraph numbers and letters are solely for reference purposes and shall not be deemed to be supplementing, limiting, or otherwise varying the text of this Agreement.

9.5 Severability. The invalidity or unenforceability of a particular provision of this Agreement shall not render this Agreement invalid or unenforceable as a whole and, in such event, the Parties shall exercise diligent good faith efforts to reform the Agreement in a manner that is fully valid and enforceable and that reflects the Parties' intentions as to their relative benefit and bargain hereunder.

9.6 Time of the Essence. Time is of the essence of this Agreement.

9.7 No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties hereto, to any person or entity other than the parties hereto.

9.8 Exhibits and Schedules. The exhibits attached hereto are hereby incorporated herein by this reference.

9.9 Amendment to this Agreement. Neither this Agreement nor any provision hereof may be changed, amended, modified, waived or discharged orally or by any course of dealing, but only by an instrument in writing signed by the party against which enforcement of the change, amendment, modification, waiver or discharge is sought.

9.10 Fees and Other Expenses. Except as otherwise provided herein, each of the parties shall pay its own fees and expenses in connection with this Agreement.

9.11 Entire Agreement. Except for the PSA this Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Developer and The City as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of either party, shall be of any effect unless it is in writing and executed by the party to be bound thereby.



9.12 Attorneys' Fees. If either party brings or commences any legal action or proceeding to enforce any of the terms of this Agreement (or for damages by reason of an alleged breach of this Agreement), the substantially prevailing party, if any, in such action shall be entitled to recover from the other party all reasonable attorneys' fees that may have been incurred, including any and all costs and expenses incurred in enforcing, perfecting and executing such judgment, and including all costs of appeal.

9.13 Term. Pursuant to RCW 36.70B.170 et seq., the Development Standards and other provisions of this Agreement shall apply to and govern and vest the development and use of the Property for a period of twenty (20) years from the Effective Date. After the Effective Date, the City may adopt new or modified laws and regulations relating to a particular subject matter specified in this Agreement or presently existing development regulations, but these new or modified standards will not apply to the Project unless Developer chooses. This Agreement shall remain in force throughout the twenty (20) year vesting period unless the City repurchases the Property, in which case this Agreement shall immediately and automatically terminate and neither Party shall have any further obligation hereunder.

9.14 Force Majeure. If, through no fault of the City or Developer, and by reason of a Force Majeure Event (defined below), any obligation in this Agreement cannot be timely completed, then all time periods relative to the applicable contingency or condition, including the time periods for the related notices and responses thereto, shall be extended for a reasonable time under the circumstances, up to one hundred eighty (180) days, and the obligation shall be satisfied as soon as reasonably practicable. "**Force Majeure Event**" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence, making the means of performance objectively impossible. Force Majeure Events included acts of God, war, riots, strikes, fire, floods, epidemics, pandemics.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year written below.

**CITY OF CARNATION**, a  
political subdivision of the State of Washington

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date of Execution by Seller: \_\_\_\_\_

**[REMLINGER ENTITY]**  
a Washington limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution by Purchaser: \_\_\_\_\_

STATE OF WASHINGTON )

COUNTY OF \_\_\_\_\_ )

I hereby certify that before me personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_ of THE CITY OF CARNATION, political subdivision of the State of Washington, and said person did acknowledge before me that said instrument is the free act and deed by said entity for the purpose therein expressed.

Witness my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
(Signature of Notary)  
(Name of Notary)

NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

STATE OF WASHINGTON )

COUNTY OF \_\_\_\_\_ )

I hereby certify that before me personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_ of [REMLINGER ENTITY] LLC, a Washington limited liability company, and said person did acknowledge before me that said instrument is the free act and deed by said limited liability company for the purpose therein expressed.

Witness my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
(Signature of Notary)  
(Name of Notary)

NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

**Exhibit A**  
**Legal Description of the Property**

**Exhibit B**  
**Conceptual Site Plan**

**Exhibit C**  
**LI/M Zone Permitted Uses Table—Attached**



**Exhibit D**

**Development Standard Modification Table—Attached**

## **Exhibit A**

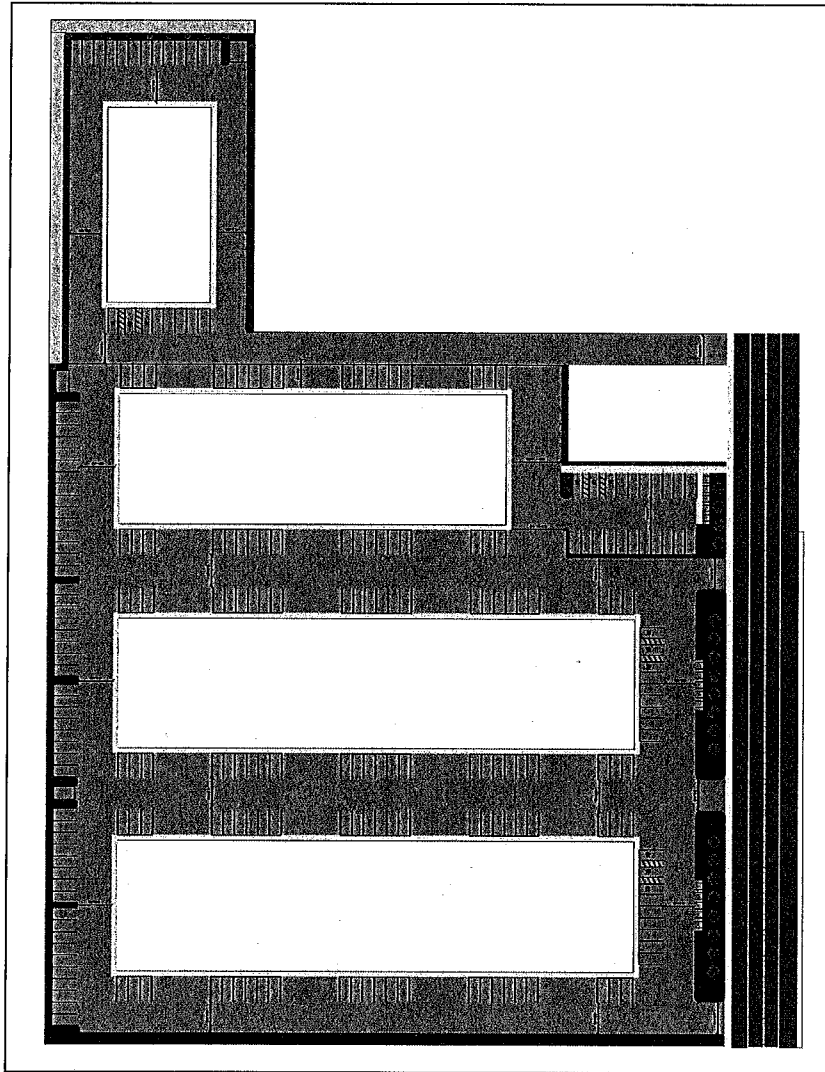
### **Legal Description of the Property**

#### Site Description:

- a. **Location:** The subject property is located at 4300 Larson Avenue, Carnation WA 98014, and identified as Assessor's Parcel No. 162507-9073.
- b. **Size and Description:** The subject site is located on the west side of Larson Avenue, south of Entwistle Street. The property is configured as an irregular rectangle being approximately 7.52 acres in area. In its flag shaped configuration, the main body of the property is approximately 588 east to west and 550 feet north to south, and a 160 wide extension (flag) along its west boundary to the north for an additional 240 feet. The topography is relatively level, being at grade with the Larson Avenue right-of-way along its east boundary and having a slight downward slope to the west. The property has a street frontage of 155 feet along the Larson Avenue right-of-way (currently unimproved) which dead ends at the southern extent of the property's frontage. The depth of the property extends 560 feet to the west where it abuts King County's Tolt McDonald Park. Vegetation on the site consists of a maintained grass surface.

**Exhibit B**  
**Conceptual Site Plan**

Site Plan Rendering





# Project Overview

## DEVELOPMENT SUMMARY

<b>SITE AREAS</b>	119,070
Building Area	SF
Parking and Walkway Area	156,880
SF Landscaping Area	42,665
SF Total Site Area	318,615
<b>PARKING REQUIRED</b>	30
Assuming 10% Office	Spaces
Remaining Warehouse	107
Spaces	
Total Parking Required	137
Spaces	
<b>PARKING PROVIDED</b>	135
Total Standard	Spaces
Total Oversize	26
Spaces	
<b>REQUIRED LANDSCAPE AREA</b>	5,425 SF
<b>LANDSCAPE AREA PROVIDED</b>	6,700 SF



The proposed development consists of three buildings that will be designed to accommodate multiple configurations and suite sizes. The three buildings combine for a total of 119,070 SF of building area with more than required parking. The flexible building design is necessary in attracting a wide range of business users and manufacturers with their own size requirements. Dividing walls can easily be added or removed. The development will be accessed by Larson Avenue through the new road extension, which will be designed to extend to NE 40th Street.

**Exhibit C**

**LI/M Zone Permitted Uses Table**

Note that the properties adjacent to SR-203 lie outside of the R12 zone. Live-work townhouses refer to units that have high floor to ceiling heights along the street-front portions of the units that allow for ground level commercial use and a live + work arrangement.

(Ord. No. 957, § 2(Exh. A), 6-21-2022)

**15.40.110 RMHP zone uses.**

A. Permitted uses.

1. Class A, B, and C mobile home.
2. Single-family detached (no permanent foundation allowed).

(Ord. No. 957, § 2(Exh. A), 6-21-2022)

**15.40.120 Uses permitted in non-residential zones.**

**Chapter 15.40 Table 2  
Table of Permitted Uses in Non-Residential Zones**

Note: For non-residential development in the MU zone, refer to CMC 15.40.140. "P" = Use is permitted

"S" = Use is allowed and subject to the special use permit criteria in CMC 15.18.040

"C" = Use is allowed and subject to the conditional use permit criteria in CMC 15.18.040

" " = Use is prohibited

Use	CBD	MU	SC	LI/M	HC	AGI	Conditions/Reference
Dwelling Units							
Single-family detached					S	P	
Caretaker residence	S	S	S	P	P	P	
Cottage housing							
Townhouse		P (X)					No more than 5 units per building.  CMC 15.40.150  (X) A permitted non-residential use must front Tolt Avenue on the ground floor. Residential entryways are permitted on Tolt Avenue.
Duplex							
Multifamily		P (X)					CMC 15.40.150  (X) A permitted non-

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							residential use must front Tolt Avenue on the ground floor. Residential entryways are permitted on Tolt Avenue.
Mixed use	P (x)	P (x)					CMC 15.40.150 CMC 15.44.190  (x) A permitted non-residential use must front Tolt Avenue on the ground floor. Residential entryways are permitted on Tolt Avenue.
Senior housing		P (x)					CMC 15.40.150  CMC 15.44.180  Must be designed as one of the other dwelling unit types permitted in the zone.  (x) A permitted non-residential use must front Tolt Avenue on the ground floor. Residential entryways are permitted on Tolt Avenue.
Permanent supportive housing	P (x)	P (x)					CMC 15.40.150  (x) A permitted non-residential use must front Tolt Avenue on the ground floor. Residential entryways are permitted on Tolt Avenue.
Group Living							
Adult family homes		P (x)					(x) A permitted non-residential use must front Tolt Avenue on the ground floor. Residential entryways



							are permitted on Tolt Avenue.
Assisted living		P (X)					CMC 15.40.150  (X) A permitted non-residential use must front Tolt Avenue on the ground floor. Residential entryways are permitted on Tolt Avenue.
Nursing home		C					4,000 GSF maximum
Agriculture							
Crop production					P	P	
Forestry and logging							
Animal production and pasture							
Animals							Title 6 CMC
Animal care	C	C	C	P	P	P	
Pet day care	C	C	C	P		P	CMC 15.44.130
Veterinary services		C	P		P	P	
Automotive							
Automotive service and repair	C (X)	C (X)	P (X)	P			(X) All activities enclosed within structure. No accessory storage structures.
Beverage stands	S (X)		S (X)	S (X)		P	CMC 15.72.110  500 GSF maximum  (X) No vehicle access from Tolt Avenue
Fuel station			P				
Parking lots and garages (as a principal use)	P		P				
Transportation service				P	P	P	
Vehicle sales/rental			P (X)	P (Y)			(X) All activities enclosed within structure.  (Y) No accessory storage structures.
Civic							

Public safety facility	P	P	P	P			CMC 15.120
Public service facility	P (x)	P (x)	P	P	P	P	(x) Excluding maintenance shops.
Religious facility	P (x)				P (y)		(x) 10,000 GSF maximum (y) 20,000 GSF maximum
Secure community transition facilities				C			RCW 71.09.285
School, preschool, elementary, and junior high/middle		P					CMC 15.120
School, high school		C					
Colleges, universities, and professional schools		P					CMC 15.120
State or regional transportation facilities				C			RCW 47.06.140 CMC 15.120
Day Care							
Family day care provider	P	P	P			P	CMC 15.44.110
Child day care center	P	P	P				CMC 15.44.110
Industrial							
Industrial, heavy							
Industrial, light				P			
Manufacturing, artisan	P	P	P	P	P	P	4,000 GSF maximum
Manufacturing, light				P		P (x)	(x) Food and drink manufacturing only
Marijuana producers, processors					P		CMC 15.110  Location restrictions: RCW 69.50.331(8)  Cooperatives per RCW 69.51A.250 are prohibited
Research and development		C (x)	C (x)	P			(x) May not be located on the ground floor along Tolt Avenue.

Self-service storage				P		P	CMC 15.44.160 20,000 GSF maximum
Warehousing				P		P	
Wholesale trade				P (x)		P	(x) No accessory storage structures.
Medical							
Hospital							CMC 15.120
Medical office/clinic	P	P	P				
Office							
Professional office	P (x)	P (x)	P (x)			P	(x) May not be located on the ground floor along Tolt Avenue, except for financial, insurance, and real estate services
Private educational services	P	C	P		P	P	2,000 GSF maximum
Overnight Lodging							
Bed and breakfast inns	S	P			P	P	
Hotel/motel	P	P (x)	P		P (x)	P	(x) 4,000 GSF maximum
Recreation							
Adult entertainment establishments				P			CMC 15.44.100
Gambling industries						P	
Fitness/sport centers	P (x) (y)	P (y)	P (z)	P	P		(x) Parking: CMC 15.72.010(A)(1) (y) 2,000 GSF maximum (z) 4,000 GSF maximum
Indoor recreation	P	P (x)	P	P		P (y)	(x) 5,000 SF maximum (y) 10,000 SF maximum
Indoor theater	P	S (x)	P				(x) 10,000 SF maximum
Outdoor recreation			S	C	C	P	
Recreational camps						P	

Retail and Restaurants							
Retail sales	P	P	P		P (X)	P	(X) 2,000 GSF maximum
Heavy retail sales		P (X)	P (X)(Y)	P	P		(X) No accessory storage structures.  (Y) CMC 15.44.170
Restaurants and cafes	P	P	P	P	P	P	
Bars	P	P	P		S	S	
Marijuana retailer			P	P	P	P	CMC 15.110  Location restrictions: RCW 69.50.331(8)
Service							
General service	P (X)	P (X)	P (X)		P	P	(X) No accessory storage structures or outdoor storage or display of merchandise.
Consumer goods service	P (X)	P (X)	P (X)	P			(X) No accessory storage structures or outdoor storage or display of merchandise.
Personal care service	P	P	P				
Funeral home		P					
Utilities							
Utility facilities, regional				C			
Utility facilities, neighborhood		C (X)	P	P	P	P	(X) 2,000 GSF maximum facility footprint
Wireless telecommunications facility	C	C	C	C	C	C	CMC 15.98

(Ord. No. 957, § 2(Exh. A), 6-21-2022)

**15.40.130 PR zone uses (parks).**

A. Permitted uses:

1. Parks.

**Exhibit D**

**Development Standard Modification Table—Attached**

### 15.17.030 - Development standards—Flexibility.

- A. A development agreement shall be consistent with applicable development regulations. Provided, however, that a development agreement may allow for modification of certain development standards otherwise required under this code in order to provide flexibility to achieve public benefits, to respond to changing community needs, and/or which provide the functional equivalent or adequately achieve the purposes of otherwise applicable development standards.
- B. The following table sets forth the types of development standards for which modifications may be approved pursuant to a development agreement, together with the corollary range of permissible modifications:

Standard	Permissible Range of Modification
Minimum lot size	25%
Minimum lot width*	10%
Maximum residential density	10% <sup>1</sup>
Maximum building height*	40% with 35' maximum <sup>2</sup>
Front setback*	33%
Side setback	25% with 5' minimum

Rear setback*	33% with 10' minimum
Parking spaces	25%
Integrated Mixture of Housing Types (Chapter <u>15.40</u> CMC, Table 1, Residential Use Note <u>6</u> )	100%

\* Any measurements may be rounded up or down to the nearest whole number.

C. A development agreement shall not authorize modifications to development standards except as expressly provided in subsection (B). Without prejudice to the foregoing, a development agreement shall not authorize modifications of the following development standards:

1. CMC Title 16, Building and Construction;
2. CMC Title 14, Environmental Protection;
3. CMC 15.48.070, Special design standards for the R6 zone; provided that this exclusion shall only apply to the R6 zone within the "Tolt Townsite Company Plat of Tolt" filed for record January 17, 1912 in Volume 20, Page 43, Records of King County, Auditor's File No. 787268.
4. Chapter 15.88, CMC, Critical Areas;
5. Chapter 15.64 CMC, Floodways, Floodplains, Drainage, and Erosion et seq.;
6. Chapter 15.36 CMC, Zoning map designations; or

7. Chapter 15.40 CMC, Permissible uses.

- D. The development standards approved through a development agreement shall apply to and govern the development and use of the property subject to the development agreement in lieu of any conflicting or different standards or requirements elsewhere in this code.
- E. Except as otherwise expressly provided by this chapter, modifications approved pursuant to a development agreement shall be without prejudice to any flexibility, bonuses and/or other adjustments to development standards authorized by other provisions of this title.

(Ord. No. 908, § 3(Exh. A), 10-16-2018)



**Attachment 1**

**SHP22-0003 - Schefer Riverfront Park**



## CITY OF CARNATION

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### CITY OF CARNATION FINDINGS, ANALYSIS, CONCLUSIONS, AND DECISION PRELIMINARY SHORT SUBDIVISION APPLICATION NO. SHP22-0003

**APPLICANT:** City of Carnation  
4621 Tolt Avenue  
P.O. Box 1238  
Carnation, WA 98014

#### PROPOSAL

**Proposed Development:** A proposed two lot short subdivision of 7.52 acres of property currently zoned "Light Industrial/Manufacturing" (LI/M). Proposed Lots 1 and 2 would be approximately 12,222 square feet and 315,479.58 square feet respectively. Water and sewage disposal service would be provided by the City of Carnation. Access to the site would be from the west side of the Larson Avenue right-of-way. Proposed Lot 1 is currently developed with the City of Carnation's sewer system vacuum station where it will remain in its current capacity.

**Future permits required:** A site development review permit for any new development is anticipated with associated permits that may include, but not limited to, public utility extension for water or sewer, clear and grading permit, floodplain management permit, drainage review, side sewer installation, water installation, shoreline permit, and right-of-way permits. In any case, all future permitting must be consistent with the standards of the underlying zone.

#### FINDINGS

1. Project History:

This application for preliminary short subdivision was submitted on July 12, 2022 and determined to be complete on September 2, 2022 after submittal of addition information.

Public Notice was issued by mail to property owners within 300 feet on September 7, 2022, published in the Snoqualmie Valley Record on September 9, 2022. Public notice was posted on the property on September 15, 2022. The comment period ran from September 9, 2022 to September 23, 2022.

2. Site Description:

- a. **Location:** The subject property is located at 4300 Larson Avenue, Carnation WA 98014, and identified as Assessor's Parcel No. 162507-9073.
- b. **Size and Description:** The subject site is located on the west side of Larson Avenue, south of Entwistle Street. The property is configured as an irregular rectangle being approximately 7.52 acres in area. In its flag shaped configuration, the main body of the property is approximately 588 east to west and 550 feet north to south, and a 160 wide extension (flag) along its west boundary to the north for an additional 240 feet. The topography is relatively level, being at grade with the Larson Avenue right-of-way along its east boundary and having a slight downward slope to the west. The property has a street frontage of 155 feet along the Larson Avenue right-of-way (currently unimproved) which dead ends at the southern extent of the property's frontage. The depth of the property extends 560 feet to the west where it abuts King County's Tolt McDonald Park. Vegetation on the site consists of a maintained grass surface.
- c. **Access:** The property will continue to be accessed directly off Larson Avenue. (*Reference attached preliminary short plat [map]*).

- d. **Comprehensive Plan/Zoning Designation:** The property is currently zoned Light Industrial Manufacturing (LI/M) which is consistent with the Comprehensive Plan's "Industrial" Land Use Designation (reference Official Comprehensive Land Use Map on file with the City of Carnation).
  - e. **Existing Development:** The preliminary short plat and site plan shows that the property is currently developed with the City's sewer system vacuum station which will be sited entirely on proposed Lot 1 upon the filing of a final short plat.
  - f. **Flood Zone:** The subject property is within the mapped 100-year floodplain.
  - g. **Critical Areas:** There are no known or mapped critical areas on this site; provided that, frequently flooded areas are considered critical areas under the Growth Management Act but are not regulated under the city of carnation critical areas code. All development of land mapped as frequently flooded areas is regulated under chapter 15.64 CMC.
3. **Agency Comments:** A request for comment on the proposal was distributed to the parties listed below along with their respective response.
- a. **Building Department:** In their comments dated October 17, 2022, the building department provided that *"The Appraisal Report provided a Flood Map that clearly shows the property is within a 100-year floodplain. This could potentially have affects for the future development site to include site preparations, potential grading, and displacement of flood waters that could potentially cause adverse effects for compensatory storage requirements for flood waters that will need to be addressed per FEMA and the City of Carnation flood prevention ordinance prior to any disturbance of the grade. The applicants must be aware of the Base Flood Elevations, and that any future development and potential future structures must clearly demonstrate compliance with all regulations through FEMA and the City of Carnation flood prevention ordinance to include but not limited to site grading, elevation and/or flood proofing of structures, and other floodplain regulations, laws, and standards as applicable to the future development of the site."*
  - b. **Public Works Department:** The Public Works Department had no comment on this proposal.
  - c. **City Engineer/HNTB Engineering:** The City Engineer returned updated comments dated November 28, 2022, providing comments and conditions regarding water connections, alley reconstruction, stormwater, and sewer connection. As submitted or as thereafter amended, engineering comments and conditions must be satisfied prior to final short plat approval. These City Engineering conditions are hereby incorporated by reference and provided as an Attachment to this decision.
  - d. **East Side Fire and Rescue:** The Fire Marshal responded with no comments or concerns in his email dated October 31, 2022.
4. **Public Comments:** There were no public comments received as of the date of this decision.
5. **CRITERIA FOR APPROVAL.** Review and preliminary determination for this short subdivision requires consistency with the following:
- 1. The standards for land divisions in Chapter 15.16 CMC;
  - 2. The City of Carnation Comprehensive Plan
  - 3. The Density and Dimensional Regulations, Chapter 15.48 CMC;
  - 4. Streets and Sidewalks, Chapter 15.56 CMC;
  - 5. Utilities, Chapter 15.60 CMC;
  - 6. Floodways, Floodplains, Drainage, and Erosion, Chapter 15.64 CMC;
  - 7. Parking, Chapter 15.72 CMC;
  - 8. The Critical Areas Code, Chapter. 15.88 CMC;

9. Shoreline Management, Chapter 15.92 CMC;
10. The Environmental Policy Code, Chapter 14.01 CMC;
11. The Public Health, Safety, Welfare, Use and Interest, Chapter 58.17 RCW.

### **ANALYSIS**

1. **Conformance with Chapter 15.16 CMC:** This proposed short subdivision is subject to the requirements of Section 15.16.050 A - J CMC – Subdivision design for short plats, and 15.16.120 CMC Preliminary decision.

***15.16.050 - Subdivision design for short plats.***

*Residential short plats are encouraged to incorporate the following design goals in order to promote livable neighborhoods that are integrated into existing development.*

- A. *New residential short plats should be designed to integrate with the surrounding neighborhood. Wherever possible, new subdivisions should be designed so that individual separately designed projects work together to create distinct neighborhoods rather than disjointed or isolated enclaves.*

**Staff Finding:** The proposed lots will maintain the orientation of the property in its current state. Both proposed lots will front Larson Avenue.

- B. *Short plats adjacent to planned or existing parks or other public open spaces should maximize visibility and pedestrian access to these areas.*

**Staff Finding:** The proposed short subdivision is adjacent to Tolt MacDonald Park, a King County park that is adjacent to the subject property's west boundary line. There is currently a non-motorized trail that passes diagonally across the northwest extension of the property. The short subdivision of this property will continue to allow passage of the trail through the property until otherwise terminated by King Country Parks and the City of Carnation. The diagonal passage of the trail through a .88-acre portion of the property poses an encumbrance on the use of section of land. An easement will be provided along the north and west property line to allow relocation of the trail should the future property owners choose to relocate it. In the case of relocation, the property owner will be responsible for construction of the relocated section to a condition equal to or greater than its present gravel surface.

- C. *Wherever feasible, new public streets and sidewalks should be aligned with and connected to those of adjacent developments, in accordance with this chapter and Chapter 15.56 CMC Streets and Sidewalks.*

**Staff Finding:** This proposed short plat will not create new public streets or sidewalks.

- D. *Wherever feasible, short plats design should provide for pedestrian connectivity with adjacent neighborhoods, nearby schools and parks, and to transit within one-fourth mile of the proposed subdivision. Any required streets and sidewalks should be designed to provide safe and pleasant conditions for pedestrians, the disabled, and cyclists.*

**Staff Finding:** The proposed lots would maintain the existing lot pattern within the City's street grid, and will continue fronting the Larson Avenue right-of-way. As provided above, no internal streets or sidewalks are proposed, necessitated, or required of this proposed short subdivision. The final short plat will require improvements along the property's Larson Avenue frontage.

- E. *To the extent possible, developments should be configured to face streets and not back up to them. Where short plats must back up to existing streets or arterials and a fence is provided, a minimum ten-foot landscape buffer shall be required to screen any tall fences. Landscaping shall follow the requirements of Chapter 15.76 CMC Screening, Landscaping and Trees.*

**Staff Finding:** Both lots of this proposed short subdivision would front the Larson Avenue right-of-way' thus satisfying this criterion for approval.

**Note: There is no CMC 15.16.050 F provided in the Municipal Code.**

- G. *Single loaded streets (i.e., those with residential development on one side and open space on the other) should be used to provide public access and visibility of natural open spaces, public parks, or schools, as well as buffering homes from parks and schools. Where single-loaded streets are both feasible or desirable, other methods that provide similar access and visibility may be used, including private streets, bike and pedestrian paths, or the placement of private common open space or recreation facilities adjacent to the public open space.*

**Staff Finding:** There are no single loaded streets within the proposed short subdivision; therefore, this criterion does not apply.

- H. *The use of cul-de-sacs should be avoided wherever possible. If cul-de-sacs are necessary, pedestrian access and/or bikeway should be provided between private parcels to connect with an adjacent cul-de-sac, street, park or open space, if applicable.*

**Staff Finding:** There are no cul-de-sacs proposed; therefore, this criterion does not apply.

- I. *Alleys may be provided for garage access. Otherwise, individual lots are encouraged to be wide enough to accommodate garages at the side or rear of the lot, to minimize the appearance of street frontage that is dominated by garages and pavement.*

**Staff Finding:** There are no existing or proposed alleys associated with this proposed short subdivision. Additionally, this is a proposed short subdivision of non-residential property having a Light Industrial/Manufacturing (LI/M) zoning designation where any future development will be subject to a site development review and design review permit requirement pursuant to CMC 15.18.150 et.seq. to ensure consistency with the City of Carnation Design Standards and Guidelines. Therefore, this criterion does not apply.

- J. *Perimeter buffers, fences and landscaping may be required when these features mitigate the adverse impacts of new subdivisions on adjoining uses that are lower in density.*

**Staff Finding:** This proposed short subdivision is for non-residential use in a Light Industrial/Manufacturing (LI/M) zoning designation where any future development permissible in that zone will be subject to a site development review permit requirement. Site development review precedes approval of any building permit or other construction permits in order to ascertain that the general lay out of the development will conform to the requirements of Title 15 CMC, including but not limited to dimensional standards, streets and sidewalks, parking, landscaping and protection of critical areas. Therefore, the proposed project would satisfy this criterion for preliminary short subdivision approval.

**15.16.120 - Preliminary decision.**

- A. *A written record of decision shall be prepared in each case. The record may be in the form of a staff report or other written document and shall indicate whether the application shall be approved, approved with conditions or denied. Pursuant to Chapter 15.09 CMC the city planner's decisions shall include any conditions to ensure consistency with the city's development regulations based on the following but not limited to:*
- 1. Conformance with adopted city, county and state rules and regulations in effect on the date the complete application was received.*
  - 2. A finding that the preliminary short subdivision makes appropriate provisions for, but not limited to, the public health, safety, and general welfare related to dedication of right-of-way or recreation*

*space, and tracts, easements, or limitations which may be proposed or required for utilities, access, drainage controls, sanitation, and water supply and sidewalks and other planning features that assure safe walking conditions for students who walk to and from school.*

3. *A finding that proposed preliminary short subdivision complies with all applicable provisions of this title and other adopted regulations and administrative rules.*

**Staff Finding:** The preliminary short subdivision map provides that the proposed land division would satisfy the bulk, density and use requirements of the LI/M zone. Both lots in this proposed short subdivision would be created for non-residential use, would front the public street right-of-way and would satisfy all lot size and configuration requirements for the underlying zone. Both lots are within an existing non-residential neighborhood and the proposed lot configuration is consistent with the existing lot pattern of the neighboring properties. Any future development is required to satisfy any requirements of the city's floodplain regulations in Chapter 15.64, Floodways, Floodplains, Drainage, and Erosion. Therefore, this proposal would be in conformance with adopted city, county and state rules and regulations in effect at the time of this permit submittal.

As conditioned herein the approval of this short subdivision will ensure appropriate provisions for, but not limited to, the public health, safety, and general welfare related to dedication of right-of-way or recreation space, and tracts, easements, or limitations which may be proposed or required for utilities, access, drainage controls, sanitation, and water supply and sidewalks and other planning features that assure safe walking conditions for the general public.

The findings of consistency with the criteria for approval provided herein constitutes a finding that this preliminary short subdivision complies with all applicable provisions of this title and other adopted regulations and administrative rules.

**15.16.140 - Preliminary short subdivision time limitation.**

- A. *The city planner's decision shall become final and effective ten calendar days after the decision has been mailed, or upon completion of appeals filed pursuant to Chapter 15.11 CMC.*
- B. *Short subdivision preliminary approvals shall be valid for thirty-six months. If any condition is not satisfied and the final short plat is not recorded within the approval period the short subdivision approval shall be null and void. If all conditions have been satisfied and all required documents have been submitted within the approval period, the department may grant a single extension of up to ninety days to obtain additional information or for the processing and recording of final short plat documents. Applicants will have a maximum of thirty days to comply with requests for additional information made within the extension period.*
- C. *All construction and site development activities related to the short subdivision are prohibited until the preliminary decision becomes effective or until authorized by any plan approval required as a condition of preliminary short subdivision approval.*

**Staff Finding:** The preliminary approval of this application will be valid for a period of thirty-six (36) months from the date of issuance provided herein. If all conditions have not been completed and a final short plat has not been approved and filed within that period of time, the approval will expire and become null and void. No work shall be allowed until ten (10) business days after preliminary approval has been granted or upon completion of appeals filed pursuant to Chapter 15.11 CMC. No site disturbing development activities may commence until such time as all permits related thereto have been approved by the City of Carnation.

**15.16.730 - Approval of the development proposal.**

- A. *No final development proposal shall be approved by the department, building permit issued for site plans, or certificate of occupancy or other permit issued, until each and all grading, paving of the streets, installation of curbs, sidewalks, monuments, sanitary and storm sewers, street lights, water mains, street signs and other improvements approved or required by the department are installed in accordance with the city standards and approved by the city engineer and the director.*

**Staff Finding:** Prior to final short plat approval, all improvements must be installed to City of Carnation standards or as otherwise approved by the City Engineer. All underground utility conduit (i.e., electric, phone, cable) will need to be extended to the property and terminating above ground as directed by the appropriate utility entity. Water service will need to be connected to the City’s water main and extended to the property, terminating with a meter setter inside of a meter box as approved by the City Engineer.

2. **Conformance with the Comprehensive Plan:** The Comprehensive Plan’s “Industrial” Land Use Designation for the site is consistent with the current Light Industrial/Manufacturing (LI/M) zoning designation (reference Official Comprehensive Land Use Map on file with the City of Carnation). Consistency with the LI/M zoning designation is discussed below.
3. **Conformance with the Density and Dimensional Regulations, Chapter 15.48 CMC:** The proposed short subdivision is located on property zoned LI/M. The purpose of the LI/M zoning district is to accommodate enterprises engaged in the manufacturing, processing, creating, repairing, renovating, painting, cleaning, or assembling of goods, merchandise, or equipment, and sexually oriented businesses and erotic entertainment establishments. The performance standards set forth in Part I of Chapter 15.44 place limitations on the characteristics of uses located in this district, which would ensure the conformance of any future development of the property with the density and dimensional regulation of Chapter 15.48 CMC.

The proposed lot sizes based on the preliminary short plat (map) are as follows:

- Lot 1 12,222 square feet.
- Lot 2: 315,479.58 square feet.

The total area of the subject property is approximately 356,097 square feet (8.17 acres) according to King County Assessor’s records. The proposed lot sizes on the final short subdivision, if consistent with the preliminary short plat [map], would not conflict with any lot size requirements for the underlying zone

The setback and dimensional standards for the LI/M zone are as follows:

Zone	Minimum Lot Size	Max impervious surface	Maximum Building Height	Front Yard setback	Side Yard, interior	Side Yard, street	Rear Yard
LI/M	None	75%	35’	25’	15’	10’	25’

Although the maximum building heights are listed at thirty-five (35) feet, building heights may be up to forty (40) feet if the front setback is at least thirty (30) feet.

The natural features of the site would not appear to limit or otherwise preclude conformance with the minimum setback requirements or other applicable development standards for the underlying zones that relate to development of the subject property, provided that the requirements of the city’s floodplain management regulations in Chapter 15.64 CMC are satisfied.

4. **Conformance with the requirements for Streets and Sidewalks, Chapter 15.56 CMC:** A right-of-way dedication of any property within thirty (30) from the centerline of Larson Avenue to the city will be required on the final short plat.
5. **Conformance with the requirements for Utilities, Chapter 15.60 CMC:** The City’s water and sewer systems have adequate capacity to serve the proposed short plat and its subsequent development potential. Certificate of Water Availability Certificate of Sewer Availability have been issued. Any new development will be subject to connection charges for both water and sewer. The City does not have a storm water conveyance

system, and storm water will be infiltrated on-site as a requirement of any new development. Puget Sound Energy provides electricity to this area.

*In accordance with CMC 15.60.010, any case in which a developer installs or causes the installation of water, sewer, electrical power, natural gas, telephone, cable television, or other types of utility facilities and intends that such facilities shall be owned, operated, or maintained by a public utility or any entity other than the developer, the developer shall transfer to such utility or entity the necessary ownership or easement rights to enable the utility or entity to operate and maintain such facilities.*

Every principal use and every building lot within a land division must have available to it a telephone service cable, and a source of electric power, each adequate to accommodate the reasonable needs of such use and every lot within such subdivision. An easement must be provided and graphically illustrated on the final short plat for any utilities not within a public right-of-way and over property other than which the utility serves.

Prior to performing any work within a public right-of-way, the person performing the work shall obtain a right-of-way permit from the Public Works Director, who may condition the permit as necessary to protect the public health, safety and welfare [CMC 15.60.030].

As provided in the analysis of CMC 15.16.730 A. above, all utility lines must be extended to the property prior to final short plat approval. As provided in CMC 15.60.370, in cases where the developer installs or causes to be installed any utility line within the city, or connects to existing facilities within the city, the developer shall, as soon as practicable after installation is complete, and before acceptance of any utility line, furnish the city with a printed and an AutoCAD computer disk (or other format acceptable to the city engineer) copy of a drawing that shows the exact location of such utility lines. Such drawings must be verified as accurate by the utility service provider. Compliance with this requirement shall be a condition of the continued validity of the permit authorizing such development.

6. Conformance with the requirements for Floodways, Floodplains, Drainage, and Erosion, Chapter 15.64 CMC: The property is shown to be located within the mapped 100-year floodplain. As previously mentioned, any development on the lots within this proposed short plat will be subject to the requirement for a site development permit and a flood hazard development permit. At this time the future use of each of the properties is unknown; therefore, at the time a development proposal is submitted compliance with Chapter 15.64 will be required.
7. Conformance with the requirements for Parking, Chapter 15.72 CMC: The future use of the undeveloped lot within this proposed short subdivision is currently unknown. Parking requirements will be reviewed at the time a development proposal is submitted for any future development within this short subdivision.
8. Conformance with the Critical Areas Code, Chapter. 15.88 CMC: There are no known or mapped critical areas associated with this property.
9. Conformance with the requirements for Shoreline Management, Chapter 15.92 CMC: The subject property is within 200 feet of the Snoqualmie River floodway. Therefore, any future development will be subject to the requirement of the City of Carnation Shoreline Master Program or the requirements for shoreline management provided in Chapter 15.92 CMC.
10. Conformance with the Environmental Policy Code, Chapter 14.04 CMC and the State Environmental Policy Act (SEPA) Chapter 197-11 WAC: This proposed two (2) lot short subdivision is not a further subdivision of a lot platted under RCW 58.16 or RCW 58.17, does not contain wetlands or tidelands, and is not abutting a shoreline; therefore, this proposed short subdivision is categorically exempt from environmental review pursuant to WAC 197-11-800(6)(d).
11. The Public Health, Safety, Welfare, Use and Interest, Chapter 58.17 RCW: The above findings demonstrate the proposal's meeting the requirements for the public health, safety, welfare, use, and interest; therefore, meeting the requirements of Chapter 58.17 RCW. One exception is *RCW 58.17.280, Naming and*



*numbering of short subdivisions, subdivisions, streets, lots and blocks, where it states that “Any city, town or county shall, by ordinance, regulate the procedure whereby short subdivisions, subdivisions, streets, lots and blocks are named and numbered. A lot numbering system and a house address system, however, shall be provided by the municipality for short subdivisions and subdivisions and must be clearly shown on the short plat or final plat at the time of approval.”* The City of Carnation currently has no ordinance by which it requires the lot numbering system and street naming system to be placed on a final plat or short plat.

Therefore, in accordance with RCW 58.17.280, the project proponent must obtain from the City a specific address for proposed Lot 2 (the existing sewer system vacuum station on proposed Lot 1 currently has an address) prior to filing application for final short plat.

## CONCLUSIONS

1. The proposed preliminary short subdivision has been reviewed by the City of Carnation in conformance with the requirements of Chapter 15.09 CMC for a Type II permit.
2. Upon compliance with the conditions of approval, the proposed preliminary short subdivision will conform to the standards for short divisions in Chapter 15.16 CMC;
3. The proposed preliminary short subdivision has been reviewed for and found to be consistent with the goals and policies of the City of Carnation Comprehensive Plan.
4. The proposed preliminary short subdivision has been reviewed for and found to be consistent with the standards of Title 15 CMC, including, but not limited to, the Density and Dimensional Regulations of Chapter 15.48 CMC; the standards for Streets and Sidewalks in Chapter 15.56 CMC; the standards for Utilities in Chapter 15.60 CMC; the standards for Parking, Chapter 15.72 CMC; the requirements of the Critical Areas Code in Chapter 15.88 CMC. Upon submittal of a development proposal, the requirements for Floodways, Floodplains, Drainage, and Erosion provided in Chapter 15.64 CMC will be addressed.
5. The proposed preliminary short subdivision is not on property located within any known critical areas, is not on property within 200 feet of a shoreline of the state. The proposal is mapped within the 100 year floodplain.
6. The proposed preliminary short subdivision is not a further subdivision of a platted lot pursuant to RCW 58.16 or RCW 58.17, does not contain wetlands or tidelands, and is not abutting a shoreline; therefore, this proposed short subdivision is categorically exempt from environmental review pursuant to WAC 197-11-800(6)(d).
7. The proposed preliminary short subdivision has been found to meet the requirements for the public health, safety, welfare, use and interest as set forth in Chapter 58.17 RCW.

## DECISION

Following review of the subject short plat application for conformity with the Carnation Municipal Code, and other applicable ordinances, laws and policies, application number SHP22-0003 is hereby granted Preliminary APPROVAL **subject to** improvement and final short plat requirements as specified in Section 15.16.160 CMC, and the following conditions for final approval:

1. The Final Short Plat shall be in substantial conformance with the submitted preliminary short plat as modified through preliminary approval (*attached*).
2. An easement will be provided along the north and west property line to allow relocation of the trail should the future property owners choose to relocate it. In the case of relocation, the property owner will be responsible for construction of the relocated section to a condition equal to or greater than its present gravel surface.

3. It shall be noted on the final short plat that the lots are located within the mapped 100-year floodplain and any further development of the lots within this proposed short plat will be subject to the requirement for a flood hazard development permit in conformance with Chapter 15.64 will be required.
4. The applicants shall be aware of the Base Flood Elevations, and that any future development and potential future structures must clearly demonstrate compliance with all regulations through FEMA and the City of Carnation flood prevention ordinance to include but not limited to site grading, elevation and/or flood proofing of structures, and other floodplain regulations, laws, and standards as applicable to the future development of the site. This notification shall be noted on the final short plat.

#### **City Engineer Requirements**

5. Unless otherwise waived or further modified by the city engineer or the public works director the final short plat must comply with the following requirements.
  - a. Electrical extensions are not required for final short plat, both proposed lots have underground services. If additional electric, telephone, cable, and communication lines are required for a proposed development, they shall be placed underground [CMC 15.60.350]. The utility designs shall include a trench detail and continuous underground warning tapes installed 12-inches above each utility line. Overhead extensions or overhead service lines are not allowed.
  - b. Side sewers extensions are not required for final short plat, both proposed lots have sewer services. If additional sewer services are necessary, sewer extensions, buffer tanks or side sewers shall be constructed per City of Carnation Sewer Standards, a side sewer permit is required prior to commencing side sewer construction. [CMC 13.70.040]
  - c. Both proposed lots have water services, additional water extensions are not required prior to the final short plat. If additional water connections are necessary for the final development, they shall be constructed per City of Carnation Water Standards.
  - d. Frontage improvements along Larson Avenue consistent with the Arterial Exhibit in the city of Carnation 2018 Street and Storm Water System Standards are required and shall consist of a total pavement width of 33-ft which is  $\frac{3}{4}$  of the ultimate paved width [CMC 15.53.110]. The frontage improvement shall include a six-foot wide cement concrete sidewalk, curb and gutter, a 9-ft wide parking lane, two 12-ft wide travel lanes, street illumination, street signage, pavement markings as well as stormwater collection, water quality treatment and infiltration facilities. A temporary turn-around shall be installed at the south end of the Larson Avenue frontage improvements. [CMC 15.56.060]. Frontage improvements may be constructed after final plat but before land use or building permits are issued at the discretion of the City's Public Works Director [CMC 15.56.170.B.3].
6. Prior to commencing site work, Land Use permit applications with detailed design drawings are required consistent with applicable construction and design standards as listed in Carnation Municipal Code CMC 12.06.010. Design and Construction of the development shall conform to these Standards and other relevant Municipal Code requirements. The following requirements are not a detailed review, additional review comments will be provided after review of the design documents submitted with the permit applications.
  - a. A geotechnical report is required and shall include recommendations for: stormwater infiltration capabilities including applicable correction factors for infiltration facilities as recommended in the DOE Manual. [DOE Stormwater Manual].
  - b. Infiltration facilities for stormwater runoff shall be provided per the requirements of the 2019 DOE Stormwater Manual for Western Washington and City standards. Infiltration systems shall be located a minimum of 10-feet from building foundations and property lines and except for infiltration necessary for Larson Ave stormwater runoff, these systems may be constructed concurrent with building construction. [DOE Manual]

- c. A traffic impact study is required and shall include a trip generation analysis and an assessment of appropriate off-site right-of-way traffic mitigation improvements in cases where a reduction of the Level of Services is anticipated. [CMC 15.56.190]
- d. Detailed designs of proposed site civil, landscaping and utility improvements are required prior to issuance of Land Use or building permits. [CMC 15.18.020]

**Other Utilities**

- 7. Prior to final short plat approval, all improvements must be installed to City of Carnation standards or as otherwise approved by the City Engineer. All underground utility conduit (i.e., electric, phone, cable) will need to be extended to the property and terminating above ground as directed by the appropriate utility entity. Water service will need to be connected to the City's water main and extended to the property, terminating with a meter setter inside of a meter box as approved by the City Engineer.
- 8. Prior to final short plat approval, any utility line installed within the city, or connection to existing facilities within the city, the developer shall, as soon as practicable after installation is complete, and before acceptance of any utility line, furnish the city with a printed and an AutoCAD computer disk (or other format acceptable to the city engineer) copy of a drawing that shows the exact location of such utility lines. Such drawings must be verified as accurate by the utility service provider.
- 9. In accordance with CMC 15.60.010, any case in which a developer installs or causes the installation of water, sewer, electrical power, natural gas, telephone, cable television, or other types of utility facilities and intends that such facilities shall be owned, operated, or maintained by a public utility or any entity other than the developer, the developer shall transfer to such utility or entity the necessary ownership or easement rights to enable the utility or entity to operate and maintain such facilities.

**Grading/Erosion and Sedimentation Control**

- 10. All temporary erosion and sediment control (TESC) shall comply with the State of Washington Department of Ecology Stormwater Management Manual for Western Washington, 2012 or latest version and CMC 15.64.260.
- 11. Dust generated during construction activities shall be controlled by wetting the dust sources in areas of exposed soils and washing truck wheels before trucks leave the site. Mud and dirt shall not be tracked onto public rights-of-way.
- 12. Construction activities shall not impact any off-site properties.

**Land Use and Zoning**

- 13. Development of both lots within this short subdivision shall be in accordance with all of the requirements of CMC 15.48 Density and Dimensions, including front, side and rear setbacks and limitations on building height and impervious surfaces.
- 143. Any new lot lines shall not result in the creation of a non-conforming setback. In any case where any structure would encroach into the setback of a newly created lot line. The south boundary line of proposed lot one shall be no less than 15 feet from the city's sewer system vacuum station building.
- 15. All permit requests will be reviewed for compliance with applicable codes, ordinances, laws, rules and regulations prior to issuance of approval.
- 16. Current City of Carnation standard plan general notes, roadway notes, drainage notes, and erosion and sediment control notes shall be shown on the engineering plans submitted for approval.
- 17. In accordance with RCW 58.17.280, the project proponent shall obtain from the City a specific address for the new lot (the existing home currently has an address) and place it on the final short.

18. In the event that the US Postal Service will provide mail delivery to either of the proposed Lots, a mail box shall be provided to serve each in accordance with City of Carnation Street and Storm Sewer Standards. Location shall be approved by US Postal Service and the City.
19. Utilities shall be provided to each lot in accordance with CMC Chapter 15.60. All new utility installation serving the short plat or along frontage shall be underground.
20. An easement shall be provided and graphically illustrated on the final short plat for any utilities not within a public right-of-way and over property other than which the utility serves.
21. The above requirements and/or decision are subject to change if proposed lot sizes or any other information provided by the applicant or their authorized representative proves inaccurate.
22. No work shall be allowed until ten (10) business days after preliminary approval has been granted or upon completion of appeals filed pursuant to Chapter 15.11 CMC. No site disturbing development activities may commence until such time as all permits related thereto have been approved by the City of Carnation.
23. A final short plat that meets all of the requirements of Section 15.16.160 CMC and of this decision shall be submitted to the City for processing and approval within 36 months of the date of this preliminary short subdivision approval. The final short plat may be presented to the City at any time during the period of preliminary approval. The preliminary approval shall be null and void unless a final short plat is approved and recorded during the original 36-month approval period.

SIGNED THIS 30<sup>th</sup> DAY OF November, 2022.



\_\_\_\_\_  
Tim Woolett, City Planner  
City of Carnation

### APPEALS

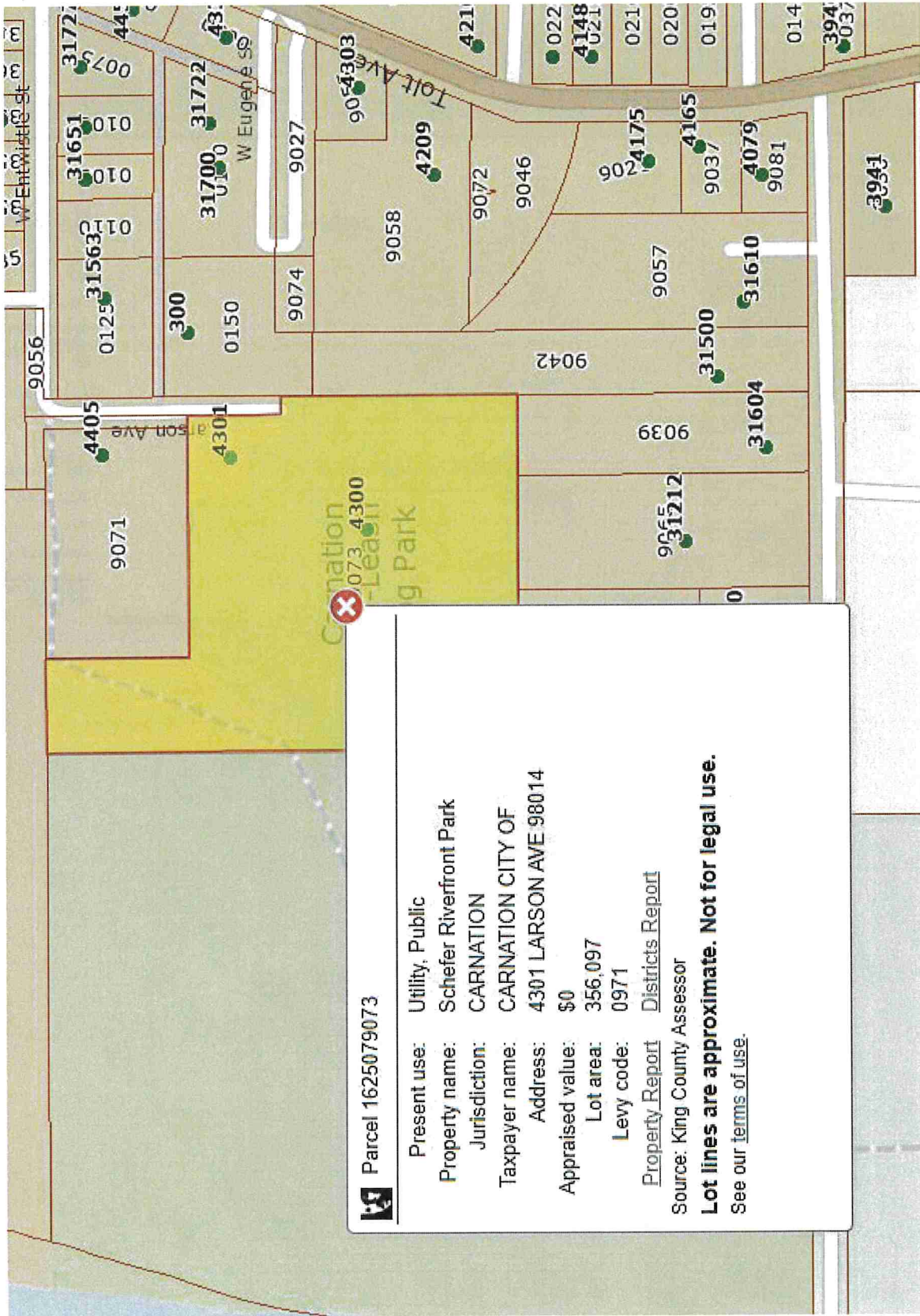
THE APPLICANT FOR A PROJECT PERMIT, OWNER OF PROPERTY TO WHICH A PROJECT PERMIT DECISION IS DIRECTED, AND/OR ANY OTHER PERSON AGGRIEVED OR ADVERSELY AFFECTED BY THE DECISION ON A TYPE I OR II PERMIT MAY APPEAL A FINAL DECISION BY FILING A AN APPEAL FOR AN OPEN RECORD APPEAL HEARING BEFORE THE HEARING EXAMINER. SAID APPEAL MUST BE FILED WITHIN FOURTEEN (14) CALENDAR DAYS FOLLOWING THE DATE OF ISSUANCE OF THE NOTICE OF DECISION. APPEALS AND THE APPEAL FEE, IF APPLICABLE, SHALL BE DELIVERED TO THE PLANNER OR CITY CLERK, AS PRESCRIBED BY SECTION 15.11.010, BY MAIL OR PERSONAL DELIVERY BEFORE FOUR-THIRTY P.M. ON THE LAST BUSINESS DAY OF THE APPEAL PERIOD. THE DECISION OR ACTION BY THE ADMINISTRATOR ON TYPE I OR II PERMITS SHALL BE FINAL ON THE DATE ISSUED UNLESS AN APPEAL IS FILED IN ACCORDANCE WITH CHAPTER 15.11 CMC - APPEALS.

Attachments: Preliminary short subdivision map.

Requirements for Final Short Plat Approval

**Attachment 2**

**King County Parcel No. 1625079073 Property Report**



Parcel 1625079073

Present use: Utility, Public  
 Property name: Schefer Riverfront Park  
 Jurisdiction: CARNATION  
 Taxpayer name: CARNATION CITY OF  
 Address: 4301 LARSON AVE 98014  
 Appraised value: \$0  
 Lot area: 356,097  
 Levy code: 0971

[Property Report](#) [Districts Report](#)

Source: King County Assessor

**Lot lines are approximate. Not for legal use.**  
 See our [terms of use](#).



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**PARCEL**

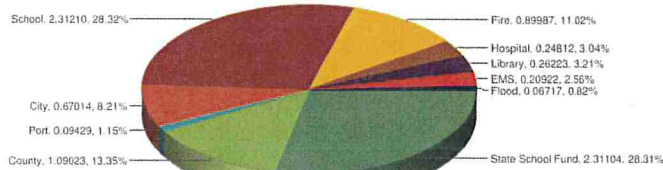
Parcel Number	162507-9073
Name	CARNATION CITY OF
Site Address	4301 LARSON AVE 98014
Legal	LOT 1 CARNATION BLA# LLA-06-00001 REC #20060727900005 SD BLA BEING POR SE 1/4 OF SW 1/4 STR 16-25-07

**BUILDING 1**

Year Built	
Building Net Square Footage	
Construction Class	
Building Quality	
Lot Size	356097
Present Use	Utility, Public
Views	No
Waterfront	

**TOTAL LEVY RATE DISTRIBUTION**

Tax Year: 2023 Levy Code: 0971 Total Levy Rate: \$8.16441 Total Senior Rate: \$4.51150



50.64% Voter Approved

[Click here to see levy distribution comparison by year.](#)

**TAX ROLL HISTORY**

Valued Year	Tax Year	Appraised Land Value (\$)	Appraised Imps Value (\$)	Appraised Total (\$)	Appraised Imps Increase (\$)	Taxable Land Value (\$)	Taxable Imps Value (\$)	Taxable Total (\$)
2022	2023	1,780,400	0	1,780,400	0	0	0	0
2021	2022	1,068,200	0	1,068,200	0	0	0	0
2020	2021	1,068,200	0	1,068,200	0	0	0	0
2019	2020	1,068,200	0	1,068,200	0	0	0	0
2018	2019	890,200	0	890,200	0	0	0	0
2017	2018	890,200	0	890,200	0	0	0	0
2016	2017	712,100	0	712,100	0	0	0	0
2015	2016	712,100	0	712,100	0	0	0	0
2014	2015	712,100	0	712,100	0	0	0	0
2013	2014	712,100	0	712,100	0	0	0	0
2012	2013	712,100	0	712,100	0	0	0	0
2011	2012	712,100	0	712,100	0	0	0	0
2010	2011	712,100	0	712,100	0	0	0	0
2009	2010	712,100	0	712,100	0	0	0	0
2008	2009	534,100	0	534,100	0	0	0	0
2007	2008	487,800	0	487,800	0	0	0	0
2006	2007	473,000	109,000	582,000	0	0	0	0
2005	2006	465,600	109,000	574,600	0	0	0	0
2004	2005	483,000	201,000	684,000	0	0	0	0
2003	2004	483,000	171,000	654,000	0	0	0	0
2002	2003	458,000	163,000	621,000	0	0	0	0

**Reference Links:**

- [King County Taxing Districts Codes and Levies \(.PDF\)](#)
- [King County Tax Links](#)
- [Property Tax Advisor](#)
- [Washington State Department of Revenue \(External link\)](#)
- [Washington State Board of Tax Appeals \(External link\)](#)
- [Board of Appeals/Equalization](#)
- [Districts Report](#)
- [iMap](#)
- [Recorder's Office](#)
- [Scanned images of surveys and other map documents](#)

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2001	2002	458,000	163,000	521,000	0	0	0	0
2000	2001	423,000	137,000	560,000	0	0	0	0
1999	2000	385,000	127,000	512,000	0	0	0	0
1998	1999	464,000	95,000	559,000	0	464,000	95,000	559,000
1997	1998	0	0	0	0	464,000	95,000	559,000
1996	1997	0	0	0	0	386,400	95,400	481,800
1994	1995	0	0	0	0	386,400	95,400	481,800
1992	1993	0	0	0	0	143,600	95,400	239,000
1990	1991	0	0	0	0	109,600	91,700	201,300
1988	1989	0	0	0	0	39,600	54,600	94,100
1987	1988	0	0	0	0	39,600	57,600	97,200
1986	1987	0	0	0	0	39,600	56,100	95,700
1985	1986	0	0	0	0	28,200	60,600	88,700
1984	1985	0	0	0	0	28,200	49,000	77,200
1982	1983	0	0	0	0	28,200	49,000	77,200

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Updated: July 25, 2022

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**Attachment 3**

**CMC 15.36.030 Light Industrial manufacturing district established**

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**15.36.030 Light industrial/manufacturing district established.**

The light industrial/manufacturing district (LI/M) is established primarily to accommodate enterprises engaged in the manufacturing, processing, creating, repairing, renovating, painting, cleaning, or assembling of goods, merchandise, or equipment, and sexually oriented businesses and erotic entertainment establishments. The performance standards set forth in Part I of Chapter 15.44 place limitations on the characteristics of uses located in this district. (Ord. 700 § 6 (Exh. F) (part), 2006; Ord. 670 § 4 (Exh. D) (part), 2005)

(Ord. No. 798, § 2(Exh. A), 9-6-2011)

**Attachment 4**

**RCW 36.70B.170 Development Agreements - Authorized**

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**RCW 36.70B.170 Development agreements—Authorized.** (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.

(2) RCW 36.70B.170 through 36.70B.190 and section 501, chapter 347, Laws of 1995 do not affect the validity of a contract rezoning, concomitant agreement, annexation agreement, or other agreement in existence on July 23, 1995, or adopted under separate authority, that includes some or all of the development standards provided in subsection (3) of this section.

(3) For the purposes of this section, "development standards" includes, but is not limited to:

(a) Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes;

(b) The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;

(c) Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW;

(d) Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;

(e) Affordable housing;

(f) Parks and open space preservation;

(g) Phasing;

(h) Review procedures and standards for implementing decisions;

(i) A build-out or vesting period for applicable standards; and

(j) Any other appropriate development requirement or procedure.

(4) The execution of a development agreement is a proper exercise of county and city police power and contract authority. A development agreement may obligate a party to fund or provide services, infrastructure, or other facilities. A development agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety. [1995 c 347 § 502.]

**Findings—Intent—1995 c 347 §§ 502-506:** "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." [1995 c 347 § 501.]

**Attachment 5**

**Schefer Park Property Purchase Agreement (PSA)**

**REAL PROPERTY PURCHASE AGREEMENT**

THIS REAL PROPERTY PURCHASE AGREEMENT ("**Agreement**") is hereby made and entered into as of the Effective Date (as defined in Section 16 below) by and between **THE CITY OF CARNATION**, a political subdivision of the State of Washington ("**Seller**"), and [**REMLINGER ENTITY**], a Washington limited liability company ("**Purchaser**"), with reference to the following facts:

A. Seller is the owner of that certain real property consisting of approximately 7.24 acres, being a portion of the land located at 4301 Larsen Avenue, Carnation, WA, King County Tax Parcel Number 1625079073 ("**Parent Parcel**"), which portion is currently identified as Lot 2 of the Short Plat (defined in subsection 12(a)(xiii) below) and legally described on Exhibit "A-1" (the "**Land**"). Following legal segregation from the Parent Parcel, as described herein, Purchaser desires to acquire the Land, together with all improvements, rights, privileges, easements, buildings, leases, tenements, hereditaments, rights of way and appurtenances that belong or appertain to the Land and are owned by Seller (collectively, the "**Property**").

B. Purchaser desires to purchase the Property from Seller, and Seller desires to sell the Property to Purchaser, upon the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are all hereby acknowledged by each of the parties hereto, the parties hereto agree as follows:

1. Purchase Price.

Subject to and pursuant to the following terms and conditions, Seller shall sell and transfer the Property to Purchaser and Purchaser shall purchase the Property from Seller and pay to Seller the sum of Two Million Four Hundred Thousand Dollars (\$2,400,000.00) ("**Purchase Price**"). At Closing (as defined in Section 3 below), the Earnest Money (as defined in Section 2 below) shall be paid to Seller and credited against the Purchase Price, and Purchaser shall deliver to Seller immediately available and collectible funds equal to the balance of the Purchase Price, plus or minus Purchaser's share of closing costs, prorations, credits and charges payable pursuant to this Agreement.

2. Earnest Money. Within three (3) business days after the Effective Date (as defined below), Purchaser shall open an escrow with Chicago Title Insurance Company ("**Title Company**"), 3002 Colby Avenue, Suite 200, Everett, Washington, Attention: Lorrie Thompson, and shall deposit with Title Company a note in the amount of One Hundred Twenty Thousand Dollars (\$120,000.00) (the "**Earnest Money Note**") substantially in the form attached hereto as Exhibit "B".

(a) Unless Purchaser elects to terminate this Agreement in accordance with the provisions of Section 7 below (or this Agreement otherwise has sooner terminated in accordance

Remlinger/City of Carnation

with its terms), Purchaser shall, on or before the Feasibility Expiration Date defined in Section 7(a) below, (sometimes referred to herein as the "**Earnest Money Deposit Date**") convert the outstanding principal amount of the Earnest Money Note to cash ("**Earnest Money Deposit**," which shall be deemed to include any Extension Deposit(s), as defined in Section 7 below) (and Title Company shall return the Earnest Money Note to Purchaser), which shall be deemed non-refundable and released to Seller (except for a default by Seller, failure of a Purchaser Condition, casualty, condemnation or in the event any material representation or material warranty of Seller shall not be substantially true and correct at the Closing).

Commented [A1]: Language added

(b) The Earnest Money Deposit shall be applicable to the Purchase Price and, upon conversion to cash, shall be deposited into a federally insured interest bearing account by the Title Company and all interest shall accrue for the benefit of Purchaser. "**Business Days**" shall mean each Monday through Friday, excluding United States and State holidays, and "**Business Day**" shall mean any one of the days otherwise comprising Business Days.

(c) If Purchaser does not timely make the Earnest Money Deposit, Purchaser shall be deemed to have elected to terminate this Agreement, in which case Title Company shall immediately return the Earnest Money Note to Purchaser whereupon this Agreement shall terminate and neither party shall have any further rights, obligations or liabilities hereunder, except for matters that, by the terms of this Agreement, expressly survive termination of this Agreement.

### 3. Closing.

(a) The consummation of the purchase and sale of the Property contemplated under this Agreement ("**Closing**") shall be defined as the date that the statutory warranty deed, the form of which is attached hereto as **Exhibit "C"** (the "**Deed**"), conveying the Property to Purchaser is recorded. The Closing shall occur on or before the date ("**Closing Date**") that is thirty (30) days following the later of (i) Purchaser's written notice to Seller that Purchaser has received any and all permits from any and all governmental entities, agencies, and/or departments having jurisdiction over the Property, as necessary or appropriate, in Purchaser's sole and absolute discretion for the construction of the Project and/or any portion thereof; and (ii) recording of the final Short Plat, unless mutually extended.

(d) Consistent with the foregoing, Closing shall occur on or prior to the Closing Date. Seller agrees to deliver vacant possession of the Property to Purchaser at Closing in substantially the same condition existing as of the Effective Date (except as may be expressly provided to the contrary in this Agreement), normal wear and tear excepted, free of any right of possession or claim to right of possession by any party other than Purchaser.

4. Closing Costs. Seller shall pay its own attorneys' fees, the costs of recording the Deed, all real estate or other excise taxes, and the premium for the issuance to Purchaser of a standard form ALTA Standard Coverage Owner's Policy of Title Insurance. Purchaser shall pay its own attorneys' fees, the additional premium charges for the issuance of an ALTA Extended Coverage Owner's Policy of Title Insurance ("**Title Policy**"), the cost of any Survey (defined below) Purchaser chooses to obtain or which is required by the Title Company for extended



coverage and any endorsements required by Purchaser, as well as the cost of any premiums charged for any amount of title insurance desired by Purchaser in excess of the Purchase Price. Any closing costs not otherwise provided for herein shall be paid by the party legally responsible therefor or, if no law applies, according to prevailing custom for commercial transactions in County.

5. Prorations.

(a) Seller shall be responsible for and shall promptly pay all utility charges and similar charges with respect to the Property attributable to the period up to and including the Closing Date. All real property ad valorem taxes, special taxes, assessments, deposits, rents and security deposits with regard to any leases, and personal property taxes shall be prorated (employing a 365-day year) between Purchaser and Seller as of the Closing Date based upon the most recently available property assessment. If such assessment is not available for the year in question, taxes shall be re-prorated when the amount thereof can be ascertained. All assessments levied against the Property shall be paid in full by Seller on or before Closing, even if said assessments are due in installments subsequent to Closing. If increased taxes are, after Closing, determined to be due for any year prior to the year in which Closing occurs, Seller shall be obligated for the payment of such additional taxes.

(b) If any errors or omissions are made regarding adjustments and prorations pursuant to this Section 5, the parties shall make the appropriate corrections promptly upon the discovery thereof. If any estimates are made at the Closing regarding adjustments or prorations, the parties shall make the appropriate correction promptly when accurate information becomes available. Any corrected adjustment or proration shall be paid in cash to the party entitled thereto.

(c) The provisions of this Section 5 shall survive the Closing for one year.

6. Inspections Prior to Closing.

(a) Purchaser and its representatives, consultants and contractors shall at all times before the Closing have the privilege, opportunity and right of entering upon the Property, including, without limitation, any buildings and other improvements located thereon, in order to inspect and examine same and perform boundary, topographic and like surveys and inspections of the Property, as well as other tests and inspections of same (including, without limitation, geotechnical and environmental tests, studies and examinations, soil tests, borings, percolation tests and other tests needed to determine surface, subsurface and topographic conditions). Purchaser hereby releases, indemnifies, holds harmless and agrees to defend Seller from all liability, including, without limitation, lien claims or personal injury or damage suits, arising directly out of or relating to any testing or inspection carried out by Purchaser and/or its authorized agents for this purpose; provided that Purchaser shall have no liability or obligation in connection with the discovery or release of any material, or any condition, on, in, or about the Property, unless any such material was brought onto the Property, or any such condition was created solely, by Purchaser. Purchaser will give Seller at least two (2) business days' notice before any materially invasive testing or inspection, and shall promptly return the Property to its prior condition after completion of any such work, subject to applicable law. Purchaser's obligations under this section 6(a) survive termination of this Agreement.

(b) Seller represents and warrants to Purchaser that (i) Seller has the authority to allow Purchaser to enter upon the Property to perform the tests, studies and examinations contemplated hereby or have been obtained by Seller, (ii) Purchaser has the right to such entry by virtue of such authority, and (iii) Seller will hold Purchaser harmless from and against any claim, damage, expense or liability suffered by Purchaser with respect to any claim made against Purchaser as a result of any breach of such representations and warranties, provided that, without expanding by implication the scope of the foregoing covenant, the foregoing agreement to hold harmless shall not apply to any loss, cost, damage, expense or liability arising out of or related to Purchaser's negligence or willful misconduct.

7. Feasibility Contingency.

(a) It is specifically understood that Purchaser presently contemplates construction of, among other improvements, a light industrial project on the Property ("**Project**"), with density, design, improvements, and uses conceptually depicted on **Exhibit "D"** ("**Project Concept Drawing**"). It is, therefore, specifically agreed that Purchaser's obligation to close hereunder is conditioned upon the satisfaction of each of the following conditions ("**Purchaser Conditions**") within the Feasibility Period, or by such later date as may be provided below (any of which conditions may be waived by Purchaser upon giving written notice of such waiver to Seller) ("**Feasibility Contingency**"). For purposes of this Agreement, the "**Feasibility Period**" shall mean the period of time between and including the Effective Date and the first Business Day ("**Feasibility Expiration Date**") after the date that is one full calendar year following the later of (i) the Effective Date or (ii) the date that Seller delivers all of the Property Materials (defined in Section 7(b) below); provided that the Feasibility Expiration Date will be delayed for so long as the conditions set forth in Section 7(c) are not satisfied. If any of the Purchaser Conditions have not been satisfied as of the then-current Feasibility Expiration Date, then Purchaser shall have the right to extend the Feasibility Period until the date that is the next Business Day following the ninety (90) day period after said Feasibility Expiration Date by converting ~~Ten-Fifty~~ Thousand and No/100 Dollars (\$50,000.00) of the principal amount of the Earnest Money Note to cash ("**Extension Deposit**"), which Extension Deposit, along with any previous Extension Deposits, shall be deemed to be part of the Earnest Money Deposit and shall be non-refundable (except for a default by Seller, failure of a Purchaser Condition, casualty, condemnation or in the event any material representation or material warranty of Seller shall not be substantially true and correct at the Closing). Purchaser shall have the right extend the Feasibility Period as provided in this paragraph up to ~~four-two~~ (42) times.

Commented [A2]: Changes: \$50,000 and two extension periods

(b) Within ~~ten-twenty~~ (420) Business Days after the Effective Date, Seller shall furnish to Purchaser the following to the extent in Seller's possession or control, whether in paper, electronic, film or other medium or format: true and correct copies of all documents and records relating to the Property, including, without limitation, leases; appraisals; engineering, environmental, and other preliminary or completed, planning or site studies; surveys; plans; development agreements, licenses, permits, maps, certificates of occupancy, tax statements, delineations; reports; applications; memoranda (interagency or otherwise); meeting minutes; ordinances; and other materials related to the Property ("**Property Materials**"). Further to this, Seller shall furnish any other documentation reasonably requested by Purchaser which might assist Purchaser in its investigation, to the extent in Seller's possession or control. The Purchaser Conditions are as follows:

Commented [A3]: Change: 20 business days

(i) Purchaser obtaining at its expense (a) a boundary and a topographic survey of the Property (collectively, "Survey"), prepared by a Washington Registered Land Surveyor, (b) inspection reports and certifications respecting such Survey prepared by the surveyor as reasonably required by Purchaser and/or the Title Company, and (c) feasibility studies and any other appraisals, inspections, assessments, reports, tests, or studies desired by Purchaser, showing that the Property is satisfactory to Purchaser, as determined in its sole and absolute discretion.

(ii) Purchaser receiving confirmation that all utility lines necessary for the construction and operation of the Project, including but not limited to water, telephone, sanitary sewer, storm sewer, natural gas and electricity lines, will be available at the boundaries of the Property and will be available, sufficient and satisfactory, in Purchaser's sole discretion, for Purchaser's use in connection with the construction and operation of the Project, and that Purchaser's ability to obtain all such utility services will be conditioned solely upon the payment of such tap-on fees and user charges as are normally and uniformly imposed by the utility companies or governmental agencies supplying such services in King County.

(iii) Without limiting clause (i) above, Purchaser's receipt, at Purchaser's sole cost and expense, of (1) soil test studies with regard to the Property confirming that suitable soil conditions exist for construction of the Project; and (2) such tests and studies as Purchaser may deem necessary or appropriate to determine the environmental condition of the Property, such tests and studies to include, without limitation, so-called "Phase I" environmental site assessments and such additional testing, including so-called "Phase II" environmental site assessments, as determined by Purchaser to be necessary, in Purchaser's sole and absolute discretion, and all of which tests, studies, assessments, audits and reports confirm the absence of any and all forms of environmental surface, subsurface, groundwater and/or other contamination and are in all other respects acceptable to Purchaser.

(iv) Seller delivering to Purchaser an estoppel certificate from Seller's existing tenants, if any, in form and substance satisfactory to Purchaser attesting to such tenants waiver or satisfaction of any existing right of first refusal or option.

(v) Mutual execution of the Development Agreement (defined in Section \_\_ below) and full and final approval thereof by the City Council of the City of Carnation, including approval as to form by the city attorney.

(vi) The Title Company being irrevocably and unconditionally committed to issue an ALTA extended coverage owner's policy of title insurance insuring fee title to the Property in Purchaser in an amount equal to the Purchase Price, subject only to the Permitted Exceptions.

(vii) Purchaser satisfying itself as to such other matters as Purchaser, in its sole discretion, deems to be necessary or desirable for the construction and operation of the Project.

In the event Purchaser in its sole and absolute discretion is not satisfied with the Property, in its sole and absolute discretion, Purchaser shall either (i) terminate this Agreement by giving written notice to Seller on or before the end of the Feasibility Period, whereupon Title Company shall distribute to Seller, as applicable, the Earnest Money Deposit, to the extent previously made by Purchaser (and, if prior to full conversion, return the Earnest Money Note to Purchaser) and this Agreement shall be null and void and of no further force or effect with Purchaser and Seller having no further rights, obligations or liabilities hereunder except as otherwise set forth herein, or (ii) waive the Feasibility Contingency and consummate the purchase of the Property as set forth herein.

(c) In addition, Purchaser Conditions shall include the following (unless Purchaser waives any waivable conditions):

(i) Seller's performance of all of its obligations under this Agreement in accordance with the provisions hereof;

(ii) The truth and accuracy of Seller's warranties and representations hereunder; and

(iii) Purchaser's receipt of any and all permits from any and all governmental entities, agencies, and/or departments having jurisdiction over the Property, as necessary or appropriate, in Purchaser's sole and absolute discretion for the construction of the Project and/or any portion thereof.

(vi) The absence of any material change in the status of the use, title, occupancy or physical condition of the Property (including, without limitation, any such change caused by casualty or condemnation), unless solely caused by Purchaser or its consultants or contractors, between the Effective Date and the Closing Date (inclusive) that has not been approved in writing by Purchaser.

Should any one or more of the conditions precedent listed in (c) above not be satisfied or waived in writing by Purchaser on or before the Closing Date, then Purchaser may terminate this Agreement by giving written notice to Seller, whereupon Title Company shall immediately refund to Purchaser all Earnest Money, which termination shall be in addition to exercising any other remedy available to Purchaser hereunder in the event of a failure of a condition precedent due to Seller's acts or omissions.

#### 8. Title Review and Title Policy.

(a) Within five (5) Business Days of the Effective Date, Seller will cause the Title Company to issue to Purchaser, a preliminary commitment for an ALTA owner's policy of title insurance covering the Property, together with a copy of (or electronic link to) each recorded document referred to in the exceptions to title identified in such title commitment (the "**Title Commitment**"). During the period beginning on the Effective Date and ending at 5:00 p.m. (Pacific Time) on the date that is twenty (20) Business Days after Purchaser's receipt of the Title Commitment (the "**Title Review Period**"), Purchaser may give Seller a notice in writing

("Purchaser 's Title Notice"), identifying those matters, if any, appearing in the Title Commitment or Survey to which Purchaser objects ("**Disapproved Exceptions**").

(b) If Purchaser timely objects to any title exceptions in Purchaser 's Title Notice, Seller shall have ten (10) Business Days after receipt of Purchaser 's Title Notice to notify Purchaser in writing that Seller will remove the Disapproved Exceptions prior to Closing or that Seller will not remove the exceptions ("**Seller's Title Response**"). Seller's failure to deliver a Seller's Title Response shall be deemed an election not to remove any disapproved exceptions set forth in Purchaser 's Title Notice.

(c) If Seller elects, or is deemed to have elected, not to remove any Disapproved Exception, Purchaser shall have until the Feasibility Expiration Date, to either:

- (i) terminate this Agreement by giving notice of termination to Seller, in which event the Earnest Money Note shall be returned to Purchaser, or
- (ii) waive its disapproval of those exceptions which Seller will not remove and agree to purchase the Property subject to such disapproved exceptions.

Without limiting Purchaser 's right to object to additional exceptions appearing in an Updated Title Commitment or Updated Survey as provided in Section 8(g) below, Purchaser 's delivery of the entire Earnest Money Deposit shall be deemed to be an election pursuant to (ii) immediately above.

(d) All exceptions that Purchaser has approved hereunder, either by Purchaser 's actual or deemed approval or its actual waiver of a disapproval, as well as (A) non-delinquent general property taxes (which shall be subject to proration as provided herein); (B) exceptions created by or resulting from the acts or omissions of Purchaser; and (C) the customary pre-printed general exceptions contained in the ALTA extended coverage owner's policy form, except to the extent Title Company agrees to delete or modify said exceptions prior to expiration of the Feasibility Period (or such later date as may be provided in Section 8(g)) below) shall be deemed to be "**Permitted Exceptions**" upon issuance of the Title Policy (as defined in Section 8(i) below).

(e) Should Seller fail to remove any Disapproved Exceptions or cause Title Company to commit to irrevocably and unconditionally issue the Title Policy free and clear of such Disapproved Exceptions at or prior to Closing, Purchaser will be entitled to terminate this Agreement and receive a full refund of the Earnest Money Deposit or in the event such Disapproved Exceptions are monetary liens, cure and remove such liens, and all of Purchaser 's cost and expense reasonably incurred in connection with such cure shall be deducted from and credited against the Purchase Price.

(f) Purchaser may elect to obtain such endorsements as Purchaser requires; provided, however, that Seller shall only be responsible for the premium for the standard coverage portion of any title insurance policy and Purchaser shall be responsible for all costs for extended coverage that exceed the cost of the standard policy and for any endorsements requested by Purchaser.

(g) If the Title Company issues an updated title commitment ("**Updated Title Commitment**"), or if Purchaser obtains an updated survey ("**Updated Survey**") of the Property

prior to expiration of the Feasibility Period, in either case setting forth new exceptions for matters which were not included in the original Title Commitment or original Survey or new matters affecting title to the Property are otherwise discovered, then the foregoing process shall be repeated; provided, however that Purchaser will have ten (10) days after receipt of the Updated Title Commitment or Updated Survey (as the case may be), to give written notice of disapproval of any such exception.

(h) Seller shall accomplish any cure that Seller has agreed or is obligated to complete pursuant to this Section 8 on or before the Closing Date and such cure shall become a condition precedent to Closing in favor of Purchaser. If such cure is not accomplished by the Closing Date, Purchaser shall have the following options: either to (i) terminate this Agreement and treat such failure to cure as a Seller's Breach (as defined in Section 15 below) or (ii) waive its objections to the items that Seller did not cure and agree to purchase the Property subject to those items, which shall be deemed Permitted Exceptions.

(i) It shall be a condition to Purchaser's obligation to close, the Title Company shall issue to Purchaser an ALTA standard coverage Owner's Policy of Title Insurance at the Closing in the amount of the Purchase Price showing fee title to the Property vested in Purchaser as the insured (including extended coverage and such endorsements as the Purchaser requests the Title Company issue to Purchaser) for the full amount of the Purchase Price showing no exceptions other than the Permitted Exceptions and otherwise in accordance with the Title Commitment ("Title Policy"). Seller shall pay the premium for an ALTA owner's standard coverage policy of title insurance with the same liability amount and subject to the same exceptions and Purchaser will pay the difference in premium to obtain extended coverage and any endorsements or other additional costs (including without limitation any costs of required surveys) attributable to such coverage.

9. Casualty and Condemnation. If, at any time between the Effective Date and Closing (inclusive), all or any portion of the Property is materially damaged by casualty or condemned by any legally constituted authority for any public use or purpose, then Purchaser may elect either: (i) to terminate this Agreement, in which event Title Company shall immediately refund to Purchaser all Earnest Money, and neither Purchaser nor Seller shall have any further liabilities, obligations or rights with regard to this Agreement (except for matters that by the express terms hereof survive termination); or (ii) to collect at Closing (or at Closing receive a credit against the Purchase Price for) all proceeds from any condemnation or from any insurance policies insuring the Property from damage or destruction and have the terms of this Agreement remain in full force and effect and binding on the parties hereto (with Purchaser receiving a credit against the Purchase Price for any deductibles and the amount of any uninsured casualty). In the event of a condemnation in which Purchaser does not elect to terminate this Agreement pursuant to the foregoing terms, then the term Property, as used herein, shall thereafter refer to the Property less and except any portion thereof taken by such condemnation.

10. Assignment. Neither Seller nor Purchaser shall assign its interest hereunder, except to a related entity, without the prior written consent of the other party.

11. Survival of Closing. All warranties, covenants and representations made herein by either Seller or Purchaser shall survive Closing for one (1) year.

12. Seller's Representations, Warranties and Covenants.

(a) Seller represents, warrants and covenants to Purchaser that:

(i) Seller (x) has complete and full authority to execute this Agreement and to convey to Purchaser good and marketable fee simple title to the Property, in accordance with Section 8 of this Agreement, (y) will execute and deliver such other documents, instruments, agreements, including (but not limited to) affidavits and certificates, as are reasonably necessary to effectuate the transaction contemplated herein, and (z) will take all such additional action reasonably necessary or appropriate to effect and facilitate the consummation of the sale and purchase transaction contemplated herein. Each of the persons executing this Agreement on behalf of Seller further represents and warrants that the persons signing this Agreement on behalf of Seller are duly qualified and appointed representatives of Seller and have all requisite power and authority on behalf of Seller to enter into this Agreement as the valid, binding and enforceable obligation of Seller.

(ii) There are no material defects in or about the Property that would affect Purchaser's ability to develop the Project.

(iii) All assessments that are liens against the Property are shown in the official records of the taxing authorities in whose jurisdiction the Property is located; no improvements (site or area) have been constructed or installed by any public authority, the cost of which may be assessed in whole or in part against any part of the Property in the future; and Seller has not been notified of any possible future improvements that might create an assessment against any part of the Property.

(iv) Seller has not received any notice of, and has no knowledge of, any pending or threatened taking or condemnation of the Property or any portion thereof.

(v) Seller can and will deliver sole and exclusive possession of the Property to Purchaser at Closing, subject to the Permitted Title Exceptions. Seller will not further sell, encumber, convey, assign, pledge, or contract to sell, convey, assign, pledge, or encumber all or any part of the Property, nor restrict the use of all or any part of the Property, nor take or cause or allow to be taken any action in conflict with this Agreement at any time between the Effective Date and (x) Closing, or (y) the earlier termination of this Agreement pursuant to its terms.

(vi) The Property has legal access to and from all street fronts and adjoining rights-of-way.

(vii) Neither the entering into of this Agreement nor the consummation of the transactions contemplated hereby will constitute or result in a violation or breach by Seller of any judgment, order, writ, injunction or decree issued against or imposed upon it, or will result in a violation of any applicable law, order, rule, code, ordinance, or regulation of any governmental authority. There is no action, suit, proceeding or investigation

pending or threatened that creates a lien or that would become a cloud on the title to the Property or any portion thereof or that questions the validity or enforceability of the transaction contemplated by this Agreement or any action taken pursuant hereto in any court or before or by any Federal, district, county, or municipal department, commission, board, bureau, agency or other governmental instrumentality. Seller agrees to indemnify, defend (with counsel satisfactory to Purchaser) and hold harmless Purchaser, its employees, officers, members, attorneys, directors, agents, contractors, assigns and successors-in-interest, from any claims, liabilities or other actions that may arise as a result of the entering into this Agreement by Purchaser with Seller on account of the falsity of this representation.

(viii) Seller has no knowledge of, nor has Seller received any notice of, any actual or threatened action, litigation, or proceeding by any organization, person, individual or governmental agency (including governmental actions under condemnation authority or proceedings similar thereto) against the Property or Seller, nor has any such organization, person, individual or governmental agency communicated to Seller anything that Seller believes to be a threat of any such action, litigation or proceeding.

(ix) Seller has received no notice of and has no knowledge of any violations of law, municipal or county ordinances, or other legal requirements with respect to the Property or with respect to the use, occupancy or construction thereon.

(x) (1) none of the Property has been excavated, (2) no landfill was deposited on, or taken from, the Property, (3) no construction debris or other debris (including, without limitation, rocks, stumps, or concrete) was buried upon any of the Property, (4) no Hazardous Materials (as hereinafter defined) have been deposited on or about the Property, and (5) no asbestos-containing materials have been placed or introduced in any buildings or other improvements on the Property. "**Hazardous Materials**" or similar terms shall mean and include asbestos, asbestos-containing materials, petroleum and petroleum products, the group of organic compounds known as polychlorinated biphenyls, and any substances or materials that are regulated, controlled or prohibited under the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 690, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Sections 9601-9657, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Washington Model Toxics Control Act, Ch. 70A.305 RCW, or any similar State law or local ordinance or any other environmental law, the Federal Water Pollution Control Act, 33 U.S.C. §1251, the Clean Air Act, 42 U.S.C. § 7401, the Toxic Substances Control Act ("TCSA"), 15 U.S.C. § 2601, or any similar State law or local ordinance, or any other Federal, State or local environmental statutes, regulations, ordinances or other environmental regulatory requirements. If any Hazardous Materials that existed on the Property as of Closing shall be discovered and Seller notified prior to Closing, Seller covenants to have same at its sole cost and expense, remediated, removed or cleaned to the satisfaction of all appropriate governmental authorities, such obligation to survive Closing.

(xi) There are no billboards or other signs nor are there cemeteries, grave sites or burial sites or grounds or other sites of historic significance, located on the Property.



(xii) There is no pending or threatened rezoning of, or change of any development regulations or building moratorium affecting, all or any part of the Property.

(xiii) On or before the Feasibility Expiration Date, Seller shall complete and record the short subdivision, City of Carnation Preliminary Short Subdivision Application Number SHP22-0003 ("**Short Plat**"), which Short Plat shall formally segregate the Property from any and all other real property, such that the closing of the transaction contemplated hereby shall not violate the provisions of Ch. 58.17 RCW or other applicable law regulating the segregation of land.

In addition to all other rights and remedies of Purchaser set forth herein, Seller shall indemnify, defend (with counsel satisfactory to Purchaser), and hold harmless Purchaser, its employees, officers, shareholders, attorneys, directors, agents, contractors, assigns and successors-in-interest, from and against any and all claims, actions, loss, cost, damage and expense (including reasonable attorneys' fees, including fees on appeal) resulting from a breach by Seller of any of the representations, warranties and covenants contained in this Agreement.

(b) At all times prior to Closing, and without limiting the provisions of subparagraph (a) above or any other provision of this Agreement, Seller shall maintain the Property free from waste and neglect, shall maintain its existing insurance coverages thereon and shall keep and perform or cause to be performed all obligations of the owner of the Property under any recorded title documents, applicable laws and any mortgage affecting the Property. Seller shall tender possession of the Property to Purchaser in the same condition the Property was in when last inspected by Purchaser, normal wear and tear and casualty damage excepted, to the end that Seller shall not in any way take any action, permit or acquiesce in any action or fail to take any action that will cause a material increase in Purchaser's site development costs or otherwise delay or adversely affect any construction activities contemplated by Purchaser in connection with the Project. Without limitation, from the Effective Date to the Closing Date or earlier termination of this Agreement, Seller shall not do, suffer or permit, or agree to do, any of the following: (i) enter into any transaction with respect to or affecting the Property that would in any way prevent Seller's full performance hereunder, or limit or adversely affect Purchaser's rights hereunder or as an owner of the Property following Closing (including, without limitation, anything that may subject Purchaser to any cost, liability or expense or otherwise interfere with, delay or increase the cost of Purchaser's acquisition, development, construction and operation of the Project on the Property); (ii) sell, encumber or grant any interest in the Property or any part thereof in any form or manner whatsoever; (iii) enter into, amend, waive any rights under, terminate or extend any document or instrument affecting the Property without the prior written consent of Purchaser, or (iv) without limiting the foregoing, change the grade or other physical characteristics of the Property in any respect unless Purchaser has given its prior written approval to any such change. Seller shall indemnify, defend (with counsel satisfactory to Purchaser) and hold harmless Purchaser, its employees, officers, shareholders, attorneys, directors, agents, contractors, assigns and successors-in-interest, from and against any loss, cost, damage, expense or liability (including reasonable attorneys' fees, including fees on appeal) suffered or incurred as a result of Seller's breach of the foregoing covenant (such covenant to survive Closing), and, without limiting any of Purchaser's rights and remedies hereunder, Purchaser shall have the unconditional right, at its option, to extend the Feasibility Period and/or the Closing Date by up to one hundred eighty (180)

days as a result of any such breach by Seller.

(c) Seller shall not enter into, amend, waive any rights under, terminate or extend any document or instrument affecting the Property without the prior written consent of Purchaser,

13. Notices. All notices shall be personally delivered, sent via a nationally recognized overnight courier service (such as Federal Express, UPS or DHL) or sent by certified United States mail (return receipt requested), with a courtesy copy concurrently

sent via electronic mail. Notices sent via personal delivery, overnight courier service and electronic mail will be effective upon receipt, and notices sent by mail will be effective three (3) Business Days after being deposited with the United States Post Office, postage prepaid. Seller and Purchaser agree that notice may be given on behalf of each party by the counsel for each party and notice by such counsel in accordance with this Section 13 shall constitute notice under this Agreement. The addresses to be used in connection with such correspondence and notices are the following, or such other address as a party shall from time to time direct in writing by notice given pursuant to this Section 13, but any such notice of a new address shall not be effective until actually received by the other party:

Seller: City of Carnation  
4621 Tolt Avenue, P.O. Box 1238  
Carnation, WA 98014  
[ana.cortez@carnationwa.gov](mailto:ana.cortez@carnationwa.gov)

with a copy to: \_\_\_\_\_

Purchaser: [Remlinger Entity]  
32610 NE 32<sup>nd</sup> Street  
Carnation, WA 98014  
Phone: (206) 300-0772  
Email: [gary@remlingerfarms.com](mailto:gary@remlingerfarms.com)

with a copy to: The Remlinger Group  
\_\_\_\_\_  
Attn: Drake Remlinger  
Phone: (425) 330-1160  
Email: [drake@remlingergroup.com](mailto:drake@remlingergroup.com)

with a copy to: Ojala Law, Inc., P.S.  
PO Box 211  
Snohomish, WA 98291  
Attn: Nate R. Veranth

Phone: (425) 788-2222  
Email: [nate@ojalalaw.com](mailto:nate@ojalalaw.com)

14. Brokers.

(a) Each party represents and warrants to the other that neither has employed, retained or consulted a broker, agent or finder in carrying on the negotiations in connection with this Agreement or the purchase and sale referred to herein. Seller and Purchaser each hereby indemnifies and agrees to defend and hold the other harmless from and against any and all claims, demands, causes of action, debts, liabilities, judgments and damages (including, without limitation, court costs and attorneys' fees, inclusive of fees incurred in connection with enforcement of this indemnity and fees on appeal) that may be asserted or recovered against the indemnified party on account of any brokerage fee, commission or other compensation arising by reason of the indemnitor's breach of these representations and warranties the foregoing indemnities being herein referred to as the "**Brokerage Indemnities**"). The Brokerage Indemnities shall survive Closing or any sooner termination of this Agreement, notwithstanding any contrary provision of this Agreement.

(b) Drake Remlinger is a member of Purchaser and is a licensed real estate broker in the State of Washington.

15. Default.

(a) Seller's Default. If the purchase and sale contemplated by this Agreement is not consummated because of the default of Seller, Title Company shall immediately refund to Purchaser the Earnest Money Deposit without prejudice to any other legal or equitable right or remedy of Purchaser against Seller, including (but not limited to) specific performance. In addition, if the failure to close was based on a breach of warranty or intentional default by Seller, **Seller shall immediately reimburse Purchaser all of Purchaser's out-of-pocket due diligence costs up to 350,000.00.**

Commented [A4]: No changes here

(b) Purchaser's Default. If Purchaser fails or refuses to perform its obligations under this Agreement, and such failure or refusal is not cured within ten (10) Business Days after Purchaser's receipt of notice of such failure from Seller, then Seller may as its sole and exclusive remedy have, and Title Company shall deliver to Seller, the Earnest Money actually paid in cash to Title Company prior to the default, as full, complete and final liquidated damages, and not as a penalty. Seller and Purchaser hereby agree that it would be difficult, if not impossible, to ascertain the damages accruing to Seller as a result of a default by Purchaser under this Agreement, but that the parties have agreed upon the Earnest Money paid prior to the default as a reasonable estimate thereof. The payment of said liquidated damages, therefore, shall constitute Seller's sole and exclusive remedy against Purchaser at law and in equity and shall be in lieu of the exercise by Seller of any other legal or equitable right or remedy that Seller may have against Purchaser as a result of Purchaser's default.

16. Date of Agreement: Dates. If this Agreement is not signed simultaneously by both parties, it shall be considered to be an offer made by the party first executing it to the other party. In such event, said offer shall expire, unless sooner revoked, at midnight on the fifth (5th) Business

Day following execution by the offering party, unless by that time one copy executed by the party to whom the offer has been made shall have been placed in the mail or personally delivered to the party making the offer. The "**Effective Date**" of this Agreement shall be the date upon which it is accepted by the party to whom the offer is made. Whenever the last day for the exercise of any privilege or the discharge of any duty hereunder shall fall upon a Saturday, Sunday or any United States or State holiday, the party having such privilege or duty shall have until 11:59 p.m. Local Time on the next succeeding Business Day to exercise such privilege or to discharge such duty.

17. Miscellaneous.

(a) Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Washington.

(b) Waiver. Failure of either Purchaser or Seller to exercise any right given hereunder or to insist upon strict compliance with regard to any term, condition or covenant specified herein, shall not constitute a waiver of Purchaser's or Seller's right to exercise such right or to demand strict compliance with any term, condition or covenant under this Agreement.

(c) Counterparts. This Agreement may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Agreement.

(d) Captions. All captions, headings, paragraph and subparagraph numbers and letters are solely for reference purposes and shall not be deemed to be supplementing, limiting, or otherwise varying the text of this Agreement.

(e) Severability. The invalidity or unenforceability of a particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

(f) Time of the Essence. Time is of the essence of this Agreement.

(g) No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties hereto, to any person or entity other than the parties hereto.

(h) Exhibits and Schedules. The exhibits attached hereto are hereby incorporated herein by this reference.

(i) Amendment to this Agreement. Neither this Agreement nor any provision hereof may be changed, amended, modified, waived or discharged orally or by any course of dealing, but only by an instrument in writing signed by the party against which enforcement of the change, amendment, modification, waiver or discharge is sought.

(j) Fees and Other Expenses. Except as otherwise provided herein, each of the parties shall pay its own fees and expenses in connection with this Agreement.

(k) Entire Agreement. This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Purchaser and Seller as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of either party, shall be of any effect unless it is in writing and executed by the party to be bound thereby.

(l) Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto (as permitted pursuant to the provisions of this Agreement).

(m) Attorneys' Fees. If either party brings or commences any legal action or proceeding to enforce any of the terms of this Agreement (or for damages by reason of an alleged breach of this Agreement), the substantially prevailing party, if any, in such action shall be entitled to recover from the other party all reasonable attorneys' fees that may have been incurred, including any and all costs and expenses incurred in enforcing, perfecting and executing such judgment, and including all costs of appeal.

18. Development Agreement. The parties acknowledge and agree that Purchaser is purchasing the Property for purposes of constructing the Project in accordance with a development agreement, in the form attached hereto as Exhibit "E" and incorporated herein by this reference.

19. Moratoria. If, at any time prior to Closing, the City of Carnation, or any other governmental entity having jurisdiction over the Property, shall impose any development restrictions, including, without limitation, any moratorium, that materially inhibits, interferes with, or stops Purchaser's ability to apply for and/or receive final approval of, Purchaser's development permits ("**Development Restrictions**"), then the Feasibility Period shall be extended (or reinstated, as applicable) until the date that is one hundred eighty (180) days following the date that the Development Restrictions are repealed or expire. In such event, all relevant dates and timelines hereunder shall be adjusted accordingly.

20. Force Majeure. If, through no fault of Purchaser or Seller, and by reason of a Force Majeure Event (defined below), any contingency or condition in the Agreement cannot be timely completed, then all time periods relative to the applicable contingency or condition, including the time periods for the related notices and responses thereto, shall be extended for a reasonable time under the circumstances, up to one hundred eighty (180) days, and the contingency or condition shall be satisfied as soon as reasonably practicable. "**Force Majeure Event**" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence, making the means of performance objectively impossible. Force Majeure Events included acts of God, war, riots, strikes, fire, floods, epidemics, pandemics.

*[signatures on following page]*

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year written below.

**SELLER:**

**CITY OF CARNATION**, a  
Political subdivision of the State of Washington

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date of Execution by Seller: \_\_\_\_\_

**PURCHASER:**

**[REMLINGER ENTITY]**  
a Washington limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date of Execution by Purchaser: \_\_\_\_\_

Remlinger/City of Carnation

EXHIBITS TO BE ADDED

- EXHIBIT "A" – Legal Description of Property
- EXHIBIT "B" – Earnest Money Note
- EXHIBIT "C" – Form of Deed
- EXHIBIT "D" – Project Concept Drawing
- EXHIBIT "E" – Form of Development Agreement

DRAFT

EXHIBIT "A-1"

Legal Description of the Land:

[Formal legal description of Lot 2 of the Short Plat to be provided]

DRAFT



## **Exhibit A-1**

### **Legal Description of the Property**

#### **Site Description:**

- a. **Location:** The subject property is located at 4300 Larson Avenue, Carnation WA 98014, and identified as Assessor's Parcel No. 162507-9073.
- b. **Size and Description:** The subject site is located on the west side of Larson Avenue, south of Entwistle Street. The property is configured as an irregular rectangle being approximately 7.52 acres in area. In its flag shaped configuration, the main body of the property is approximately 588 east to west and 550 feet north to south, and a 160 wide extension (flag) along its west boundary to the north for an additional 240 feet. The topography is relatively level, being at grade with the Larson Avenue right-of-way along its east boundary and having a slight downward slope to the west. The property has a street frontage of 155 feet along the Larson Avenue right-of-way (currently unimproved) which dead ends at the southern extent of the property's frontage. The depth of the property extends 560 feet to the west where it abuts King County's Tolt McDonald Park. Vegetation on the site consists of a maintained grass surface.

EXHIBIT "B"

Form of Earnest Money Note

*[see attached]*

DRAFT

EARNEST MONEY PROMISSORY NOTE

\$120,000.00

Seattle, Washington  
\_\_\_\_\_, 2023

FOR VALUE RECEIVED, [**REMLINGER ENTITY**], a Washington limited liability company ("**Maker**"), promises to pay to Chicago Title Insurance Company, 3002 Colby Avenue, Suite 200, Everett, Washington ("**Title Company**"), the sum of ONE HUNDRED TWENTY THOUSAND AND NO/100ths DOLLARS (\$120,000.00) to be held in escrow for the benefit of both Maker and THE CITY OF CARNATION, a political subdivision of the State of Washington ("**Seller**").

The indebtedness evidenced by this promissory note (this "**Note**") is the Earnest Money described in the Real Property Purchase Agreement between Maker, as "**Purchaser**", and Seller dated effective \_\_\_\_\_, 2023 ("**Purchase Agreement**"). Title Company will hold this Note in escrow. This Note is not subject to interest.

The indebtedness evidenced by this Note will only be due as provided by the terms and conditions of the Purchase Agreement.

Upon Maker's payment in full of the indebtedness evidenced by this Note, the entire amount so paid will be conclusively deemed to be the "Earnest Money" under the Purchase Agreement, and Title Company will deposit, hold, pay and refund such Earnest Money in accordance with the terms of the Purchase Agreement. Title Company's acceptance of this Note will be conclusively deemed to be Title Company's agreement to the terms of this Note.

This Note will be construed and enforced in accordance with the laws of the State of Washington, and venue for any action to enforce or collect this Note will be in Seattle, King County, Washington.

[**REMLINGER ENTITY**],  
a Washington limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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

EXHIBIT "C"

Form of Statutory Warranty Deed

Recording Requested by and  
After Recording Return to:

[  
]  
[  
]  
[  
]

STATUTORY WARRANTY DEED

**Grantor:** THE CITY OF CARNATION, a political  
subdivision of the State of Washington

**Grantee:** [REMLINGER ENTITY], a Washington limited  
liability company ("Purchaser"),

**Abbreviated Legal  
Description:** [ ]  
Complete legal description on Exhibit A.

**Assessor's Tax Parcel  
ID#:** [ ]

For the consideration of [Ten and no/100 Dollars], and other valuable consideration, THE CITY OF CARNATION, a political subdivision of the State of Washington ("Grantor"), does hereby convey and warrant to [REMLINGER ENTITY], a Washington limited liability company ("Grantee"), the real property situated in King County, Washington, legally described on Exhibit A attached hereto and incorporated herein.

SUBJECT TO: Items listed on Exhibit B attached hereto and incorporated herein.

[Signatures Follow]

DATED: This \_\_\_\_ day of \_\_\_\_\_, 2024.

GRANTOR:

CITY OF CARNATION, a political  
subdivision of the State of Washington

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney for the City of  
Carnation, WA, a political subdivision  
of the State of Washington

DRAFT

STATE OF WASHINGTON

COUNTY OF \_\_\_\_\_

ss.

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of **THE CITY OF CARNATION**, a political subdivision of the State of Washington, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington,  
residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_

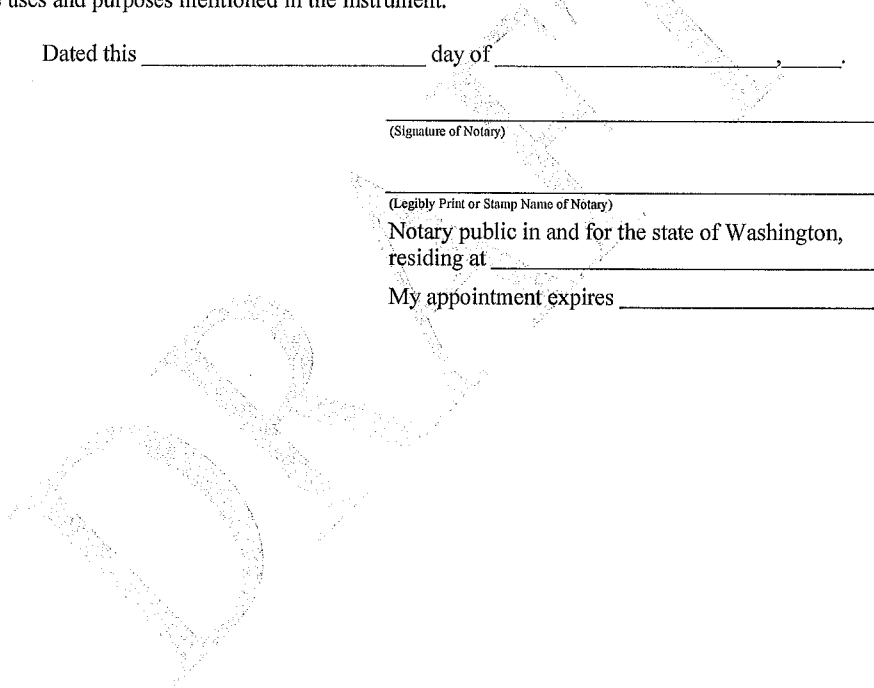


EXHIBIT A  
TO STATUTORY WARRANTY DEED

Legal Description

[TO COME]

DRAFT

RECORDED THIS DAY

AFTER RECORDING PLEASE RETURN TO:

APR 6 8 21 AM '99

City of Carnation  
P.O. Box 267  
Carnation, WA 98014  
Attn: D. Hunter

BY THE  
REC'D 10:49

**SPECIAL WARRANTY DEED**

Grantor: Val Roney, Personal Representative  
Grantee: City of Carnation  
Abbreviated  
Legal: Ptn. Govt. Lot 8 and NE 1/4 SW 1/4, 16-25-07.  
Parcel Nos.: 1625079073 and 1625079071

FILED BY PNWT  
366560-12

10/3

9904050001

THE GRANTOR, VAL RONEY, as Personal Representative of the Estate of Leah Kathleen Schefer, Deceased, King County Cause No. 98-4-04719-1SEA, for and in consideration of \$10.00 and other valuable consideration, grants, bargains, sells, conveys, and confirms to the CITY OF CARNATION, a Washington municipal corporation, GRANTEE, the following described real estate, situated in the County of King, State of Washington:

As described on Exhibit A, attached hereto and incorporated herein by reference.

The Grantor for herself and for her successors in interest does by these presents expressly limit the covenants of the deed to those herein expressed, and excludes all covenants arising or to arise by statutory or other implication, and does hereby covenant that against all persons whomsoever lawfully claiming or to claim by, through or under said Grantor and not otherwise, she will forever warrant and defend the said described real estate.

DATED: April 2, 1999.

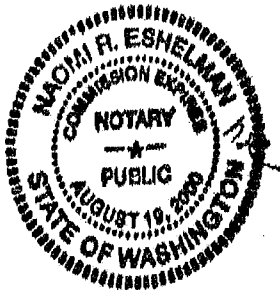
  
VAL RONEY, Personal Representative of the  
Estate of Leah Kathleen Schefer, Deceased



STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that Val Roney is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the **Personal Representative of the Estate of Leah Kathleen Schefer** to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

DATED: April 2, 1999



*Naomi R. Eshelman*  
Naomi R. Eshelman (Print Name)  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at Castroville  
My commission expires: 8/19/2000

9904060001

COPY

The land referred to in this commitment is situated in the county of King, state of Washington, and described as follows:

PARCEL A:

The east 588 feet of Government Lot 8, Section 16, Township 25 North, Range 7 East, W.M., in King County, Washington; EXCEPT the south 525 feet thereof; AND EXCEPT the east 30 feet of the north 393 feet, more or less, thereof; AND EXCEPT that portion thereof lying northeast of the southwesterly margin of an abandoned Great Northern Railway Company spur track.

PARCEL B:

The south 30 feet of the west 120 feet of the east 150 feet of the northeast quarter of the southwest quarter, and that portion of Government Lot 8 lying northeast of the southwesterly margin of an abandoned Great Northern Railway Company spur track; EXCEPT the east 30 feet thereof, all in Section 16, Township 25 North, Range 7 East, W.M., in King County, Washington.

END OF SCHEDULE A

NOTE FOR INFORMATIONAL PURPOSES ONLY:

The following may be used as an abbreviated legal description on the documents to be recorded, per amended RCW 65.04. Said abbreviated legal description is not a substitute for a complete legal description within the body of the document.

Ptn. Govt. Lot 8 and NE 1/4 SW 1/4, 16-25-07.

9904060001

EXHIBIT B  
TO STATUTORY WARRANTY DEED

Permitted Exceptions \_\_\_\_\_

DRAFT

RECORDED THIS DATE

AFTER RECORDING PLEASE RETURN TO:

APR 6 8 21 AM '99

City of Carnation  
P.O. Box 267  
Carnation, WA 98014  
Attn: D. Hunter

BY TREC  
RECORDED 10:49

**SPECIAL WARRANTY DEED**

Grantor: Val Roney, Personal Representative  
Grantee: City of Carnation  
Abbreviated  
Legal: Ptn. Govt. Lot 8 and NE 1/4 SW 1/4, 16-25-07.  
Parcel Nos.: 1625079073 and 1625079071

**FILED BY PNWT**  
366 560-12

10/3

9904050001

THE GRANTOR, VAL RONEY, as Personal Representative of the Estate of Leah Kathleen Schefer, Deceased, King County Cause No. 98-4-04719-ISEA, for and in consideration of \$10.00 and other valuable consideration, grants, bargains, sells, conveys, and confirms to the CITY OF CARNATION, a Washington municipal corporation, GRANTEE, the following described real estate, situated in the County of King, State of Washington:

As described on Exhibit A, attached hereto and incorporated herein by reference.

The Grantor for herself and for her successors in interest does by these presents expressly limit the covenants of the deed to those herein expressed, and excludes all covenants arising or to arise by statutory or other implication, and does hereby covenant that against all persons whomsoever lawfully claiming or to claim by, through or under said Grantor and not otherwise, she will forever warrant and defend the said described real estate.

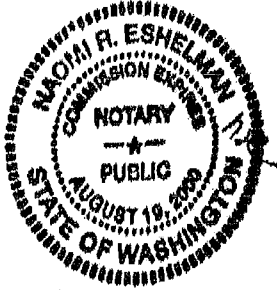
DATED: April 2, 1999.

  
VAL RONEY, Personal Representative of the  
Estate of Leah Kathleen Schefer, Deceased

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that Val Roney is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the **Personal Representative of the Estate of Leah Kathleen Schefer** to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

DATED: April 2, 1999.



*Naomi R. Eshelman*  
\_\_\_\_\_  
Naomi R. Eshelman (Print Name)  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at *Uniontown*  
My commission expires: *8/19/2000*

9904060001

COPY

The land referred to in this commitment is situated in the county of King, state of Washington, and described as follows:

PARCEL A:

The east 588 feet of Government Lot 8, Section 16, Township 25 North, Range 7 East, W.M., in King County, Washington; EXCEPT the south 528 feet thereof; AND EXCEPT the east 30 feet of the north 393 feet, more or less, thereof; AND EXCEPT that portion thereof lying northeast of the southwesterly margin of an abandoned Great Northern Railway Company spur track.

PARCEL B:

The south 30 feet of the east 120 feet of the east 150 feet of the northeast quarter of the southwest quarter, and that portion of Government Lot 8 lying northeast of the southwesterly margin of an abandoned Great Northern Railway Company spur track; EXCEPT the east 30 feet thereof, all in Section 16, Township 25 North, Range 7 East, W.M., in King County, Washington.

END OF SCHEDULE A

9904060001

NOTE FOR INFORMATIONAL PURPOSES ONLY:

The following may be used as an abbreviated legal description on the documents to be recorded, per amended RCW 65.04. Said abbreviated legal description is not a substitute for a complete legal description within the body of the document.

Ptn. Govt. Lot 8 and NE 1/4 SW 1/4, 16-25-07.

EXHIBIT "D"

Project Concept Drawing

DRAFT

Site Plan Rendering

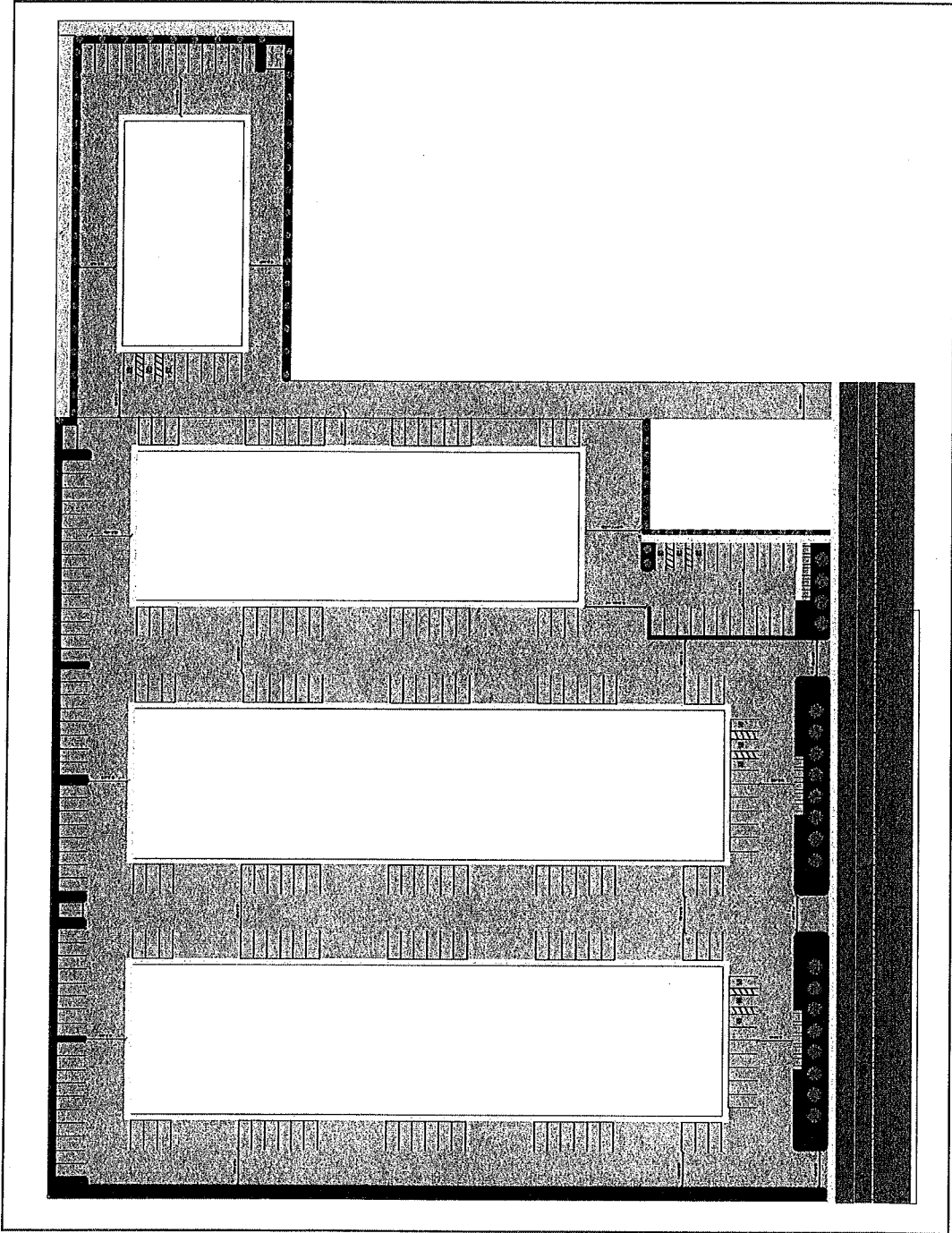




EXHIBIT "E"

Form of Development Agreement—Attached  
[TBD]

DRAFT

## DEVELOPMENT AGREEMENT

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This Development Agreement ("**Agreement**") is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2023 ("**Effective Date**"), by and between the CITY OF CARNATION, a municipal corporation under the laws of the State of Washington ("**City**"), and [REMLINGER ENTITY], a Washington limited liability company ("**Developer**") (City and Developer are each sometimes referred to herein individually as a "**Party**" and, together, as the "**Parties**").

### RECITALS

- A. The City and Developer are parties to that certain Real Property Purchase Agreement ("**PSA**"), of even date herewith, pursuant to which the City has agreed to sell, and Developer has agreed to purchase, the real property located in the City of Carnation, County of King, State of Washington, and legally described on **Exhibit A** ("**Property**").
- B. The City has commenced a land segregation process, City of Carnation Preliminary Short Subdivision Application Number SHP22-0003, pursuant to which the City intends to legally segregate the Property from its Parent Parcel (King County Parcel No. 1625079073).
- C. Developer desires to develop the Property as a project to be used in a manner consistent with the light industrial/manufacturing zone established pursuant to Section 15.36.030 ("**LI/M Zone**"), City of Carnation Municipal Code ("**CMC**"), and the uses permissible therein ("**Project**"), and the City has determined that the Project will provide significant public benefit to the City and the broader community.
- D. The City's most important interest in the development of this property is to activate the parcels for future development which will provide employment opportunities, access to services locally, road and infrastructures improvements, and diversification of municipal revenues.
- E. The City has the authority to enter this Agreement pursuant to RCW 36.70B.170 *et seq.* and CMC Title 15.
- F. Capitalized terms used, but not defined herein, shall have the meanings given to them in the PSA.

### AGREEMENT

#### 1. Introduction.

Upon approval of the PSA and this Agreement, the provisions of this Agreement, in addition to the provisions of the PSA, as applicable, shall govern the development of the Property. The Parties recognize that the development of the Project, including conformance with the conditions in this Agreement, is subject to third party permits and approvals outside of the control of the City or Developer. Nothing in this Agreement is intended to, or shall, in any way limit, expand, impair or otherwise amend any of the terms, conditions, rights, remedies or obligations of the Parties under the PSA.

## 2. Project Description.

The Project that is the subject of this Agreement is a high-quality development light industrial development, as conceptually depicted in the site plan ("*Site Plan*") attached hereto as **Exhibit B** and incorporated herein by this reference. The Parties contemplate that the Project shall comprise at least 80,000 square feet intended to serve uses consistent with the LI/M Zone. The ultimate scope and mix of specific uses constructed will be determined by Developer based on market demand and the land use capacity of the Property, subject to the development standards set forth in this Agreement. A maximum of 20% of the total building square feet may be developed as storage space. In the event Developer wants to develop more than 20% of the total building's square footage as any form of storage space, Developer shall pay City \$50,000.00 annually. The total square feet of storage space may not exceed 33% of the buildings' total square footage.

Storage in this section is defined as passive use of building space such as that used for parked vehicles, boats, equipment, sedentary inventory and or other similar uses; this definition excludes use of footage for inventory required for periodic business, commercial, professional activity.

## 3. Development Plan.

3.1 Development Elements. The City and Developer contemplate a development plan for the Property and Project. The plan contemplates, among other things, a development that balances economic development, including employment opportunities, revenue generation for the City, community connectivity and wayfinding, and environmental protection. The plan includes the following elements:

(i) Economic Development: creating at least 80,000 square feet of LI/M Zone space envisioned to provide meaningful employment opportunities within the community and revenue generation to the City. In a mutual effort maximize the footprint of the Project and complete the Larson Road Extension (defined below) in a timely manner, the City shall permit Developer, and grant to Developer any rights necessary, to expand and/or alter the existing infiltration system(s) serving the existing vacuum station on the Parent Parcel to fulfill stormwater management requirements.

~~Additionally, the City and Developer will exercise diligent good faith efforts to work with King County Department of Natural Resources and Parks ("*King County Parks*") to obtain permission and/or rights to use portions of King County Parcel No. 1625079016 (owned by King County) ("*King County Property*"), for the purposes of constructing stormwater flow control and treatment facilities. If King County agrees to provide sufficient rights therefor, as determined by the City and Developer, each in their reasonable discretion, then both the City and Developer will exercise good faith efforts to determine whether it is fiscally, commercially reasonable to design stormwater facilities that can adequately serve the planned growth and development of the contributory drainage basin with each Party contributing an equitable share of the total cost; provided that in no event shall Developer be obligated to design or construct stormwater facilities beyond what is necessary to serve the Project. If the Parties mutually agree,~~



~~each in their sole and absolute discretion, to cooperatively design and construct stormwater facilities on the King County Property as described, the existing stormwater facility serving the vacuum station would be removed, and the Developer, will have permission to utilize the current footprint of the facility to best serve the Project.~~

(ii) Larson Road Extension. Design and Construction of Larson Road: The terms of this Agreement satisfies the requirements set forth in CMC 15.56.190. In lieu of transportation impact fees otherwise collectible by the City in connection with the Project, and in full satisfaction of Developer's off-site traffic mitigation obligation, including, without limitation, those set forth in CMC Section 15.56.190. Developer shall design and construct an extension of Larson Road along the eastern and western boundaries, to the southern boundary, of the Property ("**Larson Road Extension**"). Within ninety (90) days following the Effective Date, the City and Developer will work diligently to prepare mutually acceptable design and construction standards and specifications for the Larson Road Extension that are consistent with the nature of the Project.

(iii) South Larson Extension. In addition, the City anticipates the possibility to obtain the properties directly south of, and adjacent to the Property, and directly south of Larson Road, ("**South Larson Property**") for purposes of extending Larson Road to a controlled stop-sign intersection with NE 40<sup>th</sup> Street, which includes extending Larson Road from East Entwistle St. to 40<sup>th</sup> Street including road, sidewalks and gutters.

In lieu of transportation impact fees otherwise collectible by the City in connection with the Project, Developer will, at its sole cost, design and engineer a further extension of Larson Road to the south boundary of the South Larson Property.

(iv) In addition, if the City acquires the South Larson Properties within five (5) years of the Closing Date (per the Purchase and Sale Agreement dated [REDACTED]), then Developer will construct at its own cost, such extension of Larson Road ("**South Larson Extension**");

For the avoidance of doubt, Developer's obligations to (i) design, engineer, and construct the Larson Road Extension; and (ii) design and engineer the South Larson Extension shall fully satisfy any and all obligations Developer may have to pay any transportation impact fees, under any applicable law or legal theory, regardless of whether the City acquires the South Larson Properties and/or Developer constructs the South Larson Extension. Finally, Developer will exercise good faith efforts to facilitate a meeting between the owner of the South Larson Properties and the City in connection with the City's efforts to acquire that property.

In the event the City does not obtain the properties directly south of, and adjacent to the Property within 5 years of closing in order to further extend Larson Road from East Entwistle St. to 40<sup>th</sup> Street, then Developer will provide City with all design, CAD and engineering files for the design, engineering and construction of the extension.

(v) **Soft Surface Trail Easement:** A soft surface trail connecting Tolt MacDonald Park to East Entwistle Street traverses the northwesterly portion of the Property ("**Soft Surface Trail**"). In an effort to maximize the footprint of the Project, the City and Developer will exercise diligent good faith efforts to work with King County to relocate the Soft Surface Trail on the King County Property. However, if King County is not willing to accept and establish the Soft Surface Trail on the King County Property, then as a condition to Developer's construction permits for the Project, Developer will dedicate a five (5) foot strip of land along the northern boundary of the Property as a permanent easement for this trail for public use. Notwithstanding the forgoing, the Soft Surface Trail shall be designed in conjunction with, and shall be contained within, the minimum perimeter landscape buffers, if any, as may be required for the Project. The dedication of the Soft Surface Trail shall not result in any additional increases to landscape and buffering requirements.

(vi) **Connectivity and Wayfinding:** Developer shall design and fund signage as part of the Project on the Property that will enhance connectivity and wayfinding along Route 203 to areas such as City Hall, the Business Park, Tolt Commons, Memorial Park and other destinations, all subject to City design standards.

(vii) **Artwork:** Developer shall include public artwork dedicated to the Schefer family legacy along the soft surface trail within King County's property (King County Parcel Number: 162507-9016). The final design for the soft surface trail and artwork will be a joint decision by City and Developer.

### 3.2 Development Schedule.

(i) Developer will submit to the City a complete application for permits to construct the Project conceptually consistent with the Site Plan on or before August 31, 2024 and will exercise diligent best efforts to complete construction of the Project no later than the third (3<sup>rd</sup>) anniversary of the Closing ("**Completion Timeline**"), subject to the City's compliance with the terms of this Agreement.

Developer shall be expected to meet 100% completion by the 3<sup>rd</sup> anniversary of closing. If Developer delays longer than the 3<sup>rd</sup> anniversary of closing due to its own delays, and not due to City, county or state regulatory agencies, then the following penalties will apply:

For every 15 calendar day delays beginning on the 91<sup>st</sup> day after the 3<sup>rd</sup> anniversary, the Developer shall pay the City \$25,000.00.

(ii) To the best of the City's ability all permit applications in connection with the Project shall be processed on an expedited basis. The Parties understand that there may be permits, decisions, and/or approvals from third parties necessary to the permitting of the Project ("**Third Party Approvals**") and the issuance of which the City does not control. However, the City shall, in all cases, respond to Developer's requests for review of submittals and inspection of work, with a complete set of comments and/or approval, within seven (10) business days;



provided that in no event shall be foregoing be construed to provide the City more time to review the Project, or any element thereof, than is provided for by applicable law. Additionally, upon written request of Developer, the City shall exercise reasonable good faith efforts to assist Developer in obtaining Third Party Approvals. Due to the Completion Timeline proposed by the City, the City's diligent commitment to expedited review is fundamental hereto, and without which Developer would not have entered this Agreement.

#### 4. Permitted Uses.

The uses permitted on the Property ("*Permitted Uses*") shall include all of those uses that are consistent with the LI/M Zone as set forth in the use tables in CMC Section 15.36.030, as the same exists on the Effective Date and a copy of which is attached hereto as **Exhibit C** and incorporated herein by this reference; provided that the Permitted Uses for this Project do not include indoor, or outdoor, self-serve public storage or mini-storage ("*Prohibited Storage*"), except as a use that does not occupy more than 20% of the total building square feet indoors or as allowed by code, whichever is less; provided that the term "Prohibited Storage" shall not include any warehouse use or storage of items, such as materials, inventory, equipment, vehicles, and other property in connection with a use that is permitted in the LI/M Zone. Adult entertainment establishments or marijuana retailers are not permitted uses at this Development.

#### 5. Development Standards.

5.1 Development of the Property shall be subject to the development standards set forth in this Agreement and, in the absence of a standard in this Agreement, the provisions of the CMC, as the same exists on the Effective Date; ~~provided that, at Developer's request, the City will modify those standards to the maximum extent permitted in the table set forth in CMC 15.17.030, as it exists on the Effective Date,~~ and a copy of which is attached hereto as **Exhibit D** and incorporated herein by this reference (as may be modified, "*Development Standards*").

Commented [KF1]: Correct, verified with Tim 8/17/23

5.2 In the event of a conflict between the Development Standards specified in this Agreement and the requirements of the CMC, the Development Standards of this Agreement shall prevail. In no event shall any of the Development Standards set forth herein supersede or control over any contrary provision or contractual requirement set forth in the PSA.

5.3 Any decision by the City or any representative thereof to reject a plan or permit based on inconsistency with the Development Standards must be made in writing within the timeframe specified in Section 3.2(ii) hereof and must be supported by findings outlining the identified inconsistency.

5.4 Design Standards. Development of the Property shall be subject to the design standards set forth in this Agreement and, in the absence of a standard in this Agreement, the provisions of the CMC, as the same exists on the Effective Date. The City will provide Developer with updated design standards no later than February 2, 2024

#### 6. Environmental and Traffic

6.1 Floodplain Issues. Given that the entire Property is located within the Federal Emergency Management Agency ("*FEMA*") 100-year floodplain, the construction of the Project will be subject to CMC Ch.15.64 – (Floodways, Floodplains, Drainage, and Erosion) and will require approvals from FEMA. Although Developer must investigate and secure all local, regional, state, and federal permits related to the Project at its own expense, the City shall exercise diligent good faith efforts to assist Developer in doing so, including, without limitation, providing continuing political support, writing letters, and participating in the meetings as reasonably necessary and appropriate to ensure that Developer obtains all such Third Party Approvals as quickly as possible.

Furthermore, the Parties will work in good faith to identify offsite opportunities that can provide sufficient flood plain storage in order to maximize the footprint of the Project and to prove, through industry standard flood plain modeling, that any rises to the flood plain caused by the Project will be mitigated. Upon providing evidence of this result, the City will support a Conditional Letter of Map Revision (CLOMR) demonstrating the same to FEMA, and, post-construction, a final Letter of Map Revision (LOMR) demonstrating the same.

6.2 Shoreline Jurisdiction & Critical Areas. A strip along the western portion of the Property lies within the shoreline jurisdiction and any development or improvements within that area will be subject to the Carnation Shoreline Master Program. The City represents to Developer that, to the best of the City's knowledge, other than the described shoreline area, there are no known or mapped wetlands or other critical areas on the Property. In order to permit the Project, Developer would need to hire a qualified professional to complete a survey of the Property and prepare a Critical Areas Report.

6.3 As part of the Project, Developer will prepare AM and PM peak-hour weekday and weekend intersection analysis that studies the amount of traffic to be generated by the Project during AM and PM peak-hour, the potential transportation effects of the Project during such times, and showing acceptable operations (Level Of Service D or better) of the study intersections or providing for adequate intersection improvements to meet such peak-hour level of service standards (Level Of Service D). For the avoidance of doubt, the Parties acknowledge that Developer's obligations as set forth in Section 3.1(ii) hereof constitute material off-site traffic mitigation and Developer will have no further traffic mitigation obligations, except to the extent necessary to achieve a Level of Service D or better in the applicable study intersections. Developer's traffic analysis shall be limited to existing transportation infrastructure within the city limits of Carnation and the City agrees that such analysis shall fully satisfy the City's traffic-related permit requirements for the Project.

## **7. Additional Community Benefits.**

7.1 Ombudsperson. The City will designate a City staff person to serve as a conduit between the community, Developer and various City departments, residential organizations, and neighbors beginning no later than two weeks from fully executed documents. The Ombudsperson will ensure all Parties fulfill all terms of this Agreement and the PSA. The



Ombudsperson will also work cooperatively in good faith with Developer and community organizations on community engagement activities during construction.

7.2 Schefer Riverfront Coordinating Group. Developer and the City shall exercise good faith efforts to convene the Schefer Riverfront Coordinating Group ("*CG*") at least every two months during calendar years 2023 through 2025 to develop public messaging and information to keep Carnation residents informed about the Project. CG will include one representative from the following organizations: Carnation City Council, CED Committee, , Puget Sound Energy, Planning Board, King County Waste Water, Carnation City Manager's Office, Developer, and King County Parks.

## 8. Claw Back Provision

8.1 Generally. The Parties intend that Developer will complete the design, entitlement and construction of the Project within three (3) full calendar years of Closing. If Developer fails to exercise diligent best efforts to so timely complete the Project, then, subject to the City's compliance with this Agreement, the City will have the option to purchase the Property from Developer for a purchase price equal to one hundred percent (100%) of the fair market value of the Property, which shall consider all relevant factors, including, without limitation, any entitlement obtained, and/or development completed on, the Property ("*Fair Market Value*"), as provided in this Section 8 ("*Purchase Option*").

8.2 Exercise of Option. If the City has the right to exercise a Purchase Option and elects to do so, the City shall hire an MAI certified appraiser representing the City, which appraiser shall have not less than five (5) years experience appraising industrial property in the Greater Seattle Area comparable to the Property ("*City's Appraiser*"), who shall determine the Fair Market Value of the Property. The City shall notify Developer by written notice of its election to exercise a Purchase Option ("*Option Notice*"), which Option Notice shall state with particularity the basis for the City's right to exercise a Purchase Option and the City's opinion of the Fair Market Value of the Property, as determined by this City's Appraiser. If Developer agrees with the City's statement of the Fair Market Value, then Developer shall so notify the City thereof within ten (10) business days following receipt of the Option Notice ("*Developer Response*") and the Parties shall work in good faith to prepare definitive documents governing the sale of the Property to the City on an as-is, where is basis within sixty (60) days following the City's receipt of the Developer Response. If Developer does not agree that the City has the right to exercise a Purchase Option, then it shall so notify the City in the Developer Response and then either party shall have the right to submit the question for adjudication in the Superior Court for King County. If the Developer agrees that the City has the right to exercise the Purchase Option, but does not agree with the City's statement of the Fair Market Value, then it will so notify the City in the Developer Response (referred to below as the "*Developer Arbitration Notice*") and the question will be subject to arbitration as provided in this Section 8.



In the event the City exercises the Claw Back Provision, Developer will provide City with all feasibility studies, engineering, CAD and design files related to the project.

The City's most important interest in the development of this property is to activate the parcels to maximize employment benefits, access to services locally, road/infrastructure improvements, and diversification of municipal revenues. For this reason, the Developer's ability to reach milestones is imperative. The Developer shall meet the following completion goals:

Within one year of anniversary of closing: 30% completion

Within two years of anniversary of closing: 60% completion

Within three years of anniversary of closing: 100% completion

If Developer delays longer than the 3<sup>rd</sup> anniversary of closing due to its own delays, and not due to City, county or state regulatory agencies, then the following penalties will apply:

For every 15 calendar day delays beginning on the 91<sup>st</sup> day after the 3<sup>rd</sup> anniversary, the Developer shall pay the City \$25,000.00.

In the event Developer sells this project at any stage of development or construction, the new owner will abide by this Development Agreement, ~~or negotiate a new development agreement with City.~~

8.3 Arbitration. The Developer Arbitration Notice shall specifically state Developer's opinion of the Fair Market Value and shall hire an MAI certified appraiser representing Developer, which appraiser shall have not less than five (5) years experience appraising industrial property in the Greater Seattle Area comparable to the Property ("**Developer's Appraiser**"), who shall determine the Fair Market Value of the Property. Within ten (10) business days following the City's receipt of the Developer Arbitration Notice, the City's Appraiser and the Developer's Appraiser shall appoint an independent MAI certified appraiser, which appraiser shall have not less than five (5) years experience appraising industrial property in the Greater Seattle Area comparable to the Property ("**Third Appraiser**"). Within thirty (30) days following his or her appointment, the Third Appraiser shall select either the City's or the Developer's determination of the Fair Market Value of the Property as the closest approximation of the actual Fair Market Value of Property and that shall be the purchase price for the Property. The sale of the Property shall be as-is, where-is, and shall be closed within sixty (60) days following the issuance of the Third Appraiser's opinion.

## 9. General Provisions

9.1 Notices. All notices shall be personally delivered, sent via a nationally recognized overnight courier service (such as Federal Express, UPS or DHL) or sent by certified United

States mail (return receipt requested), with a courtesy copy concurrently sent via electronic mail. Notices sent via personal delivery, overnight courier service and electronic mail will be effective upon receipt, and notices sent by mail will be effective three (3) Business Days after being deposited with the United States Post Office, postage prepaid. The City and Developer agree that notice may be given on behalf of each party by the counsel for each party and notice by such counsel in accordance with this Section 9.1 shall constitute notice under this Agreement. The addresses to be used in connection with such correspondence and notices are the following, or such other address as a party shall from time to time direct in writing by notice given pursuant to this Section 9.1, but any such notice of a new address shall not be effective until actually received by the other party:

The City: City of Carnation  
4621 Tolt Avenue, P.O. Box 1238

Carnation, WA 98014  
ana.cortez@carnationwa.gov

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_

Developer: [Remlinger Entity]  
10422 NE 37<sup>th</sup> Cir, Suite 100  
Kirkland, WA 98033  
Phone: (425) 330-1160  
Email: drake@remlingergroup.com

with a copy to:

Remlinger Farms

\_\_\_\_\_  
Attn: Gary Remlinger  
Phone: (206) 300-0772  
Email: gary@remlingerfarms.com

with a copy to:

Ojala Law, Inc., P.S.  
PO Box 211  
Snohomish, WA 98291  
Attn: Nate R. Veranth  
Phone: (425) 788-2222  
Email: nate@ojalalaw.com

9.2 Recording. Either Party may arrange for the recording of a memorandum of this Agreement with the King County Recorder's Office, as necessary to disclose this Agreement on title documents for the Property. This Agreement shall run with the land as binding on the Parties and their successors and assigns. It is mutually agreed that the terms of this Agreement touch and concern the land and shall be covenants running with the land.

9.3 Counterparts. This Agreement may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Agreement.

9.4 Captions. All captions, headings, paragraph and subparagraph numbers and letters are solely for reference purposes and shall not be deemed to be supplementing, limiting, or otherwise varying the text of this Agreement.

9.5 Severability. The invalidity or unenforceability of a particular provision of this Agreement shall not render this Agreement invalid or unenforceable as a whole and, in such event, the Parties shall exercise diligent good faith efforts to reform the Agreement in a manner that is fully valid and enforceable and that reflects the Parties' intentions as to their relative benefit and bargain hereunder.

9.6 Time of the Essence. Time is of the essence of this Agreement.

9.7 No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties hereto, to any person or entity other than the parties hereto.

9.8 Exhibits and Schedules. The exhibits attached hereto are hereby incorporated herein by this reference.

9.9 Amendment to this Agreement. Neither this Agreement nor any provision hereof may be changed, amended, modified, waived or discharged orally or by any course of dealing, but only by an instrument in writing signed by the party against which enforcement of the change, amendment, modification, waiver or discharge is sought.

9.10 Fees and Other Expenses. Except as otherwise provided herein, each of the parties shall pay its own fees and expenses in connection with this Agreement.

9.11 Entire Agreement. Except for the PSA this Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Developer and The City as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of either party, shall be of any effect unless it is in writing and executed by the party to be bound thereby.



9.12 Attorneys' Fees. If either party brings or commences any legal action or proceeding to enforce any of the terms of this Agreement (or for damages by reason of an alleged breach of this Agreement), the substantially prevailing party, if any, in such action shall be entitled to recover from the other party all reasonable attorneys' fees that may have been incurred, including any and all costs and expenses incurred in enforcing, perfecting and executing such judgment, and including all costs of appeal.

9.13 Term. Pursuant to RCW 36.70B.170 et seq., the Development Standards and other provisions of this Agreement shall apply to and govern and vest the development and use of the Property for a period of twenty (20) years from the Effective Date. After the Effective Date, the City may adopt new or modified laws and regulations relating to a particular subject matter specified in this Agreement or presently existing development regulations, but these new or modified standards will not apply to the Project unless Developer chooses. This Agreement shall remain in force throughout the twenty (20) year vesting period unless the City repurchases the Property, in which case this Agreement shall immediately and automatically terminate and neither Party shall have any further obligation hereunder.

9.14 Force Majeure. If, through no fault of the City or Developer, and by reason of a Force Majeure Event (defined below), any obligation in this Agreement cannot be timely completed, then all time periods relative to the applicable contingency or condition, including the time periods for the related notices and responses thereto, shall be extended for a reasonable time under the circumstances, up to one hundred eighty (180) days, and the obligation shall be satisfied as soon as reasonably practicable. "Force Majeure Event" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence, making the means of performance objectively impossible. Force Majeure Events included acts of God, war, riots, strikes, fire, floods, epidemics, pandemics.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year written below.

**CITY OF CARNATION**, a  
political subdivision of the State of Washington

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution by Seller: \_\_\_\_\_

**[REMLINGER ENTITY]**  
a Washington limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution by Purchaser: \_\_\_\_\_

STATE OF WASHINGTON )

COUNTY OF \_\_\_\_\_ )

I hereby certify that before me personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_ of THE CITY OF CARNATION, political subdivision of the State of Washington, and said person did acknowledge before me that said instrument is the free act and deed by said entity for the purpose therein expressed.

Witness my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Name of Notary)

NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

STATE OF WASHINGTON )

COUNTY OF \_\_\_\_\_ )

I hereby certify that before me personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_ of [REMLINGER ENTITY] LLC, a Washington limited liability company, and said person did acknowledge before me that said instrument is the free act and deed by said limited liability company for the purpose therein expressed.

Witness my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Name of Notary)

NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

**Exhibit A**  
**Legal Description of the Property**

**Exhibit B**  
**Conceptual Site Plan**



**Exhibit C**

**LI/M Zone Permitted Uses Table—Attached**



**Exhibit D**

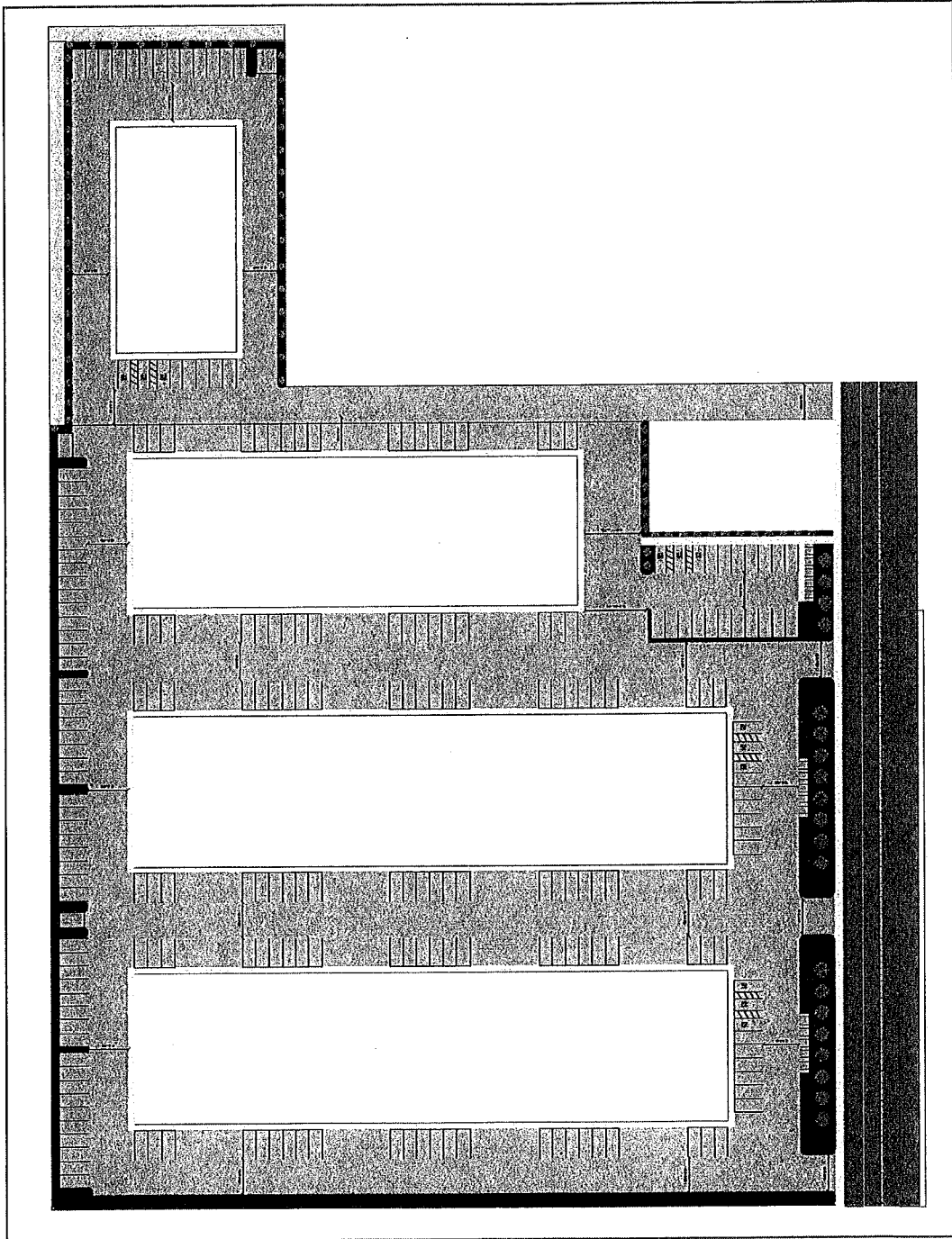
**Development Standard Modification Table—Attached**

**Attachment 6**

**Site Plan**

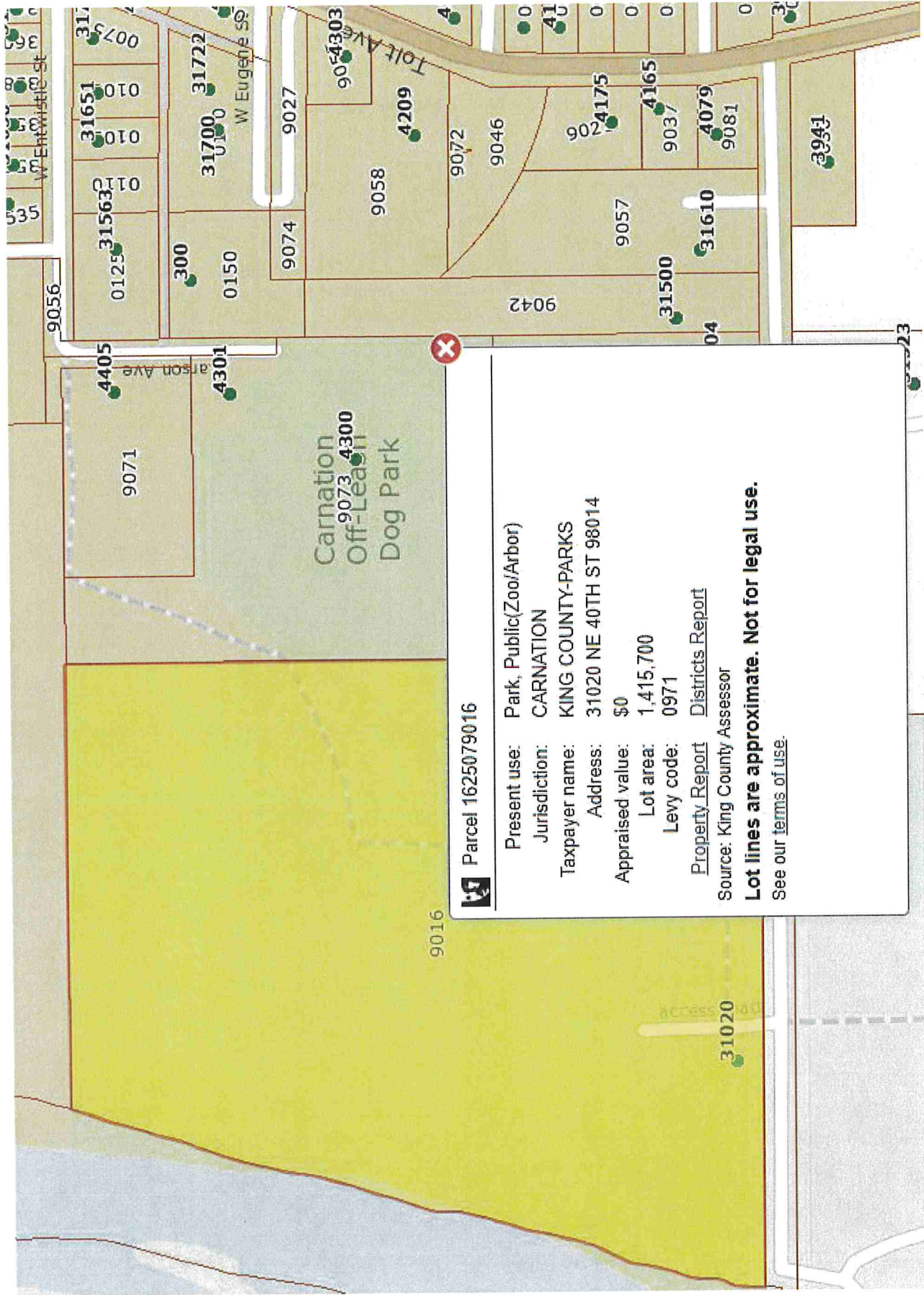
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## Site Plan Rendering



**Attachment 7**

**King County Parcel No. 1625079016 Property Report**



9016

Carnation  
9073 4300  
Off-Leash  
Dog Park

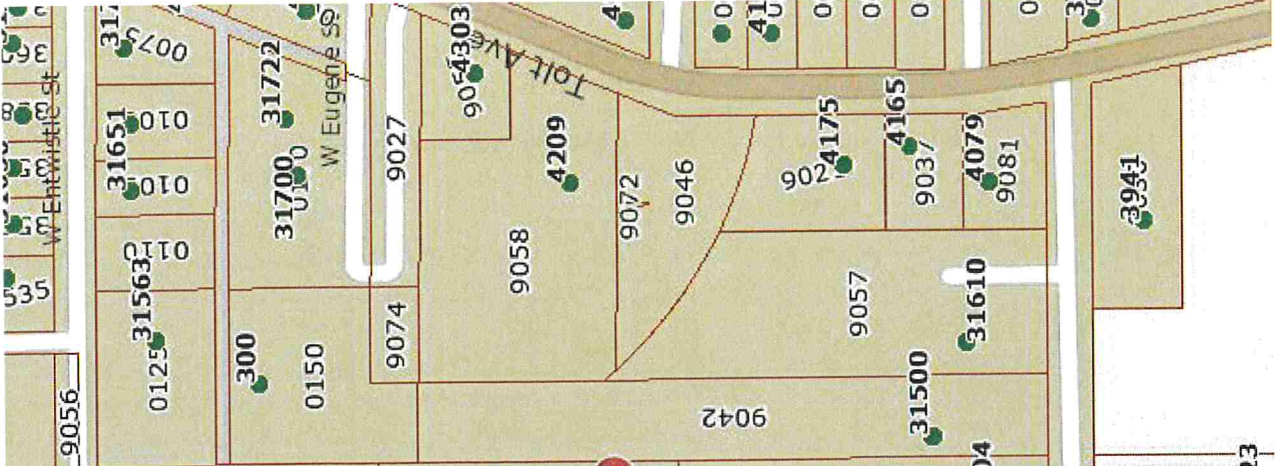


Parcel 1625079016

Present use: Park, Public(Zoo/Arbor)  
 Jurisdiction: CARNATION  
 Taxpayer name: KING COUNTY-PARKS  
 Address: 31020 NE 40TH ST 98014  
 Appraised value: \$0  
 Lot area: 1,415,700  
 Levy code: 0971  
[Property Report](#) [Districts Report](#)

Source: King County Assessor

**Lot lines are approximate. Not for legal use.**  
 See our [terms of use](#).



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**PARCEL**

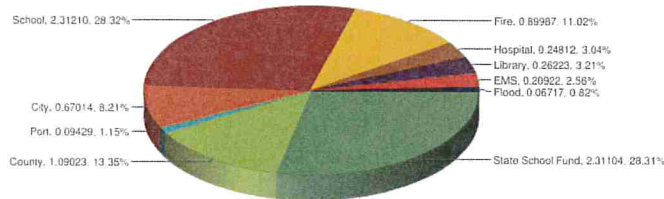
Parcel Number	162507-9016
Name	KING COUNTY-PARKS
Site Address	31020 NE 40TH ST 98014
Legal	GL 8 LESS E 588 FT LESS CO RD

**BUILDING 1**

Year Built	1929
Total Square Footage	2240
Number Of Bedrooms	4
Number Of Baths	1.00
Grade	7 Average
Condition	Average
Lot Size	1415700
Views	No
Waterfront	RIVER/SLOUGH

**TOTAL LEVY RATE DISTRIBUTION**

Tax Year: 2023 Levy Code: 0971 Total Levy Rate: \$8.16441 Total Senior Rate: \$4.51150



50.64% Voter Approved

[Click here to see levy distribution comparison by year.](#)

**TAX ROLL HISTORY**

Valued Year	Tax Year	Appraised Land Value (\$)	Appraised Imps Value (\$)	Appraised Total (\$)	Appraised Imps Increase (\$)	Taxable Land Value (\$)	Taxable Imps Value (\$)	Taxable Total (\$)
2022	2023	563,000	723,000	1,286,000	0	0	0	0
2021	2022	270,000	651,000	921,000	0	0	0	0
2020	2021	228,000	547,000	775,000	0	0	0	0
2019	2020	227,000	531,000	758,000	0	0	0	0
2018	2019	205,000	445,000	650,000	0	0	0	0
2017	2018	195,000	422,000	617,000	0	0	0	0
2014	2015	173,000	366,000	539,000	0	0	0	0
2013	2014	173,000	366,000	539,000	0	0	0	0
2012	2013	160,000	263,000	423,000	0	0	0	0
2011	2012	185,000	302,000	487,000	0	0	0	0
2010	2011	202,000	330,000	532,000	0	0	0	0
2009	2010	253,000	472,000	725,000	0	0	0	0
2008	2009	298,000	525,000	823,000	118,000	0	0	0
2007	2008	269,000	335,000	604,000	0	0	0	0
2006	2007	257,000	280,000	537,000	0	0	0	0
2005	2006	250,000	246,000	496,000	0	0	0	0
2004	2005	218,000	252,000	470,000	0	0	0	0
2003	2004	218,000	232,000	450,000	0	0	0	0
2002	2003	207,000	220,000	427,000	0	0	0	0

**Reference Links:**

- [King County Taxing Districts Codes and Levies \(.PDF\)](#)
- [King County Tax Links](#)
- [Property Tax Advisor](#)
- [Washington State Department of Revenue \(External link\)](#)
- [Washington State Board of Tax Appeals \(External link\)](#)
- [Board of Appeals/Equalization](#)
- [Districts Report](#)
- [iMap](#)
- [Recorder's Office](#)
- [Scanned images of surveys and other map documents](#)

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2001	2002	190,000	245,000	435,000	0	0	0	0
2000	2001	176,000	224,000	400,000	0	0	0	0
1999	2000	160,000	171,000	331,000	0	0	0	0
1997	1998	0	0	0	0	195,000	87,000	282,000
1996	1997	0	0	0	0	162,500	87,300	249,800
1994	1995	0	0	0	0	162,500	87,300	249,800
1992	1993	0	0	0	0	163,400	77,500	230,900
1990	1991	0	0	0	0	117,100	74,500	191,600
1988	1989	0	0	0	0	87,800	30,600	118,400
1986	1987	0	0	0	0	87,800	35,900	123,700
1984	1985	0	0	0	0	75,000	40,300	115,300
1983	1984	0	0	0	0	75,000	40,300	115,300
1982	1983	0	0	0	0	75,000	44,500	119,500

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**Information for...**

**Do more online**

**Get help**

**Attachment 8**

**CMC 15.56.190 Off-site traffic mitigation**



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### **15.56.190 Off-site traffic mitigation.**

- A. Applicants for major subdivisions, multi-family residential building, or for commercial or industrial building permits shall, where warranted and required by the City, contribute to off-site right-of-way improvements based upon traffic volumes generated by the project and other factors indicated below; provided, that in the event the City requires formation of a local improvement district (LID) for construction of right-of-way improvements, the developer's contribution share shall be determined as provided in Chapter 36.88 RCW and by City Ordinance. The volume of traffic generated by the project in relationship to the total of current traffic volumes plus the traffic generated by the development expressed in ADT will be used as the primary measurement in establishing the share of cost of the road improvement or its implementation which the permit applicant will be required to fund. The ratio of traffic volumes will be determined by dividing the number of vehicles being added as a result of the applicant's proposal by the ADT using the road system following development. The number of vehicle trips being added by the development will be determined by using the following trip generation factors:
1. Single family residence: 10.0 daily trips
  2. Multi-family residence: 6.1 daily trips
  3. Commercial/Industrial: 8.0 daily trips per 1,000 square feet of gross leasable floor area.
- B. Other trip generation factors will be determined and supplied by the City Planner as needed. The City Planner may reduce such trip generation factors where adequate public transportation facilities are available, or where the type of development clearly will not generate the number of daily trips set forth as a factor above.
- C. The analysis required in this section shall be provided by the applicant, in the form of a traffic impact study. Depending upon the size and complexity of the project, the City Engineer may require a traffic study to be prepared by a qualified traffic engineer. The traffic reports so generated shall be reviewed by the City Planner and city Engineer for conformance to the intent of this section. Where differences of professional opinion exist, the City Engineer's opinion shall be final.
- D. Appropriate off-site right-of-way traffic mitigation improvements shall be required in all cases where the ADT would result in a reduction of the Level of Service (LOS) of the right-of-way (e.g. reduction in LOS from Level "B" to Level "C").

**Attachment 9**

**CMC 15.17.030 Development standards Flexibility**

**15.17.030 Development standards—Flexibility.**

- A. A development agreement shall be consistent with applicable development regulations. Provided, however, that a development agreement may allow for modification of certain development standards otherwise required under this code in order to provide flexibility to achieve public benefits, to respond to changing community needs, and/or which provide the functional equivalent or adequately achieve the purposes of otherwise applicable development standards.
- B. The following table sets forth the types of development standards for which modifications may be approved pursuant to a development agreement, together with the corollary range of permissible modifications:

Standard	Permissible Range of Modification
Minimum lot size	25%
Minimum lot width*	10%
Maximum residential density	10% <sup>1</sup>
Maximum building height*	40% with 35' maximum <sup>2</sup>
Front setback*	33%
Side setback	25% with 5' minimum
Rear setback*	33% with 10' minimum
Parking spaces	25%
Integrated Mixture of Housing Types (Chapter 15.40 CMC, Table 1, Residential Use Note 6)	100%

\* Any measurements may be rounded up or down to the nearest whole number.

- C. A development agreement shall not authorize modifications to development standards except as expressly provided in subsection (B). Without prejudice to the foregoing, a development agreement shall not authorize modifications of the following development standards:
  - 1. CMC Title 16, Building and Construction;
  - 2. CMC Title 14, Environmental Protection;
  - 3. CMC 15.48.070, Special design standards for the R6 zone; provided that this exclusion shall only apply to the R6 zone within the "Tolt Townsite Company Plat of Tolt" filed for record January 17, 1912 in Volume 20, Page 43, Records of King County, Auditor's File No. 787268.
  - 4. Chapter 15.88, CMC, Critical Areas;
  - 5. Chapter 15.64 CMC, Floodways, Floodplains, Drainage, and Erosion et seq.;
  - 6. Chapter 15.36 CMC, Zoning map designations; or
  - 7. Chapter 15.40 CMC, Permissible uses.
- D. The development standards approved through a development agreement shall apply to and govern the development and use of the property subject to the development agreement in lieu of any conflicting or different standards or requirements elsewhere in this code.
- E. Except as otherwise expressly provided by this chapter, modifications approved pursuant to a development agreement shall be without prejudice to any flexibility, bonuses and/or other adjustments to development standards authorized by other provisions of this title.

(Ord. No. 908, § 3(Exh. A), 10-16-2018)

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**Attachment 10**

**FEMA**



# National Flood Hazard Layer FIRMette

121°55'24"W 47°39'1"N



## Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

**SPECIAL FLOOD HAZARD AREAS**

- Without Base Flood Elevation (BFE)  
Zone A, V, A99
- With BFE or Depth Zone AE, AO, AH, VE, AR
- Regulatory Floodway

**OTHER AREAS OF FLOOD HAZARD**

- 0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X
- Future Conditions 1% Annual Chance Flood Hazard Zone X
- Area with Reduced Flood Risk due to Levee Zone X
- Area with Flood Risk due to Levee Zone D

**OTHER AREAS**

- NO SCREEN
- Area of Minimal Flood Hazard Zone X
- Effective LOMRs
- Area of Undetermined Flood Hazard Zone D

**GENERAL STRUCTURES**

- Channel, Culvert, or Storm Sewer
- Levee, Dike, or Floodwall

**CROSS SECTIONS WITH 1% ANNUAL CHANCE WATER SURFACE ELEVATION**

- 20.2
- 17.5
- 8
- Coastal Transect
- Base Flood Elevation Line (BFE)
- Limit of Study
- Jurisdiction Boundary
- Coastal Transect Baseline
- Profile Baseline
- Hydrographic Feature

**OTHER FEATURES**

- Digital Data Available
- No Digital Data Available
- Unmapped

**MAP PANELS**

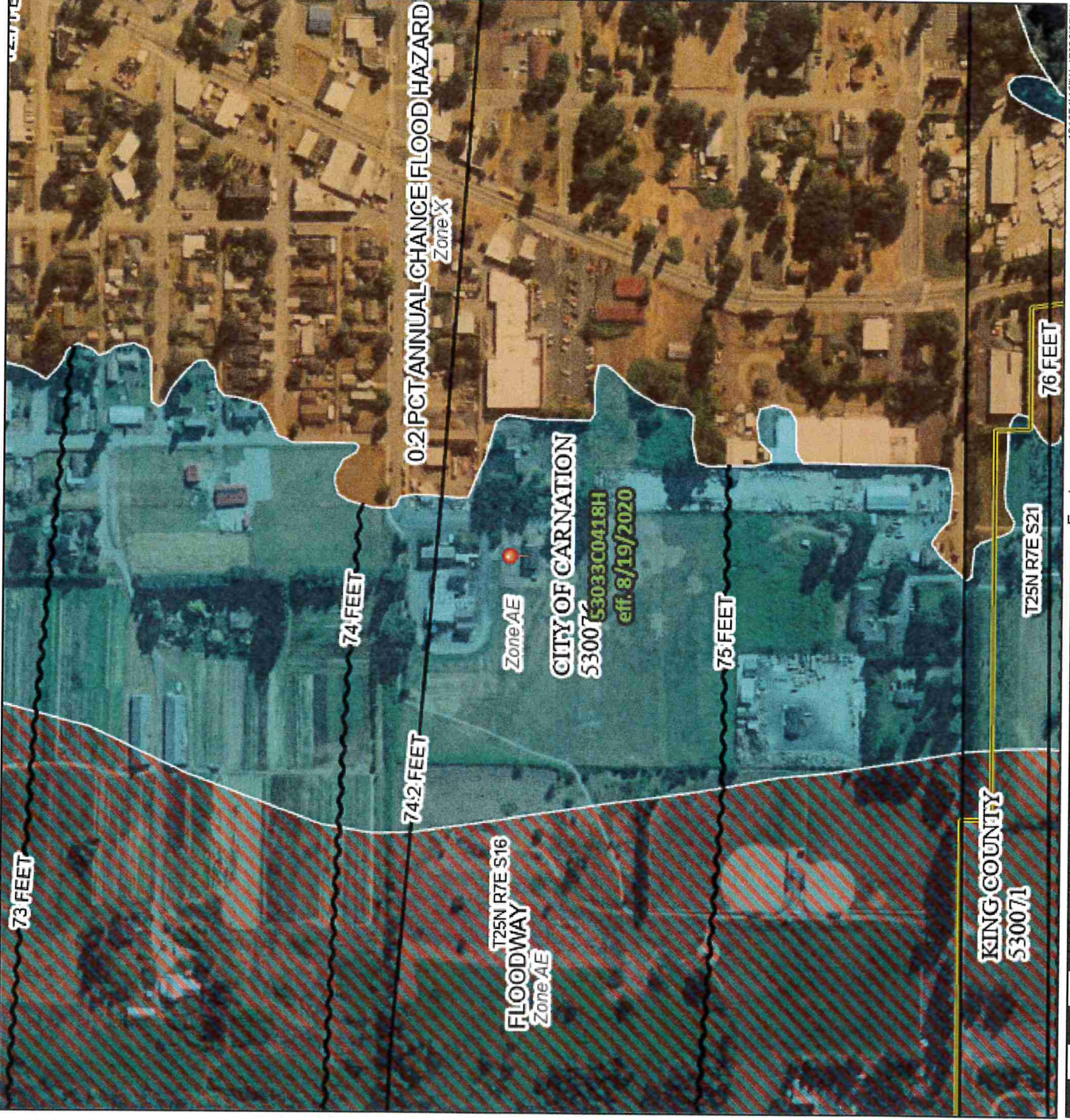
- Digital Data Available
- No Digital Data Available
- Unmapped

The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards.

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 7/6/2023 at 8:37 PM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.



121°54'46"W 47°38'37"N

1:6,000

2,000

1,500

1,000

500

250

0

**Attachment 11**

**CMC Chapter 15.64 FLOODWAYS, FLOODPLAINS, DRAINAGE, AND EROSION**



## Chapter 15.64 FLOODWAYS, FLOODPLAINS, DRAINAGE, AND EROSION

### *Part I. Floodways and Floodplains*

#### **15.64.010 Findings—Purpose—Flood loss reduction.**

- A. Findings. The flood hazard areas of the City of Carnation are subject to periodic inundation which results in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to the flood loss.
- B. Purpose. It is the purpose of this ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:
- (1) To protect human life and health;
  - (2) To minimize expenditure of public money and costly flood control projects;
  - (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
  - (4) To minimize prolonged business interruptions;
  - (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;
  - (6) To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
  - (7) To ensure that potential buyers are notified that property is in an area of special flood hazard; and
  - (8) To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.
  - (9) To ensure that development within the special flood hazard area complies with applicable local, state and federal regulations.
  - (10) Participate in and maintain eligibility for flood insurance and disaster relief.
- C. Flood loss reduction. In order to accomplish its purposes, this ordinance includes methods and provisions for:
- (1) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
  - (2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
  - (3) Controlling the alteration of natural flood plains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
  - (4) Controlling filling, grading, dredging, and other development which may increase flood damage; and



- 
- (5) Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or may increase flood hazards in other areas.

(Ord. 634 § 4, 2001)

(Ord. No. 864, § 2, 8-4-2015; Ord. No. 930, § 3(Exh. B), 8-4-2020)

#### **15.64.015 General provisions.**

- A. Applicability. The floodplain management regulations set forth in this chapter shall apply to all areas of special flood hazard within the jurisdiction of the City of Carnation.
- B. Basis for Establishing the Areas of Special Flood Hazard. The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for King County and Incorporated Areas" (FIS) dated August 19, 2020, and any revisions thereto, with an accompanying flood insurance rate map (FIRM), dated August 19, 2020, and any revisions thereto, are adopted by reference and declared to be a part of this chapter. The (FIS) and the FIRM are on file with the city clerk at Carnation city hall and available for public inspection and copying. The best available information for flood hazard area identification as outlined in CMC Section 15.64.020(D)(4) shall be the basis for regulation until a new FIRM is issued which incorporates the data utilized under CMC Section 15.64.020(D)(4).
- C. Penalties. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violations of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions), shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall upon conviction thereof be fined not more than one thousand dollars or imprisoned for not more than ninety days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation. Each day that a violation exists shall constitute a separate violation.
- D. Abrogation and greater restrictions. This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- E. Interpretation. In the interpretation and application of this chapter, all provisions shall be:
- (1) Considered as minimum requirements;
  - (2) Liberally construed in favor of the governing body; and
  - (3) Deemed neither to limit nor repeal any other powers granted under state statutes.
- F. Warning and disclaimer of liability. The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the city, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

(Ord. 684 § 2, 2005; Ord. 634 § 5, 2001)

**15.64.020 Administration.**

- A. Development Permit Required. A development permit shall be obtained before construction or development begins within any area of special flood hazard established in CMC 15.64.015(B). The permit shall be for all structures including manufactured homes, as set forth in CMC 15.08.010 and for all development including fill and other activities, also defined in CMC 15.08.010.
- B. Application for Development Permit. Application for a development permit shall be made on forms furnished by the city and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:
  - 1. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;
  - 2. Elevation in relation to mean sea level to which any structure has been floodproofed;
  - 3. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in CMC 15.64.035(B); and
  - 4. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.
  - 5. Assessment of the potential impacts of any development on the critical habitat of threatened and endangered salmon to ensure compliance with the Endangered Species Act (ESA) per the 2008 Biological Opinion on the implementation of the NFIP in the Puget Sound Region.
  - 6. Where development is proposed in the floodway, an engineering analysis indicating no rise of the base flood elevation
  - 7. Any other such information that may be reasonably required by the Floodplain Administrator in order to review the application.
- C. Designation of local administrator. The building official is hereby appointed to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions.
- D. Duties and responsibilities of local administrator. The duties of the building official under this chapter shall include, but not be limited to:
  - 1. Review all development permits to determine that the permit requirements of this chapter have been satisfied;
  - 2. Review all development permits to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required;
  - 3. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of CMC 15.64.040 are met;
  - 4. When base flood elevation data has not been provided (A or V zone) in accordance with CMC Section 15.64.015(B), the building official shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer CMC Sections 15.64.035 and 15.64.040;
  - 5. Where base flood elevation data is provided through the Flood Insurance Study, FIRM, or required as in CMC 15.64.020(D)(4), obtain and record the actual elevation (in relation to mean sea level) of the

---

lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement;

6. For all new or substantially improved flood-proofed nonresidential structures where base flood elevation data is provided through the flood insurance study, FIRM, or as required in subsection (D)(4) of this section:
  - a. Obtain and record the elevation (in relation to mean sea level) to which the structure was floodproofed; and
  - b. Maintain the floodproofing certifications required in CMC 15.64.020(B);
7. Maintain for public inspection all records pertaining to the provisions of this chapter;
8. Notify adjacent communities and the department of ecology prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration;
9. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished; and
10. Make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in CMC 15.64.025.

(Ord. 684 §§ 3, 4, 2005; Ord. 634 § 6, 2001)

(Ord. No. 864, § 3, 8-4-2015; Ord. No. 930, § 3(Exh. B), 8-4-2020)

#### **15.64.025 Appeals and variances.**

- A. The hearing examiner shall hear and decide appeals and requests for variances from the requirements of this chapter. The hearing examiner shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the building official in the enforcement or administration of this ordinance. Those aggrieved by the decision of the building official, or any taxpayer, may appeal such decision to the hearing examiner, as provided in Chapter 15.11 of the CMC.
- B. In passing upon such applications, the hearing examiner shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:
  1. The danger that materials may be swept onto other lands to the injury of others;
  2. The danger to life and property due to flooding or erosion damage;
  3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  4. The importance of the services provided by the proposed facility to the community;
  5. The necessity to the facility of a waterfront location, where applicable;
  6. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
  7. The compatibility of the proposed use with existing and anticipated development;
  8. The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;

- 
9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
  10. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
  11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- C. Upon consideration of the factors of CMC 15.64.025(B) and the purposes of this chapter, the hearing examiner may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter. The hearing examiner shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.
- D. Conditions for Variances.
1. Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing Items (1-11) in CMC 15.64.025(B) have been fully considered. As the lot size increases the technical justification required for issuing the variance increases;
  2. Variances may be issued for the repair, rehabilitation, or restoration of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure;
  3. Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result;
  4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;
  5. Variances shall only be issued upon:
    - a. A showing of good and sufficient cause;
    - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant;
    - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- E. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.
- F. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(Ord. 634 § 7, 2001)

(Ord. No. 930, § 3(Exh. B), 8-4-2020)

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### 15.64.030 General standards.

In all areas of special flood hazards, the following standards are required:

- A. Anchoring.
  - 1. All new construction and substantial improvements, including those related to manufactured homes, shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads including the effects of buoyancy; and
  - 2. All manufactured homes shall be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
- B. AH Zone Drainage. Adequate drainage paths are required around structures on slopes to guide floodwaters around and away from proposed structures.
- C. Construction Materials and Methods.
  - 1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
  - 2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage; and
  - 3. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- D. Utilities.
  - 1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems;
  - 2. A water well shall be located on high ground that is not in the floodway (WAC 173-160-171);
  - 3. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters; and
  - 4. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- E. Subdivision Proposals.
  - 1. All subdivision proposals shall be consistent with the need to minimize flood damage;
  - 2. All subdivision proposals shall have public utilities and facilities, such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage;
  - 3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and
  - 4. For subdivision proposals and other proposed developments which contain at least fifty lots or five acres (whichever is less), base flood elevation data shall be included with the proposal. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated by the project proponent.
- F. Review of Building Permits. Where elevation data is not available either through the Flood Insurance Study, FIRM, or from another authoritative source, applications for building permits shall be reviewed

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to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above the highest adjacent grade in these zones may result in higher insurance rates.

(Ord. 684 §§ 5, 6, 2005; Ord. 634 § 8, 2001)

(Ord. No. 930, § 3(Exh. B), 8-4-2020)

### **15.64.035 Specific standards.**

In all areas of special flood hazards where base flood elevation data has been provided as set forth in CMC 15.64.015(B) or CMC 15.64.020(D)(4), the following provisions are required:

**A. Residential Construction.**

1. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated one foot or more above the BFE. Mechanical equipment and utilities shall be waterproof or elevated at least one foot above the BFE.
2. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs must meet or exceed the following minimum criteria:
  - a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
  - b. The bottom of all openings shall be no higher than one foot above grade; and,
  - c. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
  - d. A garage attached to a residential structure, constructed with the garage floor slab below the BFE, must be designed to allow for the automatic entry and exit of floodwaters.

Alternatively, a registered engineer or architect may design and certify engineered openings.

**B. Nonresidential Construction.** New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated one foot or more above the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

1. Be floodproofed so that below one foot or more above the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
3. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the building official as set forth in CMC 15.64.020(D)(6);
4. Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in CMC 15.64.035(A)(2); and,

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5. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g. a building floodproofed to the base flood level will be rated as one foot below).
- C. Manufactured Homes.
1. All manufactured homes to be placed or substantially improved on sites shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated one foot or more above the base flood elevation and be securely anchored to an adequately designed foundation system to resist flotation, collapse and lateral movement:
    - a. Outside of a manufactured home park or subdivision;
    - b. In a new manufactured home park or subdivision;
    - c. In an expansion to an existing manufactured home park or subdivision; or,
    - d. In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, and
  2. Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision that are not subject to the above manufactured home provisions be elevated so that either:
    - a. The lowest floor of the manufactured home is elevated one foot or more above the base flood elevation; or,
    - b. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty six inches in height above grade and be securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement.
  2. Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision that are not subject to the above manufactured home provisions be elevated so that either:
    - a. The lowest floor of the manufactured home is elevated one foot or more above the base flood elevation; or,
    - b. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty six inches in height above grade and be securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement.
- D. Recreational vehicles. Recreational vehicles, if otherwise permitted by this title, are required to either:
1. Be on the site for fewer than one hundred eighty consecutive days;
  2. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
  3. Meet the requirements of CMC 15.64.035(C) and the elevation and anchoring requirements for manufactured homes.

(Ord. 634 § 9, 2001)

(Ord. No. 930, § 3(Exh. B), 8-4-2020)

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### **15.64.040 Floodways.**

Located within areas of special flood hazard established in CMC 15.64.015(B) are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- A. Encroachments, including fill, new construction, substantial improvements, and other development are prohibited within the designated floodway unless certification by a registered professional engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels during the occurrence of the base flood discharge.
- B. Construction or reconstruction of residential structures is prohibited within designated floodways, except for:
  - (1) Repairs, reconstruction, or improvements to a structure which do not increase the ground floor area;
  - (2) Repairs, reconstruction or improvements to a structure, the cost of which does not exceed fifty percent of the market value of the structure either: (a) before the repair, or reconstruction is started, or (b) if the structure has been damaged, and is being restored, before the damage occurred;
  - (3) Repairs or reconstruction of a substantially damaged residential structure as provided in RCW 86.16.041 as said section presently exists or is hereafter amended; and
  - (4) Repairs, reconstruction, or replacement of existing farmhouses in designated floodways as provided in RCW 86.16.041 as said section presently exists or is hereafter amended. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or any projects for improvements to structures identified as historic places shall not be included in the fifty percent.
- C. If CMC 15.64.040(A) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of CMC 15.64.030, 15.64.035, 15.64.040, 15.64.045, and 15.64.050.
- D. Excavation in the designated floodway is prohibited, except: (1) as otherwise required by law; (2) as part of a government funded or sponsored wildlife habitat enhancement project.

(Ord. 684 § 7, 2005; Ord. 634 § 10, 2001)

### **15.64.045 Standards for shallow flooding areas (AO Zones).**

Shallow flooding areas appear on FIRMs as AO zones with depth designations. The base flood depths in these zones range from one to three feet above ground where a clearly defined channel does not exist, or where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is usually characterized as sheet flow. In these areas, the following provisions apply:

- A. New construction and substantial improvements of residential structures and manufactured homes within AO zones shall have the lowest floor (including basement) elevated above the highest adjacent grade to the structure, one foot or more above the depth number specified in feet on the community's FIRM (at least two feet above the highest adjacent grade to the structure if no depth number is specified);



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- B. New construction and substantial improvements of nonresidential structures within AO zones shall either:
1. Have the lowest floor (including basement) elevated above the highest adjacent grade of the building site, one foot or more above the depth number specified on the FIRM (at least two feet if no depth number is specified); or
  2. Together with attendant utility and sanitary facilities, be completely flood proofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer or architect as in CMC 15.64.035(B)(3).
- C. Require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.
- D. Recreational vehicles placed on sites within AO Zones on the community's FIRM either:
1. Be on the site for fewer than one hundred eighty consecutive days;
  2. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or,
  3. Meet the requirements of CMC 15.64.045(A) and (C) and the anchoring requirements for manufactured homes set forth in CMC 15.64.030(A)(2).

(Ord. 634 § 11, 2001)

#### **15.64.050 Critical facility.**

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the Special Flood Hazard Area (SFHA) (one hundred year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet or to the height of the five hundred year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

(Ord. 634 § 12, 2001)

### ***Part II. Drainage, Erosion Control, Stormwater Management<sup>1</sup>***

#### **15.64.160 Purpose; intent.**

The purpose of this part is to establish drainage standards governing the development and redevelopment of land within the city. The city of Carnation does not own or operate a stormwater utility or any other comprehensive system for the collection and treatment of storm runoff. As such, insuring adequate drainage of

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<sup>1</sup>Editor's note(s)—Ord. No. 781, § 2(Exh. A), adopted July 20, 2010, amended Ch. 15.64, part II, to read as set out here. Former Ch. 15.64, part II, pertained to similar subject matter.

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storm runoff must be accomplished exclusively through on-site retention and/or infiltration. The primary component of these standards is the requirement that the rate of stormwater discharge resulting from new development or redevelopment sites will not exceed the predeveloped condition rate of stormwater discharge. Another critical aspect of the following regulations is to place the financial and legal responsibility for the design, maintenance, operation and repair of private drainage facilities exclusively upon the owner(s) of the underlying property. Unless otherwise expressly provided in this part, the following provisions shall be interpreted in furtherance of these objectives.

(Ord. No. 781, § 2(Exh. A), 7-20-2010; Ord. No. 816, § 2, 10-2-2012)

#### **15.64.165 Definitions.**

- A. "Predeveloped condition" shall mean the existing condition prior to submission of development application.
- B. "Rate of stormwater discharge" shall mean the rate of stormwater surface runoff from the site as modeled using the current version of the Department of Ecology Western Washington Hydrology Model which is based on continuous simulation hydrologic modeling.

(Ord. No. 816, § 3, 10-2-2012)

#### **15.64.170 Stormwater standards adopted.**

- A. The 2012 edition of the Washington State Department of Ecology's Stormwater Management Manual for Western Washington ("the manual") is hereby adopted by reference, including any future amendments, revisions, updates or future year editions thereof. A copy of the manual shall be maintained at city hall and made available for public inspection and copying upon request.
- B. The provisions of this chapter shall supersede any inconsistent provisions of the manual to the extent of any irreconcilable conflict.

(Ord. No. 781, § 2(Exh. A), 7-20-2010; Ord. No. 846, § 2, 8-19-2014)

#### **15.64.180 Natural drainage system utilized to extent feasible.**

- A. To the extent practicable, all development shall conform to the natural contours of the land and natural and preexisting manmade drainage ways shall remain undisturbed.
- B. To the extent practicable, lot boundaries shall be made to coincide with natural and pre-existing manmade drainage ways within subdivisions to avoid the creation of lots that can be built upon only by altering such drainage ways.

(Ord. No. 781, § 2(Exh. A), 7-20-2010)

#### **15.64.190 Developments must drain properly.**

- A. All developments shall be provided with a drainage system that is adequate to prevent the undue detention or retention of surface water on the development site. Surface water shall not be regarded as unduly detained or retained if:
  - 1. The detention or retention results from a technique, practice or device deliberately installed as part of an approved sedimentation or stormwater control plan; or

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2. The detention or retention is not substantially different in location or degree than the existing condition prior to the development or redevelopment, unless such detention or retention presents a danger to health or safety.
  3. The detention or retention is temporary, resulting from shortterm fluctuations in groundwater level.
- B. No surface water may be channeled or directed into a sanitary sewer.
  - C. Stormwater infiltration drainage shall be provided, on site, for all new development and redevelopment as defined in this chapter. Retention or detention of stormwater shall be provided, as required by this chapter, to ensure that stormwater discharge from new development and redevelopment does not exceed the predeveloped condition rate of stormwater discharge.
    1. For purposes of determining the rate, stormwater discharges shall match developed discharge durations to predeveloped durations for the range of predeveloped discharge rates from fifty percent of the two-year peak flow up to the full fifty-year peak flow.
  - D. The direct discharge to groundwater from untreated or polluted stormwater shall be governed by the applicable standards and procedures set forth in the manual.
  - E. Private roads and access ways within unsubdivided developments shall utilize a storm drainage system designed by a licensed engineer to provide adequate drainage if the grade of such roads or access ways is too steep to provide drainage in another manner or if other sufficient reasons exist to require such construction.
  - F. For sites within the central business district, or in the mixed use zone if the property has frontage on Tolt Avenue, with insufficient space for on-site stormwater infiltration facilities, the director, in his or her sole discretion, may authorize construction of infiltration facilities within the public rights-of-way when design of the facility is acceptable to the director and the director determines sufficient space would remain to accommodate future buried utilities requirements. Such authorization may be granted pursuant to the following criteria:
    1. The facility is properly sized for both the stormwater runoff from the site plus the runoff from the right-of-way tributary to the site.
    2. The cost of facilities construction and right-of-way restoration is paid by the property owner.
    3. A written covenant in a form approved by the city attorney has been recorded against the title of the underlying property containing without limitation the following provisions:
      - a. A city-approved maintenance and operation plan for the facility.
      - b. A permanent right of access for city personnel to inspect the facility.
      - c. A detailed construction design clearly depicting the location, depth, and operation of the facility.
      - d. The landowner agrees to indemnify, protect, defend, and hold harmless the city, its officers, employees, and volunteers, from any and all damages, injuries, costs, expenses, including attorneys fees, resulting from or otherwise arising out of, directly or indirectly, the location, installation, construction, operation, and/or repair of the facility.
      - e. An authorization, but not an obligation, for the city to perform any emergency maintenance or repair work necessary to insure the proper functioning of the facility and to charge all expenses therefrom to the landowner.
      - f. An agreement to relocate the facility at the landowner's exclusive expense to an alternative location within the public right-of-way whenever such relocation is deemed reasonably necessary by the director. Such relocation shall be completed within one hundred and twenty days of receipt of notice of the city's intent from the city; provided, however, that in the event of an

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emergency requiring relocation of the facility within a shorter time period, as determined by the director, the landowner shall relocate said facility in accordance with the director's instruction.

(Ord. No. 781, § 2(Exh. A), 7-20-2010; Ord. No. 816, § 4, 2012)

#### **15.64.200 Illegal discharge of materials into the stormwater system.**

- A. The discharge of any material pollutant, substance or other matter other than stormwater into stormwater facilities or groundwater is prohibited.
- B. Illicit discharges to stormwater drainage systems are prohibited. Illicit discharges are unauthorized connections to the stormwater drainage systems or discharges that exceed the rate, volume and/or water quality requirements set forth in this chapter.

(Ord. No. 781, § 2(Exh. A), 7-20-2010)

#### **15.64.210 Exemptions.**

All new development or redevelopment is subject to minimum requirements set forth in this chapter except the following:

- A. Commercial agriculture, and forest practices regulated under Title 222 WAC, except for Class IV general forest practices that are conversions from timber land to other uses, are exempt from the provisions of this chapter.
- B. Development undertaken by the Washington State Department of Transportation in state highway rights-of-way is regulated by Chapter 173-270 WAC, the Puget Sound Highway Runoff Program.

(Ord. No. 781, § 2(Exh. A), 7-20-2010)

#### **15.64.220 Stormwater best management practices (BMPs).**

- A. General. BMPs shall be used for stormwater management, for source control of pollution, for runoff treatment, and for construction stormwater pollution prevention to comply with the standards in this chapter. Provided, that use of particular BMPs shall not excuse full compliance with the requirements set forth in this chapter unless expressly provided herein. Standard BMPs are described in the manual.
- B. All new development and redevelopment as defined in this chapter shall be required to implement BMPs for on-site stormwater management, for source control of pollution, for construction stormwater pollution prevention, and to manage stormwater discharge to avoid harming downstream properties, regardless of whether such activities require a permit.
- C. Experimental BMPs. The director may approve the use of BMPs that are not set forth in the manual ("Experimental BMPs"). Experimental BMPs are encouraged as a means of solving problems in a manner not addressed by the manual in an effort to improve stormwater quality technology. Experimental BMPs must be approved by the director in accordance with the approval process outlined in the manual. Experimental BMPs may include, but not be limited to pervious paving surfaces, rain-gardens, green roofs and soil improvements designed to mimic predevelopment soil conditions.

(Ord. No. 781, § 2(Exh. A), 7-20-2010)

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### 15.64.230 Permits required for regulated activities.

- A. Regulated activities include:
1. All new development or redevelopment except for single family residential development, the result of which is to create, add or otherwise cause to exist upon a development site two thousand square feet or more of: (i) new impervious surface area, (ii) replaced impervious surface area, or (iii) new impervious surface area plus replaced impervious surface area;
  2. All new development or redevelopment that involves land disturbing activity, as defined in Chapter 15.08 CMC, of five thousand square feet up to three-fourths acres;
  3. Class IV general forest practices involving conversions from timber land to other uses; or
  4. Subdivision, short subdivision and binding site plans, as defined in Ch. 58.17.020 RCW.
- B. Regulated activities shall proceed only after the city approves a stormwater site plan and issues a drainage permit. Stormwater site plans shall include the following plans as required by this chapter:
1. Permanent stormwater control plan, in accordance with the manual.
  2. Construction stormwater pollution prevention plan (SWPPP), in accordance with the manual.
- C. All costs for inspection, maintenance, operation and repair of private stormwater facilities shall be born exclusively by the property owner.
- D. A covenant containing a description, configuration, and operation and maintenance requirements of and with respect to the stormwater facilities shall be recorded against the title of the underlying property at the property owner's expense. The covenant shall be in a form approved and developed by the director, and shall include a dimensional plan view drawing depicting the record drawings location(s) of the stormwater facilities. The covenant shall authorize, but not require, the city to: (i) perform any maintenance or repair necessary to prevent damage to public or private property resulting from the property owner's failure to properly maintain and/or repair the facilities, and (ii) charge any expenses incurred therefore to the property owner.
- E. To ensure compliance with these standards, maintenance bonding or other appropriate financial instruments shall be required for all stormwater facilities serving commercial properties, long or short plats, and stormwater facilities constructed within public rights-of-way. The duration and amount of any bonding/security requirements shall be fifteen percent of the value of the improvement, to be held by the city for two years.
- F. Nothing in this chapter shall be construed as exempting any development project or activity from any other requirement concerning storm runoff under any applicable federal, state or local regulation, specifically including without limitation any other provision of the CMC.

(Ord. No. 781, § 2(Exh. A), 7-20-2010; Ord. No. 826, § 2, 2-5-2013; Ord. No. 846, § 3, 8-19-2014)

### 15.64.235 Compliance with state regulations.

All stormwater drainage shall, in addition to compliance with the provisions of this chapter, comply fully with all applicable state and/or federal regulations, specifically including without limitation the following:

- A. Underground injection wells shall be registered with the Washington State Department of Ecology in accordance with WAC Chapter 173-218, Underground Injection Control Program.

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- B Discharge of storm water runoff into groundwater shall comply with the provisions of WAC Chapter 173-200 Water Quality Standards for Groundwaters of the State of Washington.

(Ord. No. 816, § 5, 10-2-2012)

#### **15.64.240 Replacement of impervious surfaces, exceptions for maintenance.**

Replacement of existing impervious surfaces for routine maintenance including re-roofing, roof replacement and routine overlays of existing paved surfaces shall not count as replacement for purposes of calculating the volume of impervious surface that requires a permit.

(Ord. No. 781, § 2(Exh. A), 7-20-2010)

#### **15.64.250 Minimum requirements for large projects.**

- A. Large projects shall be defined as:
  - 1. All new development or redevelopment that creates or adds five thousand square feet or more of new, replaced, or new plus replaced impervious surface area, or
  - 2. All new development or redevelopment that converts three-fourths acres or more of native vegetation to lawn or landscape areas.
- B. In addition to providing a stormwater site plan, large projects shall provide the following minimum requirements, as applicable, in accordance with the manual:
  - a. Runoff treatment.
  - b. Flow control.
  - c. Wetlands protection.
  - d. Basin/watershed planning.
  - e. Operation and maintenance.

(Ord. No. 781, § 2(Exh. A), 7-20-2010)

#### **15.64.260 Road-related projects.**

For projects primarily involving the installation, construction, repair, replacement and/or relocation of streets, roadways, alleys and sidewalks, runoff from replaced and new impervious surfaces (including pavement, shoulders, curbs; and sidewalks) shall meet all of the minimum requirements for large projects as described in this chapter if the new impervious surfaces total five thousand square feet or more and total fifty percent or more of the existing impervious surfaces within the project limits.

(Ord. No. 781, § 2(Exh. A), 7-20-2010)

#### **15.64.270 Exceptions.**

Exceptions to minimum requirements for new development or redevelopment may be granted by the director prior to permit approval and construction, provided that:

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1. The exception provides substantially equivalent environmental protection; and that the objectives of safety, function, environmental protection and facility maintenance, based upon sound engineering, are met;
  2. That there are special physical circumstances or conditions affecting the property such that the strict application of these provisions would deprive the applicant of all reasonable use of the parcel of land in question, and every reasonable effort to find creative ways to meet the intent of the minimum standards has been made;
  3. That the granting of the exception will not be detrimental to the public health and welfare, nor injurious to other properties in the vicinity and/or downstream, and to the quality of waters of the state; and
  4. The exception is the least reasonably possible exception that could be granted to comply with the intent of the minimum requirements.

(Ord. No. 781, § 2(Exh. A), 7-20-2010)

#### **15.64.280 Administration.**

- A. Director. The city manager or his/her designee shall administer this chapter, and shall be referred to as the director. The director shall have the authority to develop and implement administrative procedures to administer and enforce this chapter.
- B. Review and Approval. The director may approve, conditionally approve or deny an application for activities regulated by this chapter.
- C. Enforcement Authority. The director shall have the authority to enforce this chapter.
- D. Inspection. All activities regulated by this chapter, except those exempt in Section 15.64.210, shall be inspected by the director or designee. The director shall inspect projects at various stages of the work requiring approval to determine that adequate control is being exercised. Stages of work requiring inspection may include, but are not limited to, preconstruction; installation of BMPs; land disturbing activities; installation of utilities, landscaping, retaining walls and completion of project. When required by the director, a special inspection and/or testing shall be performed.

(Ord. No. 781, § 2(Exh. A), 7-20-2010)

#### **15.64.290 Enforcement.**

- A. General enforcement action may be taken whenever a person has violated any provision of this chapter. The choice of enforcement action and the severity of any penalty shall be based on the nature of the violation, the damage or risk to the public or to public resources, and/or the degree of bad faith of the person subject to the enforcement action.
- B. Stop Work Order. The director shall have the authority to serve a person a stop work order if an action is being undertaken in violation of this chapter.
  1. Content of Order. The order shall contain:
    - a. A description of the specific nature, extent, and time of violation and the damage or potential damage; and

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- b. A notice that the violation or the potential violation cease and desist, and, in appropriate cases, the specific corrective action to be taken within a given time. A civil penalty may be issued with the order.
  2. Notice. A stop work order shall be imposed by a notice in writing, either by certified mail with return receipt requested, or by personal service, to the person incurring the same.
  3. Effective Date. The stop work order issued under this section shall become effective immediately upon receipt by the person to whom the order is directed.
  4. Compliance. Failure to comply with the terms of a stop work order may result in enforcement actions including, but not limited to, criminal misdemeanor liability in addition to the issuance of a civil penalty, including fines imposed ranging from one hundred dollars to five hundred dollars per day.
  5. The director shall consider the following factors to determine the amount of fine imposed:
    - a. Severity of the violation.
    - b. Amount of damage to private and/or public property resulting from the violation.
    - c. The compliance history of the property.
    - d. Evidence of good or bad faith by the violator including without limitation the delay in achieving compliance upon notice of the violation.

(Ord. No. 781, § 2(Exh. A), 7-20-2010)

#### **15.64.300 Flexibility in administration permitted.**

- A. Purpose. The city recognizes that the wide variety of types of development, natural systems and unique topography in the city weighs against the inflexible enforcement of standards set forth in this chapter. The purpose of this section is to authorize the director to permit deviations from the strict adherence to certain requirements and to either require more intensive or allow less intensive requirements or alternatives whenever the director finds that such deviations or alternatives will alternately achieve the purposes of this chapter without imposing unnecessary costs.
- B. Areas with Seasonal High Groundwater or Flooding. The city recognizes that in areas with exceptionally high seasonal groundwater levels, seasonal variations in the groundwater table, including those associated with high riparian water levels, may temporarily decrease the normal capacity and effectiveness of stormwater facilities. In some situations, it would be unreasonably onerous to require stormwater infiltration designs that are guaranteed to always comply with the runoff standards established in this chapter during extreme weather events or temporary high groundwater conditions. Therefore, in areas where seasonal groundwater levels rise to within seven feet of the surface for residential development or nine feet of the surface for nonresidential development, the director may approve stormwater infiltration facilities that may be expected to experience temporarily reduced capacity and/or performance if such facilities are designed and constructed in a manner that ensures any off-site runoff will occur at a rate and volume that will not cause property damage. The applicant shall demonstrate to the satisfaction of the director that: (i) an on-site drainage system cannot practicably be designed and constructed to ensure complete compliance with the requirements of this chapter, and (ii) under the applicant's alternative proposal, resulting stormwater runoff will not cause property damage or violate applicable state or federal regulations, including without limitation any applicable runoff or discharge standards.
- C. Deviations and Mitigation. Whenever the director authorizes a deviation from the requirements set forth in this chapter, he/she shall enter on the face of the permit the requirement that it imposes to meet the standard and the reasons for allowing or requiring the deviation. Any such decision shall be entirely at the



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discretion of the director, and nothing in this chapter shall be construed as requiring the director to approve any deviation. The director may condition any such decision upon the imposition of such reasonable mitigation measures as deemed necessary by the director. Without limitation of the forgoing, the director may require an applicant requesting a deviation to execute a recorded covenant indemnifying, protecting, defending, holding harmless the city, its officers, employees, and volunteers, from any and all damages, injuries, claims, costs, expenses, including attorneys fees, resulting from, relating to or otherwise arising out of stormwater runoff from the applicant's property.

(Ord. No. 781, § 2(Exh. A), 7-20-2010; Ord. No. 816, § 6, 10-2-2012)

**Attachment 11 continued**

**Ordinance No. 971 Amending CMC 15.64.020**

ORDINANCE NO. 971

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
CARNATION, WASHINGTON, AMENDING SECTION  
15.64.020 OF THE CARNATION MUNICIPAL CODE

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WHEREAS, in order for the City of Carnation to maintain our current Community Rating System flood insurance and maintain the premium discount for the businesses and residents in Carnation the City of Carnation must update Chapter 15.64; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF CARNATION DO HEREBY ORDAIN AS  
FOLLOWS:

Section 1. Carnation Municipal Code Section 15.64.020 is amended to read as follows:

**Chapter 15.64 FLOODWAYS, FLOODPLAINS, DRAINAGE, AND EROSION**

***Part I. Floodways and Floodplains***

**15.64.020 Administration.**

- A. Development Permit Required. A development permit shall be obtained before construction or development begins within any area of special flood hazard established in CMC 15.64.015(B). The permit shall be for all structures including manufactured homes, as set forth in CMC 15.08.010 and for all development including fill and other activities, also defined in CMC 15.08.010.
- B. Application for Development Permit. Application for a development permit shall be made on forms furnished by the city and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:
  - 1. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;
  - 2. Elevation in relation to mean sea level to which any structure has been floodproofed;
  - 3. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in CMC 15.64.035(B); and
  - 4. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.
  - 5. Assessment of the potential impacts of any development on the critical habitat of threatened and endangered salmon to ensure compliance with the Endangered Species Act (ESA) per the 2008 Biological Opinion on the implementation of the NFIP in the Puget Sound Region.
  - 6. Where development is proposed in the floodway, an engineering analysis indicating no rise of the base flood elevation (BFE).

7. Any other such information that may be reasonably required by the Floodplain Administrator in order to review the application.
- C. Designation of local administrator. The building official, or designee, is hereby appointed to administer and implement this part by granting or denying development permit applications in accordance with its provisions.
- D. Duties and responsibilities of local administrator. The duties of the building official or designee under this part shall include, but not be limited to:
  1. Review all development permits to determine that the permit requirements of this part have been satisfied;
  2. Review all development permits to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required;
  3. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of CMC 15.64.040 are met;

4. When base flood elevation data has not been provided (A or V zone) in accordance with CMC Section 15.64.015(B), the building official or designee shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer CMC Sections 15.64.035 and 15.64.040;
5. Where base flood elevation data is provided through the Flood Insurance Study, FIRM, or required as in CMC 15.64.020(D)(4), obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement;
6. For all new or substantially improved flood-proofed nonresidential structures where base flood elevation data is provided through the flood insurance study, FIRM, or as required in subsection (D)(4) of this section:
  - a. Obtain and record the elevation (in relation to mean sea level) to which the structure was floodproofed; and
  - b. Maintain the floodproofing certifications required in CMC 15.64.020(B);
7. Maintain for public inspection all records pertaining to the provisions of this part;
8. Notify adjacent communities and the department of ecology prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration;
9. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished; and
10. Make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in CMC 15.64.025.

#### **15.64.025 Appeals and variances.**

- A. The hearing examiner shall hear and decide appeals and requests for variances from the requirements of this chapter. The hearing examiner shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the building official or designee in the enforcement or administration of this ordinance. Those aggrieved by the decision of the building official or designee, or any taxpayer, may appeal such decision to the hearing examiner, as provided in Chapter 15.11 of the CMC.
- B. In passing upon such applications, the hearing examiner shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:
  1. The danger that materials may be swept onto other lands to the injury of others;
  2. The danger to life and property due to flooding or erosion damage;
  3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  4. The importance of the services provided by the proposed facility to the community;
  5. The necessity to the facility of a waterfront location, where applicable;
  6. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
  7. The compatibility of the proposed use with existing and anticipated development;
  8. The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;

9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
  10. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
  11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- C. Upon consideration of the factors of CMC 15.64.025(B) and the purposes of this chapter, the hearing examiner may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter. The hearing examiner shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.
- D. Conditions for Variances.
1. Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (1-11) in CMC 15.64.025(B) have been fully considered. As the lot size increases the technical justification required for issuing the variance increases;
  2. Variances may be issued for the repair, rehabilitation, or restoration of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure;
  3. Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result;
  4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;
  5. Variances shall only be issued upon:
    - a. A showing of good and sufficient cause;
    - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant;
    - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- E. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.
- F. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

### 15.64.030 General standards.

In all areas of special flood hazards, the following standards are required:

- A. Anchoring.
  - 1. All new construction and substantial improvements, including those related to manufactured homes, shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads including the effects of buoyancy; and
  - 2. All manufactured homes shall be anchored to prevent flotation, collapse or lateral movement, and shall be installed using engineering methods and engineering practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
- B. AH Zone Drainage. Adequate drainage paths are required around structures on slopes to guide floodwaters around and away from proposed structures.
- C. Construction Materials and Methods.
  - 1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
  - 2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage; and
  - 3. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- D. Utilities.
  - 1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems;
  - 2. A water well shall be located on high ground that is not in the floodway (WAC 173-160-171);
  - 3. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters; and
  - 4. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- E. Subdivision Proposals.
  - 1. All subdivision proposals shall be consistent with the need to minimize flood damage;
  - 2. All subdivision proposals shall have public utilities and facilities, such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage;
  - 3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and
  - 4. For subdivision proposals and other proposed developments which contain at least fifty lots or five acres (whichever is less), base flood elevation data shall be included with the proposal. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated by the project proponent.
- F. Review of Building Permits. Where elevation data is not available either through the Flood Insurance Study, FIRM, or from another authoritative source, applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness

is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above the highest adjacent grade in these zones may result in higher insurance rates.

#### **15.64.035 Specific standards.**

In all areas of special flood hazards where base flood elevation data has been provided as set forth in CMC 15.64.015(B) or CMC 15.64.020(D)(4), the following provisions are required:

##### **A. Residential Construction.**

1. New construction, substantial improvement, and/or reconstruction due to substantial damage of any residential structure shall have the lowest floor, including basement, elevated one foot or more above the base flood elevation. Mechanical equipment and utilities appurtenant to the residential structure shall be elevated at least one foot above the base flood elevation.
2. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs must meet or exceed the following minimum criteria:
  - a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
  - b. The bottom of all openings shall be no higher than one foot above grade; and,
  - c. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
  - d. A garage attached to a residential structure, constructed with the garage floor slab below the base flood elevation, must be designed to allow for the automatic entry and exit of floodwaters. Mechanical equipment and utilities placed within an attached garage shall be elevated at least one foot above the base flood elevation.

Alternatively, a registered engineer or architect may design and certify engineered openings.

##### **B. Nonresidential Construction.** New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated one foot or more above the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

1. Be floodproofed so that below one foot or more above the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
3. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the building official or designee as set forth in CMC 15.64.020(D)(6);
4. Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in CMC 15.64.035(A)(2); and,
5. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g. a building floodproofed to the base flood level will be rated as one foot below).



C. Manufactured Homes.

1. All manufactured homes to be placed or substantially improved on sites shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated one foot or more above the base flood elevation and be securely anchored to an adequately designed foundation system to resist flotation, collapse and lateral movement. Mechanical equipment and utilities appurtenant to the manufactured home shall be elevated at least one foot above the base flood elevation. This requirement shall apply to manufactured homes at the following locations:
    - a. Outside of a manufactured home park or subdivision;
    - b. In a new manufactured home park or subdivision;
    - c. In an expansion to an existing manufactured home park or subdivision; or,
    - d. In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, and
  2. Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision that are not subject to the above manufactured home provisions be elevated so that either:
    - a. The lowest floor of the manufactured home is elevated one foot or more above the base flood elevation. Mechanical equipment and utilities appurtenant to the manufactured home shall be elevated at least one foot above the base flood elevation.; or,
    - b. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength which the lowest floor of the manufactured home is elevated by one foot or more above the base flood elevation, and be securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement. Mechanical equipment and utilities appurtenant to the manufactured home shall be elevated at least one foot above the base flood elevation.
- D. Recreational vehicles. Recreational vehicles, if otherwise permitted by this title, are required to either:
1. Be on the site for fewer than one hundred eighty consecutive days;
  2. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
  3. Meet the requirements of CMC 15.64.035(C) and the elevation and anchoring requirements for manufactured homes.

...

### **15.64.045 Standards for shallow flooding areas (AO Zones).**

Shallow flooding areas appear on FIRMs as AO zones with depth designations. The base flood depths in these zones range from one to three feet above ground where a clearly defined channel does not exist, or where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is usually characterized as sheet flow. In these areas, the following provisions apply:

- A. New construction and substantial improvements of residential structures and manufactured homes within AO zones shall have the lowest floor (including basement) elevated above the highest adjacent grade to the structure, one foot or more above the depth number specified in feet on the community's FIRM (at least two feet above the highest adjacent grade to the structure if no depth number is specified). Mechanical equipment and utilities appurtenant to residential structures and manufactured homes shall be elevated at least one foot above the base flood elevation;
- B. New construction and substantial improvements of nonresidential structures within AO zones shall either:
  1. Have the lowest floor (including basement) elevated above the highest adjacent grade of the building site, one foot or more above the depth number specified on the FIRM (at least two feet if no depth number is specified); or
  2. Together with attendant utility and sanitary facilities, be completely flood proofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer or architect as set forth in CMC 15.64.035(B)(3).
- C. Require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.
- D. Recreational vehicles placed on sites within AO Zones on the community's FIRM either:
  1. Be on the site for fewer than one hundred eighty consecutive days;
  2. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or,
  3. Meet the requirements of CMC 15.64.045(A) and (C) and the anchoring requirements for manufactured homes set forth in CMC 15.64.030(A)(2).

...

### ***Part II. Drainage, Erosion Control, Stormwater Management<sup>1</sup>***

...

#### **15.64.170 Stormwater standards adopted.**

- A. The 2019 edition of the Washington State Department of Ecology's Stormwater Management Manual for Western Washington ("the manual") is hereby adopted by reference, including any future amendments,

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<sup>1</sup>Editor's note(s)—Ord. No. 781, § 2(Exh. A), adopted July 20, 2010, amended Ch. 15.64, part II, to read as set out here. Former Ch. 15.64, part II, pertained to similar subject matter.

revisions, updates or future year editions thereof. A copy of the manual shall be maintained at city hall and made available for public inspection and copying upon request.

- B. The provisions of this chapter shall supersede any inconsistent provisions of the manual to the extent of any irreconcilable conflict.

...

**15.64.280 Administration.**

- A. Director. The city manager or designee shall administer this part, and shall be referred to as the director. The director shall have the authority to develop and implement administrative procedures to administer and enforce this part.
- B. Review and Approval. The director may approve, conditionally approve or deny an application for activities regulated by this part.
- C. Enforcement Authority. The director shall have the authority to enforce this part.
- D. Inspection. All activities regulated by this part, except those exempt in Section 15.64.210, shall be inspected by the director or designee. The director shall inspect projects at various stages of the work requiring approval to determine that adequate control is being exercised. Stages of work requiring inspection may include, but are not limited to, preconstruction; installation of BMPs; land disturbing activities; installation of utilities, landscaping, retaining walls and completion of project. When required by the director, a special inspection and/or testing shall be performed.

Section 2. Effective Date. This ordinance shall be in force and effect from and after its passage and five (5) days following its publication by summary or posting as provided by law.

APPROVED by the Carnation City Council the 3rd day of May, 2023.

*Jim Ribail*

Jim Ribail (May 23, 2023 16:53 PDT)

MAYOR, JIM RIBAIL

ATTEST/AUTHENTICATED:

*Lora Wilmes*

CITY CLERK, LORA WILMES

APPROVED AS TO FORM:

*Thom H. Graafstra*

Thom H. Graafstra (May 24, 2023 05:59 PDT)

City Attorney



# SCHEFER PUBLIC COMMENTS

From Special Meeting  
August 3<sup>rd</sup>, 2023

## TRAFFIC

- Concern about Entwistle traffic.
- Concern about Tolt Hill traffic.
- Question about public transit within City limits.

## ENVIRONMENT

- Keep natural area in the NW region.
- Low lighting in evening.
- Heat mediation.
- Increase natural buffer.
- Establish tree codes to protect tree canopy.
- More open space.
- Utilize permeable surfaces.
- Build with ecological intention.

## SAFETY

- Floodplain concern for storage.
- Consider mental health of residents.

## ECONOMIC

- Provides more spaces for business.
- More employment opportunity.
- Diversifies taxes.
- Concern over competition between Tolt Ave.
- Supports economic sustainability within the city.
- Will bring in more/new businesses.

## COMMUNITY

- Noise ordinance to stop loud noise at night.
- Keep a community lens when designing.
- Would like a larger/longer trail.
- Consider continuing the Dog Park.
- Increased transparency.



## DEVELOPMENT AGREEMENT

This Development Agreement ("**Agreement**") is entered into on this \_\_\_ day of \_\_\_\_\_, 2023 ("**Effective Date**"), by and between the CITY OF CARNATION, a municipal corporation under the laws of the State of Washington ("**City**"), and [REMLINGER ENTITY], a Washington limited liability company ("**Developer**") (City and Developer are each sometimes referred to herein individually as a "**Party**" and, together, as the "**Parties**").

### RECITALS

- A. The City and Developer are parties to that certain Real Property Purchase Agreement ("**PSA**"), of even date herewith, pursuant to which the City has agreed to sell, and Developer has agreed to purchase, the real property located in the City of Carnation, County of King, State of Washington, and legally described on **Exhibit A** ("Property").
- B. The City has commenced a land segregation process, City of Carnation Preliminary Short Subdivision Application Number SHP22-0003, pursuant to which the City intends to legally segregate the Property from its Parent Parcel (King County Parcel No. 1625079073).
- C. Developer desires to develop the Property as a project to be used in a manner consistent with the light industrial/manufacturing zone established pursuant to Section 15.36.030 ("**LIM Zone**"), City of Carnation Municipal Code ("**CMC**"), and the uses permissible therein ("**Project**"), and the City has determined that the Project will provide significant public benefit to the City and the broader community.
- D. The City's most important interest in the development of this property is to activate the parcels for future development which will provide employment opportunities, access to services locally, road and infrastructures improvements, and diversification of municipal revenues.
- E. The City has the authority to enter this Agreement pursuant to RCW 36.70B.170 *et seq.* and CMC Title 15.
- F. Capitalized terms used, but not defined herein, shall have the meanings given to them in the PSA.

### AGREEMENT

#### 1. Introduction.

Upon approval of the PSA and this Agreement, the provisions of this Agreement, in addition to the provisions of the PSA, as applicable, shall govern the development of the Property. The Parties recognize that the development of the Project, including conformance with the conditions in this Agreement, is subject to third party permits and approvals outside of the control of the City or Developer. Nothing in this Agreement is intended to, or shall, in any way limit, expand, impair or otherwise amend any of the terms, conditions, rights, remedies or obligations of the Parties under the PSA.

## 2. Project Description.

The Project that is the subject of this Agreement is a high-quality development light industrial development, as conceptually depicted in the site plan ("*Site Plan*") attached hereto as **Exhibit B** and incorporated herein by this reference. The Parties contemplate that the Project shall comprise at least 80,000 square feet intended to serve uses consistent with the LI/M Zone. The ultimate scope and mix of specific uses constructed will be determined by Developer based on market demand and the land use capacity of the Property, subject to the development standards set forth in this Agreement. A maximum of 20% of the total building square feet may be developed as storage space. In the event Developer wants to develop more than 20% of the total building's square footage as any form of storage space, Developer shall pay City \$50,000.00 annually. The total square feet of storage space may not exceed 33% of the buildings' total square footage.

Storage in this section is defined as passive use of building space such as that used for parked vehicles, boats, equipment, sedentary inventory and or other similar uses; this definition excludes use of footage for inventory required for periodic business, commercial, professional activity.

## 3. Development Plan.

3.1 Development Elements. The City and Developer contemplate a development plan for the Property and Project. The plan contemplates, among other things, a development that balances economic development, including employment opportunities, revenue generation for the City, community connectivity and wayfinding, and environmental protection. The plan includes the following elements:

(i) Economic Development: creating at least 80,000 square feet of LI/M Zone space envisioned to provide meaningful employment opportunities within the community and revenue generation to the City. In a mutual effort maximize the footprint of the Project and complete the Larson Road Extension (defined below) in a timely manner, the City shall permit Developer, and grant to Developer any rights necessary, to expand and/or alter the existing infiltration system(s) serving the existing vacuum station on the Parent Parcel to fulfill stormwater management requirements.

(ii) Larson Road Extension. Design and Construction of Larson Road: The terms of this Agreement satisfies the requirements set forth in CMC 15.56.190. In lieu of transportation impact fees otherwise collectible by the City in connection with the Project, and in full satisfaction of Developer's off-site traffic mitigation obligation, including, without limitation, those set forth in CMC Section 15.56.190. Developer shall design and construct an extension of Larson Road along the eastern and western boundaries, to the southern boundary, of the Property ("*Larson Road Extension*"). Within ninety (90) days following the Effective Date, the City and Developer will work diligently to prepare mutually acceptable design and construction standards and specifications for the Larson Road Extension that are consistent with the nature of the Project.



(iii) South Larson Extension. In addition, the City anticipates the possibility to obtain the properties directly south of, and adjacent to the Property, and directly south of Larson Road, ("**South Larson Property**") for purposes of extending Larson Road to a controlled stop-sign intersection with NE 40<sup>th</sup> Street, which includes extending Larson Road from East Entwistle St. to 40<sup>th</sup> Street including road, sidewalks and gutters.

In lieu of transportation impact fees otherwise collectible by the City in connection with the Project, Developer will, at its sole cost, design and engineer a further extension of Larson Road to the south boundary of the South Larson Property.

(iv) In addition, if the City acquires the South Larson Properties within five (5) years of the Closing Date (per the Purchase and Sale Agreement dated [REDACTED]), then Developer will construct at its own cost, such extension of Larson Road ("**South Larson Extension**");

For the avoidance of doubt, Developer's obligations to (i) design, engineer, and construct the Larson Road Extension; and (ii) design and engineer the South Larson Extension shall fully satisfy any and all obligations Developer may have to pay any transportation impact fees, under any applicable law or legal theory, regardless of whether the City acquires the South Larson Properties and/or Developer constructs the South Larson Extension. Finally, Developer will exercise good faith efforts to facilitate a meeting between the owner of the South Larson Properties and the City in connection with the City's efforts to acquire that property.

In the event the City does not obtain the properties directly south of, and adjacent to the Property within 5 years of closing in order to further extend Larson Road from East Entwistle St. to 40<sup>th</sup> Street, then Developer will provide City with all design, CAD and engineering files for the design, engineering and construction of the extension.

(v) Soft Surface Trail Easement: A soft surface trail connecting Tolt MacDonald Park to East Entwistle Street traverses the northwesterly portion of the Property ("**Soft Surface Trail**"). In an effort to maximize the footprint of the Project, the City and Developer will exercise diligent good faith efforts to work with King County to relocate the Soft Surface Trail on the King County Property. However, if King County is not willing to accept and establish the Soft Surface Trail on the King County Property, then as a condition to Developer's construction permits for the Project, Developer will dedicate a five (5) foot strip of land along the northern boundary of the Property as a permanent easement for this trail for public use. Notwithstanding the forgoing, the Soft Surface Trail shall be designed in conjunction with, and shall be contained within, the minimum perimeter landscape buffers, if any, as may be required for the Project. The dedication of the Soft Surface Trail shall not result in any additional increases to landscape and buffering requirements.

(vi) Connectivity and Wayfinding: Developer shall design and fund signage as part of the Project on the Property that will enhance connectivity and wayfinding along Route 203 to areas such as City Hall, the Business Park, Tolt Commons, Memorial Park and other destinations, all subject to City design standards.



(vii) Artwork: Developer shall include public artwork dedicated to the Schefer family legacy along the soft surface trail within King County's property (King County Parcel Number: 162507-9016). The final design for the soft surface trail and artwork will be a joint decision by City and Developer.

### 3.2 Development Schedule.

(i) Developer will submit to the City a complete application for permits to construct the Project conceptually consistent with the Site Plan on or before August 31, 2024 and will exercise diligent best efforts to complete construction of the Project no later than the third (3<sup>rd</sup>) anniversary of the Closing ("**Completion Timeline**"), subject to the City's compliance with the terms of this Agreement.

Developer shall be expected to meet 100% completion by the 3<sup>rd</sup> anniversary of closing. If Developer delays longer than the 3<sup>rd</sup> anniversary of closing due to its own delays, and not due to City, county or state regulatory agencies, then the following penalties will apply:

For every 15 calendar day delays beginning on the 91<sup>st</sup> day after the 3<sup>rd</sup> anniversary, the Developer shall pay the City \$25,000.00.

(ii) To the best of the City's ability all permit applications in connection with the Project shall be processed on an expedited basis. The Parties understand that there may be permits, decisions, and/or approvals from third parties necessary to the permitting of the Project ("**Third Party Approvals**") and the issuance of which the City does not control. However, the City shall, in all cases, respond to Developer's requests for review of submittals and inspection of work, with a complete set of comments and/or approval, within seven (10) business days; provided that in no event shall be foregoing be construed to provide the City more time to review the Project, or any element thereof, than is provided for by applicable law. Additionally, upon written request of Developer, the City shall exercise reasonable good faith efforts to assist Developer in obtaining Third Party Approvals. Due to the Completion Timeline proposed by the City, the City's diligent commitment to expedited review is fundamental hereto, and without which Developer would not have entered this Agreement.

## 4. Permitted Uses.

The uses permitted on the Property ("**Permitted Uses**") shall include all of those uses that are consistent with the LI/M Zone as set forth in the use tables in CMC Section 15.36.030, as the same exists on the Effective Date and a copy of which is attached hereto as **Exhibit C** and incorporated herein by this reference; provided that the Permitted Uses for this Project do not include indoor, or outdoor, self-serve public storage or mini-storage ("**Prohibited Storage**"), except as a use that does not occupy more than 20% of the total building square feet indoors or as allowed by code, whichever is less; provided that the term "Prohibited Storage" shall not include any warehouse use or storage of items, such as materials, inventory, equipment, vehicles,

and other property in connection with a use that is permitted in the LI/M Zone. Adult entertainment establishments or marijuana retailers are not permitted uses at this Development.

## **5. Development Standards.**

5.1 Development of the Property shall be subject to the development standards set forth in this Agreement and, in the absence of a standard in this Agreement, the provisions of the CMC, as the same exists on the Effective Date; and a copy of which is attached hereto as **Exhibit D** and incorporated herein by this reference (as may be modified, "***Development Standards***").

5.2 In the event of a conflict between the Development Standards specified in this Agreement and the requirements of the CMC, the Development Standards of this Agreement shall prevail. In no event shall any of the Development Standards set forth herein supersede or control over any contrary provision or contractual requirement set forth in the PSA.

5.3 Any decision by the City or any representative thereof to reject a plan or permit based on inconsistency with the Development Standards must be made in writing within the timeframe specified in Section 3.2(ii) hereof and must be supported by findings outlining the identified inconsistency.

5.4 Design Standards. Development of the Property shall be subject to the design standards set forth in this Agreement and, in the absence of a standard in this Agreement, the provisions of the CMC, as the same exists on the Effective Date. The City will provide Developer with updated design standards no later than February 2, 2024

## **6. Environmental and Traffic**

6.1 Floodplain Issues. Given that the entire Property is located within the Federal Emergency Management Agency ("***FEMA***") 100-year floodplain, the construction of the Project will be subject to CMC Ch.15.64 – (Floodways, Floodplains, Drainage, and Erosion) and will require approvals from FEMA. Although Developer must investigate and secure all local, regional, state, and federal permits related to the Project at its own expense, the City shall exercise diligent good faith efforts to assist Developer in doing so, including, without limitation, providing continuing political support, writing letters, and participating in the meetings as reasonably necessary and appropriate to ensure that Developer obtains all such Third Party Approvals as quickly as possible.

Furthermore, the Parties will work in good faith to identify offsite opportunities that can provide sufficient flood plain storage in order to maximize the footprint of the Project and to prove, through industry standard flood plain modeling, that any rises to the flood plain caused by the Project will be mitigated. Upon providing evidence of this result, the City will support a Conditional Letter of Map Revision (CLOMR) demonstrating the same to FEMA, and, post-construction, a final Letter of Map Revision (LOMR) demonstrating the same.

6.2 Shoreline Jurisdiction & Critical Areas. A strip along the western portion of the Property lies within the shoreline jurisdiction and any development or improvements within that area will be subject to the Carnation Shoreline Master Program. The City represents to Developer that, to the best of the City's knowledge, other than the described shoreline area, there are no known or mapped wetlands or other critical areas on the Property. In order to permit the Project, Developer would need to hire a qualified professional to complete a survey of the Property and prepare a Critical Areas Report.

6.3 As part of the Project, Developer will prepare AM and PM peak-hour weekday and weekend intersection analysis that studies the amount of traffic to be generated by the Project during AM and PM peak-hour, the potential transportation effects of the Project during such times, and showing acceptable operations (Level Of Service D or better) of the study intersections or providing for adequate intersection improvements to meet such peak-hour level of service standards (Level Of Service D). For the avoidance of doubt, the Parties acknowledge that Developer's obligations as set forth in Section 3.1(ii) hereof constitute material off-site traffic mitigation and Developer will have no further traffic mitigation obligations, except to the extent necessary to achieve a Level of Service D or better in the applicable study intersections. Developer's traffic analysis shall be limited to existing transportation infrastructure within the city limits of Carnation and the City agrees that such analysis shall fully satisfy the City's traffic-related permit requirements for the Project.

## **7. Additional Community Benefits.**

7.1 Ombudsperson. The City will designate a City staff person to serve as a conduit between the community, Developer and various City departments, residential organizations, and neighbors beginning no later than two weeks from fully executed documents. The Ombudsperson will ensure all Parties fulfill all terms of this Agreement and the PSA. The Ombudsperson will also work cooperatively in good faith with Developer and community organizations on community engagement activities during construction.

7.2 Schefer Riverfront Coordinating Group. Developer and the City shall exercise good faith efforts to convene the Schefer Riverfront Coordinating Group ("CG") at least every two months during calendar years 2023 through 2025 to develop public messaging and information to keep Carnation residents informed about the Project. CG will include one representative from the following organizations: Carnation City Council, CED Committee, , Puget Sound Energy, Planning Board, King County Waste Water, Carnation City Manager's Office, Developer, and King County Parks.

## **8. Claw Back Provision**

8.1 Generally. The Parties intend that Developer will complete the design, entitlement and construction of the Project within three (3) full calendar years of Closing. If Developer fails to exercise diligent best efforts to so timely complete the Project, then, subject to the City's compliance with this Agreement, the City will have the option to purchase the Property

from Developer for a purchase price equal to one hundred percent (100%) of the fair market value of the Property, which shall consider all relevant factors, including, without limitation, any entitlement obtained, and/or development completed on, the Property ("**Fair Market Value**"), as provided in this Section 8 ("**Purchase Option**").

8.2 Exercise of Option. If the City has the right to exercise a Purchase Option and elects to do so, the City shall hire an MAI certified appraiser representing the City, which appraiser shall have not less than five (5) years experience appraising industrial property in the Greater Seattle Area comparable to the Property ("**City's Appraiser**"), who shall determine the Fair Market Value of the Property. The City shall notify Developer by written notice of its election to exercise a Purchase Option ("**Option Notice**"), which Option Notice shall state with particularity the basis for the City's right to exercise a Purchase Option and the City's opinion of the Fair Market Value of the Property, as determined by this City's Appraiser. If Developer agrees with the City's statement of the Fair Market Value, then Developer shall so notify the City thereof within ten (10) business days following receipt of the Option Notice ("**Developer Response**") and the Parties shall work in good faith to prepare definitive documents governing the sale of the Property to the City on an as-is, where is basis within sixty (60) days following the City's receipt of the Developer Response. If Developer does not agree that the City has the right to exercise a Purchase Option, then it shall so notify the City in the Developer Response and then either party shall have the right to submit the question for adjudication in the Superior Court for King County. If the Developer agrees that the City has the right to exercise the Purchase Option, but does not agree with the City's statement of the Fair Market Value, then it will so notify the City in the Developer Response (referred to below as the "**Developer Arbitration Notice**") and the question will be subject to arbitration as provided in this Section 8.

In the event the City exercises the Claw Back Provision, Developer will provide City with all feasibility studies, engineering, CAD and design files related to the project.

The City's most important interest in the development of this property is to activate the parcels to maximize employment benefits, access to services locally, road/infrastructure improvements, and diversification of municipal revenues. For this reason, the Developer's ability to reach milestones is imperative. The Developer shall meet the following completion goals:

Within one year of anniversary of closing: 30% completion

Within two years of anniversary of closing: 60% completion

Within three years of anniversary of closing: 100% completion

If Developer delays longer than the 3<sup>rd</sup> anniversary of closing due to its own delays, and not due to City, county or state regulatory agencies, then the following penalties will apply:

For every 15 calendar day delays beginning on the 91<sup>st</sup> day after the 3<sup>rd</sup> anniversary, the Developer shall pay the City \$25,000.00.

In the event Developer sells this project at any stage of development or construction, the new owner will abide by this Development Agreement,

8.3 Arbitration. The Developer Arbitration Notice shall specifically state Developer's opinion of the Fair Market Value and shall hire an MAI certified appraiser representing Developer, which appraiser shall have not less than five (5) years experience appraising industrial property in the Greater Seattle Area comparable to the Property ("**Developer's Appraiser**"), who shall determine the Fair Market Value of the Property. Within ten (10) business days following the City's receipt of the Developer Arbitration Notice, the City's Appraiser and the Developer's Appraiser shall appoint an independent MAI certified appraiser, which appraiser shall have not less than five (5) years experience appraising industrial property in the Greater Seattle Area comparable to the Property ("**Third Appraiser**"). Within thirty (30) days following his or her appointment, the Third Appraiser shall select either the City's or the Developer's determination of the Fair Market Value of the Property as the closest approximation of the actual Fair Market Value of Property and that shall be the purchase price for the Property. The sale of the Property shall be as-is, where-is, and shall be closed within sixty (60) days following the issuance of the Third Appraiser's opinion.

## 9. General Provisions

9.1 Notices. All notices shall be personally delivered, sent via a nationally recognized overnight courier service (such as Federal Express, UPS or DHL) or sent by certified United States mail (return receipt requested), with a courtesy copy concurrently sent via electronic mail. Notices sent via personal delivery, overnight courier service and electronic mail will be effective upon receipt, and notices sent by mail will be effective three (3) Business Days after being deposited with the United States Post Office, postage prepaid. The City and Developer agree that notice may be given on behalf of each party by the counsel for each party and notice by such counsel in accordance with this Section 9.1 shall constitute notice under this Agreement. The addresses to be used in connection with such correspondence and notices are the following, or such other address as a party shall from time to time direct in writing by notice given pursuant to this Section 9.1, but any such notice of a new address shall not be effective until actually received by the other party:

The City: City of Carnation  
4621 Tolt Avenue, P.O. Box 1238

Carnation, WA 98014  
ana.cortez@carnationwa.gov

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_

Developer: [Remlinger Entity]  
10422 NE 37<sup>th</sup> Cir, Suite 100  
Kirkland, WA 98033  
Phone: (425) 330-1160  
Email: [drake@remlingergroup.com](mailto:drake@remlingergroup.com)

with a copy to:

Remlinger Farms

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Attn: Gary Remlinger  
Phone: (206) 300-0772  
Email: [gary@remlingerfarms.com](mailto:gary@remlingerfarms.com)

with a copy to:

Ojala Law, Inc., P.S.  
PO Box 211  
Snohomish, WA 98291  
Attn: Nate R. Veranth  
Phone: (425) 788-2222  
Email: [nate@ojalalaw.com](mailto:nate@ojalalaw.com)

9.2 Recording. Either Party may arrange for the recording of a memorandum of this Agreement with the King County Recorder's Office, as necessary to disclose this Agreement on title documents for the Property. This Agreement shall run with the land as binding on the Parties and their successors and assigns. It is mutually agreed that the terms of this Agreement touch and concern the land and shall be covenants running with the land.

9.3 Counterparts. This Agreement may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Agreement.

9.4 Captions. All captions, headings, paragraph and subparagraph numbers and letters are solely for reference purposes and shall not be deemed to be supplementing, limiting, or otherwise varying the text of this Agreement.

9.5 Severability. The invalidity or unenforceability of a particular provision of this Agreement shall not render this Agreement invalid or unenforceable as a whole and, in such event, the Parties shall exercise diligent good faith efforts to reform the Agreement in a manner that is fully valid and enforceable and that reflects the Parties' intentions as to their relative benefit and bargain hereunder.

9.6 Time of the Essence. Time is of the essence of this Agreement.

9.7 No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties hereto, to any person or entity other than the parties hereto.

9.8 Exhibits and Schedules. The exhibits attached hereto are hereby incorporated herein by this reference.

9.9 Amendment to this Agreement. Neither this Agreement nor any provision hereof may be changed, amended, modified, waived or discharged orally or by any course of dealing, but only by an instrument in writing signed by the party against which enforcement of the change, amendment, modification, waiver or discharge is sought.

9.10 Fees and Other Expenses. Except as otherwise provided herein, each of the parties shall pay its own fees and expenses in connection with this Agreement.

9.11 Entire Agreement. Except for the PSA this Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Developer and The City as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of either party, shall be of any effect unless it is in writing and executed by the party to be bound thereby.

9.12 Attorneys' Fees. If either party brings or commences any legal action or proceeding to enforce any of the terms of this Agreement (or for damages by reason of an alleged breach of this Agreement), the substantially prevailing party, if any, in such action shall be entitled to recover from the other party all reasonable attorneys' fees that may have been incurred, including any and all costs and expenses incurred in enforcing, perfecting and executing such judgment, and including all costs of appeal.

9.13. Term. Pursuant to RCW 36.70B.170 et seq., the Development Standards and other provisions of this Agreement shall apply to and govern and vest the development and use of the Property for a period of twenty (20) years from the Effective Date. After the Effective Date, the City may adopt new or modified laws and regulations relating to a particular subject matter specified in this Agreement or presently existing development regulations, but these new or modified standards will not apply to the Project unless Developer chooses. This Agreement shall remain in force throughout the twenty (20) year vesting period unless the City repurchases the Property, in which case this Agreement shall immediately and automatically terminate and neither Party shall have any further obligation hereunder.

9.14 Force Majeure. If, through no fault of the City or Developer, and by reason of a Force Majeure Event (defined below), any obligation in this Agreement cannot be timely completed, then all time periods relative to the applicable contingency or condition, including the time periods for the related notices and responses thereto, shall be extended for a reasonable time under the circumstances, up to one hundred eighty (180) days, and the obligation shall be

satisfied as soon as reasonably practicable. "**Force Majeure Event**" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence, making the means of performance objectively impossible. Force Majeure Events included acts of God, war, riots, strikes, fire, floods, epidemics, pandemics.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year written below.

**CITY OF CARNATION**, a  
political subdivision of the State of Washington

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date of Execution by Seller: \_\_\_\_\_

**[REMLINGER ENTITY]**  
a Washington limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date of Execution by Purchaser: \_\_\_\_\_

STATE OF WASHINGTON )

COUNTY OF \_\_\_\_\_ )

I hereby certify that before me personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_ of THE CITY OF CARNATION, political subdivision of the State of Washington, and said person did acknowledge before me that said instrument is the free act and deed by said entity for the purpose therein expressed.

Witness my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_(Signature of Notary)

\_\_\_\_\_(Name of Notary)

NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_.  
My appointment expires: \_\_\_\_\_



STATE OF WASHINGTON )

COUNTY OF \_\_\_\_\_ )

I hereby certify that before me personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_ of [REMLINGER ENTITY] LLC, a Washington limited liability company, and said person did acknowledge before me that said instrument is the free act and deed by said limited liability company for the purpose therein expressed.

Witness my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_(Signature of Notary)

\_\_\_\_\_(Name of Notary)

NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_.

My appointment expires: \_\_\_\_\_

**Exhibit A**

**Legal Description of the Property**

**Exhibit B**  
**Conceptual Site Plan**

**Exhibit C**

**LI/M Zone Permitted Uses Table—Attached**

**Exhibit D**

**Development Standard Modification Table—Attached**

## REAL PROPERTY PURCHASE AGREEMENT

THIS REAL PROPERTY PURCHASE AGREEMENT ("**Agreement**") is hereby made and entered into as of the Effective Date (as defined in Section 16 below) by and between **THE CITY OF CARNATION**, a political subdivision of the State of Washington ("**Seller**"), and [**REMLINGER ENTITY**], a Washington limited liability company ("**Purchaser**"), with reference to the following facts:

A. Seller is the owner of that certain real property consisting of approximately 7.24 acres, being a portion of the land located at 4301 Larsen Avenue, Carnation, WA, King County Tax Parcel Number 1625079073 ("**Parent Parcel**"), which portion is currently identified as Lot 2 of the Short Plat (defined in subsection 12(a)(xiii) below) and legally described on **Exhibit "A-1"** (the "**Land**"). Following legal segregation from the Parent Parcel, as described herein, Purchaser desires to acquire the Land, together with all improvements, rights, privileges, easements, buildings, leases, tenements, hereditaments, rights of way and appurtenances that belong or appertain to the Land and are owned by Seller (collectively, the "**Property**").

B. Purchaser desires to purchase the Property from Seller, and Seller desires to sell the Property to Purchaser, upon the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are all hereby acknowledged by each of the parties hereto, the parties hereto agree as follows:

1. Purchase Price.

Subject to and pursuant to the following terms and conditions, Seller shall sell and transfer the Property to Purchaser and Purchaser shall purchase the Property from Seller and pay to Seller the sum of Two Million Four Hundred Thousand Dollars (\$2,400,000.00) ("**Purchase Price**"). At Closing (as defined in Section 3 below), the Earnest Money (as defined in Section 2 below) shall be paid to Seller and credited against the Purchase Price, and Purchaser shall deliver to Seller immediately available and collectible funds equal to the balance of the Purchase Price, plus or minus Purchaser's share of closing costs, prorations, credits and charges payable pursuant to this Agreement.

2. Earnest Money. Within three (3) business days after the Effective Date (as defined below), Purchaser shall open an escrow with Chicago Title Insurance Company ("**Title Company**"), 3002 Colby Avenue, Suite 200, Everett, Washington, Attention: Lorrie Thompson, and shall deposit with Title Company a note in the amount of One Hundred Twenty Thousand Dollars (\$120,000.00) (the "**Earnest Money Note**") substantially in the form attached hereto as **Exhibit "B"**.

(a) Unless Purchaser elects to terminate this Agreement in accordance with the provisions of Section 7 below (or this Agreement otherwise has sooner terminated in accordance

Remlinger/City of Carnation

with its terms), Purchaser shall, on or before the Feasibility Expiration Date defined in Section 7(a) below, (sometimes referred to herein as the "**Earnest Money Deposit Date**") convert the outstanding principal amount of the Earnest Money Note to cash ("**Earnest Money Deposit**," which shall be deemed to include any Extension Deposit(s), as defined in Section 7 below) (and Title Company shall return the Earnest Money Note to Purchaser), which shall be deemed non-refundable and released to seller (except for a default by Seller, failure of a Purchaser Condition, casualty, condemnation or in the event any material representation or material warranty of Seller shall not be substantially true and correct at the Closing).

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(b) The Earnest Money Deposit shall be applicable to the Purchase Price and, upon conversion to cash, shall be deposited into a federally insured interest bearing account by the Title Company and all interest shall accrue for the benefit of Purchaser. "**Business Days**" shall mean each Monday through Friday, excluding United States and State holidays, and "**Business Day**" shall mean any one of the days otherwise comprising Business Days.

(c) If Purchaser does not timely make the Earnest Money Deposit, Purchaser shall be deemed to have elected to terminate this Agreement, in which case Title Company shall immediately return the Earnest Money Note to Purchaser whereupon this Agreement shall terminate and neither party shall have any further rights, obligations or liabilities hereunder, except for matters that, by the terms of this Agreement, expressly survive termination of this Agreement.

### 3. Closing.

(a) The consummation of the purchase and sale of the Property contemplated under this Agreement ("**Closing**") shall be defined as the date that the statutory warranty deed, the form of which is attached hereto as Exhibit "C" (the "**Deed**"), conveying the Property to Purchaser is recorded. The Closing shall occur on or before the date ("**Closing Date**") that is thirty (30) days following the later of (i) Purchaser's written notice to Seller that Purchaser has received any and all permits from any and all governmental entities, agencies, and/or departments having jurisdiction over the Property, as necessary or appropriate, in Purchaser's sole and absolute discretion for the construction of the Project and/or any portion thereof; and (ii) recording of the final Short Plat, unless mutually extended.

(d) Consistent with the foregoing, Closing shall occur on or prior to the Closing Date. Seller agrees to deliver vacant possession of the Property to Purchaser at Closing in substantially the same condition existing as of the Effective Date (except as may be expressly provided to the contrary in this Agreement), normal wear and tear excepted, free of any right of possession or claim to right of possession by any party other than Purchaser.

4. Closing Costs. Seller shall pay its own attorneys' fees, the costs of recording the Deed, all real estate or other excise taxes, and the premium for the issuance to Purchaser of a standard form ALTA Standard Coverage Owner's Policy of Title Insurance. Purchaser shall pay its own attorneys' fees, the additional premium charges for the issuance of an ALTA Extended Coverage Owner's Policy of Title Insurance ("**Title Policy**"), the cost of any Survey (defined below) Purchaser chooses to obtain or which is required by the Title Company for extended

coverage and any endorsements required by Purchaser, as well as the cost of any premiums charged for any amount of title insurance desired by Purchaser in excess of the Purchase Price. Any closing costs not otherwise provided for herein shall be paid by the party legally responsible therefor or, if no law applies, according to prevailing custom for commercial transactions in County.

5. Prorations.

(a) Seller shall be responsible for and shall promptly pay all utility charges and similar charges with respect to the Property attributable to the period up to and including the Closing Date. All real property ad valorem taxes, special taxes, assessments, deposits, rents and security deposits with regard to any leases, and personal property taxes shall be prorated (employing a 365-day year) between Purchaser and Seller as of the Closing Date based upon the most recently available property assessment. If such assessment is not available for the year in question, taxes shall be re-prorated when the amount thereof can be ascertained. All assessments levied against the Property shall be paid in full by Seller on or before Closing, even if said assessments are due in installments subsequent to Closing. If increased taxes are, after Closing, determined to be due for any year prior to the year in which Closing occurs, Seller shall be obligated for the payment of such additional taxes.

(b) If any errors or omissions are made regarding adjustments and prorations pursuant to this Section 5, the parties shall make the appropriate corrections promptly upon the discovery thereof. If any estimates are made at the Closing regarding adjustments or prorations, the parties shall make the appropriate correction promptly when accurate information becomes available. Any corrected adjustment or proration shall be paid in cash to the party entitled thereto.

(c) The provisions of this Section 5 shall survive the Closing for one year.

6. Inspections Prior to Closing.

(a) Purchaser and its representatives, consultants and contractors shall at all times before the Closing have the privilege, opportunity and right of entering upon the Property, including, without limitation, any buildings and other improvements located thereon, in order to inspect and examine same and perform boundary, topographic and like surveys and inspections of the Property, as well as other tests and inspections of same (including, without limitation, geotechnical and environmental tests, studies and examinations, soil tests, borings, percolation tests and other tests needed to determine surface, subsurface and topographic conditions). Purchaser hereby releases, indemnifies, holds harmless and agrees to defend Seller from all liability, including, without limitation, lien claims or personal injury or damage suits, arising directly out of or relating to any testing or inspection carried out by Purchaser and/or its authorized agents for this purpose; provided that Purchaser shall have no liability or obligation in connection with the discovery or release of any material, or any condition, on, in, or about the Property, unless any such material was brought onto the Property, or any such condition was created solely, by Purchaser. Purchaser will give Seller at least two (2) business days' notice before any materially invasive testing or inspection, and shall promptly return the Property to its prior condition after completion of any such work, subject to applicable law. Purchaser's obligations under this section 6(a) survive termination of this Agreement.



(b) Seller represents and warrants to Purchaser that (i) Seller has the authority to allow Purchaser to enter upon the Property to perform the tests, studies and examinations contemplated hereby or have been obtained by Seller, (ii) Purchaser has the right to such entry by virtue of such authority, and (iii) Seller will hold Purchaser harmless from and against any claim, damage, expense or liability suffered by Purchaser with respect to any claim made against Purchaser as a result of any breach of such representations and warranties, provided that, without expanding by implication the scope of the foregoing covenant, the foregoing agreement to hold harmless shall not apply to any loss, cost, damage, expense or liability arising out of or related to Purchaser's negligence or willful misconduct.

7. Feasibility Contingency.

(a) It is specifically understood that Purchaser presently contemplates construction of, among other improvements, a light industrial project on the Property ("**Project**"), with density, design, improvements, and uses conceptually depicted on Exhibit "D" ("**Project Concept Drawing**"). It is, therefore, specifically agreed that Purchaser's obligation to close hereunder is conditioned upon the satisfaction of each of the following conditions ("**Purchaser Conditions**") within the Feasibility Period, or by such later date as may be provided below (any of which conditions may be waived by Purchaser upon giving written notice of such waiver to Seller) ("**Feasibility Contingency**"). For purposes of this Agreement, the "**Feasibility Period**" shall mean the period of time between and including the Effective Date and the first Business Day ("**Feasibility Expiration Date**") after the date that is one full calendar year following the later of (i) the Effective Date or (ii) the date that Seller delivers all of the Property Materials (defined in Section 7(b) below); provided that the Feasibility Expiration Date will be delayed for so long as the conditions set forth in Section 7(c) are not satisfied. If any of the Purchaser Conditions have not been satisfied as of the then-current Feasibility Expiration Date, then Purchaser shall have the right to extend the Feasibility Period until the date that is the next Business Day following the ninety (90) day period after said Feasibility Expiration Date by converting Fifty Thousand and No/100 Dollars (\$50,000.00) of the principal amount of the Earnest Money Note to cash ("**Extension Deposit**"), which Extension Deposit, along with any previous Extension Deposits, shall be deemed to be part of the Earnest Money Deposit and shall be non-refundable (except for a default by Seller, failure of a Purchaser Condition, casualty, condemnation or in the event any material representation or material warranty of Seller shall not be substantially true and correct at the Closing). Purchaser shall have the right extend the Feasibility Period as provided in this paragraph up to two (2) times.

(b) Within twenty (20) Business Days after the Effective Date, Seller shall furnish to Purchaser the following to the extent in Seller's possession or control, whether in paper, electronic, film or other medium or format: true and correct copies of all documents and records relating to the Property, including, without limitation, leases; appraisals; engineering, environmental, and other preliminary or completed, planning or site studies; surveys; plans; development agreements, licenses, permits, maps, certificates of occupancy, tax statements, delineations; reports; applications; memoranda (interagency or otherwise); meeting minutes; ordinances; and other materials related to the Property ("**Property Materials**"). Further to this, Seller shall furnish any other documentation reasonably requested by Purchaser which might assist Purchaser in its investigation, to the extent in Seller's possession or control. The Purchaser Conditions are as follows:

(i) Purchaser obtaining at its expense (a) a boundary and a topographic survey of the Property (collectively, "**Survey**"), prepared by a Washington Registered Land Surveyor, (b) inspection reports and certifications respecting such Survey prepared by the surveyor as reasonably required by Purchaser and/or the Title Company, and (c) feasibility studies and any other appraisals, inspections, assessments, reports, tests, or studies desired by Purchaser, showing that the Property is satisfactory to Purchaser, as determined in its sole and absolute discretion.

(ii) Purchaser receiving confirmation that all utility lines necessary for the construction and operation of the Project, including but not limited to water, telephone, sanitary sewer, storm sewer, natural gas and electricity lines, will be available at the boundaries of the Property and will be available, sufficient and satisfactory, in Purchaser's sole discretion, for Purchaser's use in connection with the construction and operation of the Project, and that Purchaser's ability to obtain all such utility services will be conditioned solely upon the payment of such tap-on fees and user charges as are normally and uniformly imposed by the utility companies or governmental agencies supplying such services in King County.

(iii) Without limiting clause (i) above, Purchaser's receipt, at Purchaser's sole cost and expense, of (1) soil test studies with regard to the Property confirming that suitable soil conditions exist for construction of the Project; and (2) such tests and studies as Purchaser may deem necessary or appropriate to determine the environmental condition of the Property, such tests and studies to include, without limitation, so-called "Phase I" environmental site assessments and such additional testing, including so-called "Phase II" environmental site assessments, as determined by Purchaser to be necessary, in Purchaser's sole and absolute discretion, and all of which tests, studies, assessments, audits and reports confirm the absence of any and all forms of environmental surface, subsurface, groundwater and/or other contamination and are in all other respects acceptable to Purchaser.

(iv) Seller delivering to Purchaser an estoppel certificate from Seller's existing tenants, if any, in form and substance satisfactory to Purchaser attesting to such tenants waiver or satisfaction of any existing right of first refusal or option.

(v) Mutual execution of the Development Agreement (defined in Section \_\_ below) and full and final approval thereof by the City Council of the City of Carnation, including approval as to form by the city attorney.

(vi) The Title Company being irrevocably and unconditionally committed to issue an ALTA extended coverage owner's policy of title insurance insuring fee title to the Property in Purchaser in an amount equal to the Purchase Price, subject only to the Permitted Exceptions.

(vii) Purchaser satisfying itself as to such other matters as Purchaser, in its sole discretion, deems to be necessary or desirable for the construction and operation of the Project.

In the event Purchaser in its sole and absolute discretion is not satisfied with the Property, in its sole and absolute discretion, Purchaser shall either (i) terminate this Agreement by giving written notice to Seller on or before the end of the Feasibility Period, whereupon Title Company shall distribute to Seller, as applicable, the Earnest Money Deposit, to the extent previously made by Purchaser (and, if prior to full conversion, return the Earnest Money Note to Purchaser) and this Agreement shall be null and void and of no further force or effect with Purchaser and Seller having no further rights, obligations or liabilities hereunder except as otherwise set forth herein, or (ii) waive the Feasibility Contingency and consummate the purchase of the Property as set forth herein.

(c) In addition, Purchaser Conditions shall include the following (unless Purchaser waives any waivable conditions):

(i) Seller's performance of all of its obligations under this Agreement in accordance with the provisions hereof;

(ii) The truth and accuracy of Seller's warranties and representations hereunder; and

(iii) Purchaser's receipt of any and all permits from any and all governmental entities, agencies, and/or departments having jurisdiction over the Property, as necessary or appropriate, in Purchaser's sole and absolute discretion for the construction of the Project and/or any portion thereof.

(vi) The absence of any material change in the status of the use, title, occupancy or physical condition of the Property (including, without limitation, any such change caused by casualty or condemnation), unless solely caused by Purchaser or its consultants or contractors, between the Effective Date and the Closing Date (inclusive) that has not been approved in writing by Purchaser.

Should any one or more of the conditions precedent listed in (c) above not be satisfied or waived in writing by Purchaser on or before the Closing Date, then Purchaser may terminate this Agreement by giving written notice to Seller, whereupon Title Company shall immediately refund to Purchaser all Earnest Money, which termination shall be in addition to exercising any other remedy available to Purchaser hereunder in the event of a failure of a condition precedent due to Seller's acts or omissions.

#### 8. Title Review and Title Policy.

(a) Within five (5) Business Days of the Effective Date, Seller will cause the Title Company to issue to Purchaser, a preliminary commitment for an ALTA owner's policy of title insurance covering the Property, together with a copy of (or electronic link to) each recorded document referred to in the exceptions to title identified in such title commitment (the "**Title Commitment**"). During the period beginning on the Effective Date and ending at 5:00 p.m. (Pacific Time) on the date that is twenty (20) Business Days after Purchaser's receipt of the Title Commitment (the "**Title Review Period**"), Purchaser may give Seller a notice in writing

("Purchaser 's Title Notice"), identifying those matters, if any, appearing in the Title Commitment or Survey to which Purchaser objects ("**Disapproved Exceptions**").

(b) If Purchaser timely objects to any title exceptions in Purchaser 's Title Notice, Seller shall have ten (10) Business Days after receipt of Purchaser 's Title Notice to notify Purchaser in writing that Seller will remove the Disapproved Exceptions prior to Closing or that Seller will not remove the exceptions ("**Seller's Title Response**"). Seller's failure to deliver a Seller's Title Response shall be deemed an election not to remove any disapproved exceptions set forth in Purchaser 's Title Notice.

(c) If Seller elects, or is deemed to have elected, not to remove any Disapproved Exception, Purchaser shall have until the Feasibility Expiration Date, to either:

- (i) terminate this Agreement by giving notice of termination to Seller, in which event the Earnest Money Note shall be returned to Purchaser, or
- (ii) waive its disapproval of those exceptions which Seller will not remove and agree to purchase the Property subject to such disapproved exceptions.

Without limiting Purchaser 's right to object to additional exceptions appearing in an Updated Title Commitment or Updated Survey as provided in Section 8(g) below, Purchaser 's delivery of the entire Earnest Money Deposit shall be deemed to be an election pursuant to (ii) immediately above.

(d) All exceptions that Purchaser has approved hereunder, either by Purchaser 's actual or deemed approval or its actual waiver of a disapproval, as well as (A) non-delinquent general property taxes (which shall be subject to proration as provided herein); (B) exceptions created by or resulting from the acts or omissions of Purchaser; and (C) the customary pre-printed general exceptions contained in the ALTA extended coverage owner's policy form, except to the extent Title Company agrees to delete or modify said exceptions prior to expiration of the Feasibility Period (or such later date as may be provided in Section 8(g)) below) shall be deemed to be "**Permitted Exceptions**" upon issuance of the Title Policy (as defined in Section 8(i) below).

(e) Should Seller fail to remove any Disapproved Exceptions or cause Title Company to commit to irrevocably and unconditionally issue the Title Policy free and clear of such Disapproved Exceptions at or prior to Closing, Purchaser will be entitled to terminate this Agreement and receive a full refund of the Earnest Money Deposit or in the event such Disapproved Exceptions are monetary liens, cure and remove such liens, and all of Purchaser 's cost and expense reasonably incurred in connection with such cure shall be deducted from and credited against the Purchase Price.

(f) Purchaser may elect to obtain such endorsements as Purchaser requires; provided, however, that Seller shall only be responsible for the premium for the standard coverage portion of any title insurance policy and Purchaser shall be responsible for all costs for extended coverage that exceed the cost of the standard policy and for any endorsements requested by Purchaser.

(g) If the Title Company issues an updated title commitment ("**Updated Title Commitment**"), or if Purchaser obtains an updated survey ("**Updated Survey**") of the Property

prior to expiration of the Feasibility Period, in either case setting forth new exceptions for matters which were not included in the original Title Commitment or original Survey or new matters affecting title to the Property are otherwise discovered, then the foregoing process shall be repeated; provided, however that Purchaser will have ten (10) days after receipt of the Updated Title Commitment or Updated Survey (as the case may be), to give written notice of disapproval of any such exception.

(h) Seller shall accomplish any cure that Seller has agreed or is obligated to complete pursuant to this Section 8 on or before the Closing Date and such cure shall become a condition precedent to Closing in favor of Purchaser. If such cure is not accomplished by the Closing Date, Purchaser shall have the following options: either to (i) terminate this Agreement and treat such failure to cure as a Seller's Breach (as defined in Section 15 below) or (ii) waive its objections to the items that Seller did not cure and agree to purchase the Property subject to those items, which shall be deemed Permitted Exceptions.

(i) It shall be a condition to Purchaser's obligation to close, the Title Company shall issue to Purchaser an ALTA standard coverage Owner's Policy of Title Insurance at the Closing in the amount of the Purchase Price showing fee title to the Property vested in Purchaser as the insured (including extended coverage and such endorsements as the Purchaser requests the Title Company issue to Purchaser) for the full amount of the Purchase Price showing no exceptions other than the Permitted Exceptions and otherwise in accordance with the Title Commitment ("Title Policy"). Seller shall pay the premium for an ALTA owner's standard coverage policy of title insurance with the same liability amount and subject to the same exceptions and Purchaser will pay the difference in premium to obtain extended coverage and any endorsements or other additional costs (including without limitation any costs of required surveys) attributable to such coverage.

9. Casualty and Condemnation. If, at any time between the Effective Date and Closing (inclusive), all or any portion of the Property is materially damaged by casualty or condemned by any legally constituted authority for any public use or purpose, then Purchaser may elect either: (i) to terminate this Agreement, in which event Title Company shall immediately refund to Purchaser all Earnest Money, and neither Purchaser nor Seller shall have any further liabilities, obligations or rights with regard to this Agreement (except for matters that by the express terms hereof survive termination); or (ii) to collect at Closing (or at Closing receive a credit against the Purchase Price for) all proceeds from any condemnation or from any insurance policies insuring the Property from damage or destruction and have the terms of this Agreement remain in full force and effect and binding on the parties hereto (with Purchaser receiving a credit against the Purchase Price for any deductibles and the amount of any uninsured casualty). In the event of a condemnation in which Purchaser does not elect to terminate this Agreement pursuant to the foregoing terms, then the term Property, as used herein, shall thereafter refer to the Property less and except any portion thereof taken by such condemnation.

10. Assignment. Neither Seller nor Purchaser shall assign its interest hereunder, except to a related entity, without the prior written consent of the other party.

11. Survival of Closing. All warranties, covenants and representations made herein by either Seller or Purchaser shall survive Closing for one (1) year.

12. Seller's Representations, Warranties and Covenants.

(a) Seller represents, warrants and covenants to Purchaser that:

(i) Seller (x) has complete and full authority to execute this Agreement and to convey to Purchaser good and marketable fee simple title to the Property, in accordance with Section 8 of this Agreement, (y) will execute and deliver such other documents, instruments, agreements, including (but not limited to) affidavits and certificates, as are reasonably necessary to effectuate the transaction contemplated herein, and (z) will take all such additional action reasonably necessary or appropriate to effect and facilitate the consummation of the sale and purchase transaction contemplated herein. Each of the persons executing this Agreement on behalf of Seller further represents and warrants that the persons signing this Agreement on behalf of Seller are duly qualified and appointed representatives of Seller and have all requisite power and authority on behalf of Seller to enter into this Agreement as the valid, binding and enforceable obligation of Seller.

(ii) There are no material defects in or about the Property that would affect Purchaser's ability to develop the Project.

(iii) All assessments that are liens against the Property are shown in the official records of the taxing authorities in whose jurisdiction the Property is located; no improvements (site or area) have been constructed or installed by any public authority, the cost of which may be assessed in whole or in part against any part of the Property in the future; and Seller has not been notified of any possible future improvements that might create an assessment against any part of the Property.

(iv) Seller has not received any notice of, and has no knowledge of, any pending or threatened taking or condemnation of the Property or any portion thereof.

(v) Seller can and will deliver sole and exclusive possession of the Property to Purchaser at Closing, subject to the Permitted Title Exceptions. Seller will not further sell, encumber, convey, assign, pledge, or contract to sell, convey, assign, pledge, or encumber all or any part of the Property, nor restrict the use of all or any part of the Property, nor take or cause or allow to be taken any action in conflict with this Agreement at any time between the Effective Date and (x) Closing, or (y) the earlier termination of this Agreement pursuant to its terms.

(vi) The Property has legal access to and from all street fronts and adjoining rights-of-way.

(vii) Neither the entering into of this Agreement nor the consummation of the transactions contemplated hereby will constitute or result in a violation or breach by Seller of any judgment, order, writ, injunction or decree issued against or imposed upon it, or will result in a violation of any applicable law, order, rule, code, ordinance, or regulation of any governmental authority. There is no action, suit, proceeding or investigation

pending or threatened that creates a lien or that would become a cloud on the title to the Property or any portion thereof or that questions the validity or enforceability of the transaction contemplated by this Agreement or any action taken pursuant hereto in any court or before or by any Federal, district, county, or municipal department, commission, board, bureau, agency or other governmental instrumentality. Seller agrees to indemnify, defend (with counsel satisfactory to Purchaser) and hold harmless Purchaser, its employees, officers, members, attorneys, directors, agents, contractors, assigns and successors-in-interest, from any claims, liabilities or other actions that may arise as a result of the entering into this Agreement by Purchaser with Seller on account of the falsity of this representation.

(viii) Seller has no knowledge of, nor has Seller received any notice of, any actual or threatened action, litigation, or proceeding by any organization, person, individual or governmental agency (including governmental actions under condemnation authority or proceedings similar thereto) against the Property or Seller, nor has any such organization, person, individual or governmental agency communicated to Seller anything that Seller believes to be a threat of any such action, litigation or proceeding.

(ix) Seller has received no notice of and has no knowledge of any violations of law, municipal or county ordinances, or other legal requirements with respect to the Property or with respect to the use, occupancy or construction thereon.

(x) (1) none of the Property has been excavated, (2) no landfill was deposited on, or taken from, the Property, (3) no construction debris or other debris (including, without limitation, rocks, stumps, or concrete) was buried upon any of the Property, (4) no Hazardous Materials (as hereinafter defined) have been deposited on or about the Property, and (5) no asbestos-containing materials have been placed or introduced in any buildings or other improvements on the Property. "**Hazardous Materials**" or similar terms shall mean and include asbestos, asbestos-containing materials, petroleum and petroleum products, the group of organic compounds known as polychlorinated biphenyls, and any substances or materials that are regulated, controlled or prohibited under the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 690, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Sections 9601-9657, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Washington Model Toxics Control Act, Ch. 70A.305 RCW, or any similar State law or local ordinance or any other environmental law, the Federal Water Pollution Control Act, 33 U.S.C. §1251, the Clean Air Act, 42 U.S.C. § 7401, the Toxic Substances Control Act ("TCSA"), 15 U.S.C. § 2601, or any similar State law or local ordinance, or any other Federal, State or local environmental statutes, regulations, ordinances or other environmental regulatory requirements. If any Hazardous Materials that existed on the Property as of Closing shall be discovered and Seller notified prior to Closing, Seller covenants to have same at its sole cost and expense, remediated, removed or cleaned to the satisfaction of all appropriate governmental authorities, such obligation to survive Closing.

(xi) There are no billboards or other signs nor are there cemeteries, grave sites or burial sites or grounds or other sites of historic significance, located on the Property.

(xii) There is no pending or threatened rezoning of, or change of any development regulations or building moratorium affecting, all or any part of the Property.

(xiii) On or before the Feasibility Expiration Date, Seller shall complete and record the short subdivision, City of Carnation Preliminary Short Subdivision Application Number SHP22-0003 ("**Short Plat**"), which Short Plat shall formally segregate the Property from any and all other real property, such that the closing of the transaction contemplated hereby shall not violate the provisions of Ch. 58.17 RCW or other applicable law regulating the segregation of land.

In addition to all other rights and remedies of Purchaser set forth herein, Seller shall indemnify, defend (with counsel satisfactory to Purchaser), and hold harmless Purchaser, its employees, officers, shareholders, attorneys, directors, agents, contractors, assigns and successors-in-interest, from and against any and all claims, actions, loss, cost, damage and expense (including reasonable attorneys' fees, including fees on appeal) resulting from a breach by Seller of any of the representations, warranties and covenants contained in this Agreement.

(b) At all times prior to Closing, and without limiting the provisions of subparagraph (a) above or any other provision of this Agreement, Seller shall maintain the Property free from waste and neglect, shall maintain its existing insurance coverages thereon and shall keep and perform or cause to be performed all obligations of the owner of the Property under any recorded title documents, applicable laws and any mortgage affecting the Property. Seller shall tender possession of the Property to Purchaser in the same condition the Property was in when last inspected by Purchaser, normal wear and tear and casualty damage excepted, to the end that Seller shall not in any way take any action, permit or acquiesce in any action or fail to take any action that will cause a material increase in Purchaser's site development costs or otherwise delay or adversely affect any construction activities contemplated by Purchaser in connection with the Project. Without limitation, from the Effective Date to the Closing Date or earlier termination of this Agreement, Seller shall not do, suffer or permit, or agree to do, any of the following: (i) enter into any transaction with respect to or affecting the Property that would in any way prevent Seller's full performance hereunder, or limit or adversely affect Purchaser's rights hereunder or as an owner of the Property following Closing (including, without limitation, anything that may subject Purchaser to any cost, liability or expense or otherwise interfere with, delay or increase the cost of Purchaser's acquisition, development, construction and operation of the Project on the Property); (ii) sell, encumber or grant any interest in the Property or any part thereof in any form or manner whatsoever; (iii) enter into, amend, waive any rights under, terminate or extend any document or instrument affecting the Property without the prior written consent of Purchaser, or (iv) without limiting the foregoing, change the grade or other physical characteristics of the Property in any respect unless Purchaser has given its prior written approval to any such change. Seller shall indemnify, defend (with counsel satisfactory to Purchaser) and hold harmless Purchaser, its employees, officers, shareholders, attorneys, directors, agents, contractors, assigns and successors-in-interest, from and against any loss, cost, damage, expense or liability (including reasonable attorneys' fees, including fees on appeal) suffered or incurred as a result of Seller's breach of the foregoing covenant (such covenant to survive Closing), and, without limiting any of Purchaser's rights and remedies hereunder, Purchaser shall have the unconditional right, at its option, to extend the Feasibility Period and/or the Closing Date by up to one hundred eighty (180)



days as a result of any such breach by Seller.

(c) Seller shall not enter into, amend, waive any rights under, terminate or extend any document or instrument affecting the Property without the prior written consent of Purchaser,

13. Notices. All notices shall be personally delivered, sent via a nationally recognized overnight courier service (such as Federal Express, UPS or DHL) or sent by certified United States mail (return receipt requested), with a courtesy copy concurrently

sent via electronic mail. Notices sent via personal delivery, overnight courier service and electronic mail will be effective upon receipt, and notices sent by mail will be effective three (3) Business Days after being deposited with the United States Post Office, postage prepaid. Seller and Purchaser agree that notice may be given on behalf of each party by the counsel for each party and notice by such counsel in accordance with this Section 13 shall constitute notice under this Agreement. The addresses to be used in connection with such correspondence and notices are the following, or such other address as a party shall from time to time direct in writing by notice given pursuant to this Section 13, but any such notice of a new address shall not be effective until actually received by the other party:

Seller: City of Carnation  
4621 Tolt Avenue, P.O. Box 1238  
Carnation, WA 98014 \_\_\_\_\_  
ana.cortez@carnationwa.gov \_\_\_\_\_

with a copy to: \_\_\_\_\_  
\_\_\_\_\_

Purchaser: [Remlinger Entity]  
32610 NE 32<sup>nd</sup> Street  
Carnation, WA 98014  
Phone: (206) 300-0772  
Email: [gary@remlingerfarms.com](mailto:gary@remlingerfarms.com)

with a copy to: The Remlinger Group  
Attn: Drake Remlinger  
Phone: (425) 330-1160  
Email: drake@remlingergroup.com

with a copy to: Ojala Law, Inc., P.S.  
PO Box 211  
Snohomish, WA 98291  
Attn: Nate R. Veranth

Phone: (425) 788-2222  
Email: [nate@ojalalaw.com](mailto:nate@ojalalaw.com)

14. Brokers.

(a) Each party represents and warrants to the other that neither has employed, retained or consulted a broker, agent or finder in carrying on the negotiations in connection with this Agreement or the purchase and sale referred to herein. Seller and Purchaser each hereby indemnifies and agrees to defend and hold the other harmless from and against any and all claims, demands, causes of action, debts, liabilities, judgments and damages (including, without limitation, court costs and attorneys' fees, inclusive of fees incurred in connection with enforcement of this indemnity and fees on appeal) that may be asserted or recovered against the indemnified party on account of any brokerage fee, commission or other compensation arising by reason of the indemnitor's breach of these representations and warranties the foregoing indemnities being herein referred to as the "**Brokerage Indemnities**"). The Brokerage Indemnities shall survive Closing or any sooner termination of this Agreement, notwithstanding any contrary provision of this Agreement.

(b) Drake Remlinger is a member of Purchaser and is a licensed real estate broker in the State of Washington.

15. Default.

(a) Seller's Default. If the purchase and sale contemplated by this Agreement is not consummated because of the default of Seller, Title Company shall immediately refund to Purchaser the Earnest Money Deposit without prejudice to any other legal or equitable right or remedy of Purchaser against Seller, including (but not limited to) specific performance. In addition, if the failure to close was based on a breach of warranty or intentional default by Seller, Seller shall immediately reimburse Purchaser all of Purchaser's out-of-pocket due diligence costs up to 350,000.00.

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(b) Purchaser's Default. If Purchaser fails or refuses to perform its obligations under this Agreement, and such failure or refusal is not cured within ten (10) Business Days after Purchaser's receipt of notice of such failure from Seller, then Seller may as its sole and exclusive remedy have, and Title Company shall deliver to Seller, the Earnest Money actually paid in cash to Title Company prior to the default, as full, complete and final liquidated damages, and not as a penalty. Seller and Purchaser hereby agree that it would be difficult, if not impossible, to ascertain the damages accruing to Seller as a result of a default by Purchaser under this Agreement, but that the parties have agreed upon the Earnest Money paid prior to the default as a reasonable estimate thereof. The payment of said liquidated damages, therefore, shall constitute Seller's sole and exclusive remedy against Purchaser at law and in equity and shall be in lieu of the exercise by Seller of any other legal or equitable right or remedy that Seller may have against Purchaser as a result of Purchaser's default.

16. Date of Agreement; Dates. If this Agreement is not signed simultaneously by both parties, it shall be considered to be an offer made by the party first executing it to the other party. In such event, said offer shall expire, unless sooner revoked, at midnight on the fifth (5th) Business

Day following execution by the offering party, unless by that time one copy executed by the party to whom the offer has been made shall have been placed in the mail or personally delivered to the party making the offer. The "**Effective Date**" of this Agreement shall be the date upon which it is accepted by the party to whom the offer is made. Whenever the last day for the exercise of any privilege or the discharge of any duty hereunder shall fall upon a Saturday, Sunday or any United States or State holiday, the party having such privilege or duty shall have until 11:59 p.m. Local Time on the next succeeding Business Day to exercise such privilege or to discharge such duty.

17. Miscellaneous.

(a) Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Washington.

(b) Waiver. Failure of either Purchaser or Seller to exercise any right given hereunder or to insist upon strict compliance with regard to any term, condition or covenant specified herein, shall not constitute a waiver of Purchaser's or Seller's right to exercise such right or to demand strict compliance with any term, condition or covenant under this Agreement.

(c) Counterparts. This Agreement may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Agreement.

(d) Captions. All captions, headings, paragraph and subparagraph numbers and letters are solely for reference purposes and shall not be deemed to be supplementing, limiting, or otherwise varying the text of this Agreement.

(e) Severability. The invalidity or unenforceability of a particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

(f) Time of the Essence. Time is of the essence of this Agreement.

(g) No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties hereto, to any person or entity other than the parties hereto.

(h) Exhibits and Schedules. The exhibits attached hereto are hereby incorporated herein by this reference.

(i) Amendment to this Agreement. Neither this Agreement nor any provision hereof may be changed, amended, modified, waived or discharged orally or by any course of dealing, but only by an instrument in writing signed by the party against which enforcement of the change, amendment, modification, waiver or discharge is sought.

(j) Fees and Other Expenses. Except as otherwise provided herein, each of the parties shall pay its own fees and expenses in connection with this Agreement.

(k) Entire Agreement. This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Purchaser and Seller as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of either party, shall be of any effect unless it is in writing and executed by the party to be bound thereby.

(l) Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto (as permitted pursuant to the provisions of this Agreement).

(m) Attorneys' Fees. If either party brings or commences any legal action or proceeding to enforce any of the terms of this Agreement (or for damages by reason of an alleged breach of this Agreement), the substantially prevailing party, if any, in such action shall be entitled to recover from the other party all reasonable attorneys' fees that may have been incurred, including any and all costs and expenses incurred in enforcing, perfecting and executing such judgment, and including all costs of appeal.

18. Development Agreement. The parties acknowledge and agree that Purchaser is purchasing the Property for purposes of constructing the Project in accordance with a development agreement, in the form attached hereto as Exhibit "E" and incorporated herein by this reference.

19. Moratoria. If, at any time prior to Closing, the City of Carnation, or any other governmental entity having jurisdiction over the Property, shall impose any development restrictions, including, without limitation, any moratorium, that materially inhibits, interferes with, or stops Purchaser's ability to apply for and/or receive final approval of, Purchaser's development permits ("**Development Restrictions**"), then the Feasibility Period shall be extended (or reinstated, as applicable) until the date that is one hundred eighty (180) days following the date that the Development Restrictions are repealed or expire. In such event, all relevant dates and timelines hereunder shall be adjusted accordingly.

20. Force Majeure. If, through no fault of Purchaser or Seller, and by reason of a Force Majeure Event (defined below), any contingency or condition in the Agreement cannot be timely completed, then all time periods relative to the applicable contingency or condition, including the time periods for the related notices and responses thereto, shall be extended for a reasonable time under the circumstances, up to one hundred eighty (180) days, and the contingency or condition shall be satisfied as soon as reasonably practicable. "**Force Majeure Event**" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence, making the means of performance objectively impossible. Force Majeure Events included acts of God, war, riots, strikes, fire, floods, epidemics, pandemics.

*[signatures on following page]*

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year written below.

**SELLER:**

**CITY OF CARNATION**, a  
Political subdivision of the State of Washington

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date of Execution by Seller: \_\_\_\_\_

**PURCHASER:**

**[REMLINGER ENTITY]**  
a Washington limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date of Execution by Purchaser: \_\_\_\_\_

Remlinger/City of Carnation

EXHIBITS TO BE ADDED

- EXHIBIT "A" – Legal Description of Property
- EXHIBIT "B" – Earnest Money Note
- EXHIBIT "C" – Form of Deed
- EXHIBIT "D" – Project Concept Drawing
- EXHIBIT "E" – Form of Development Agreement

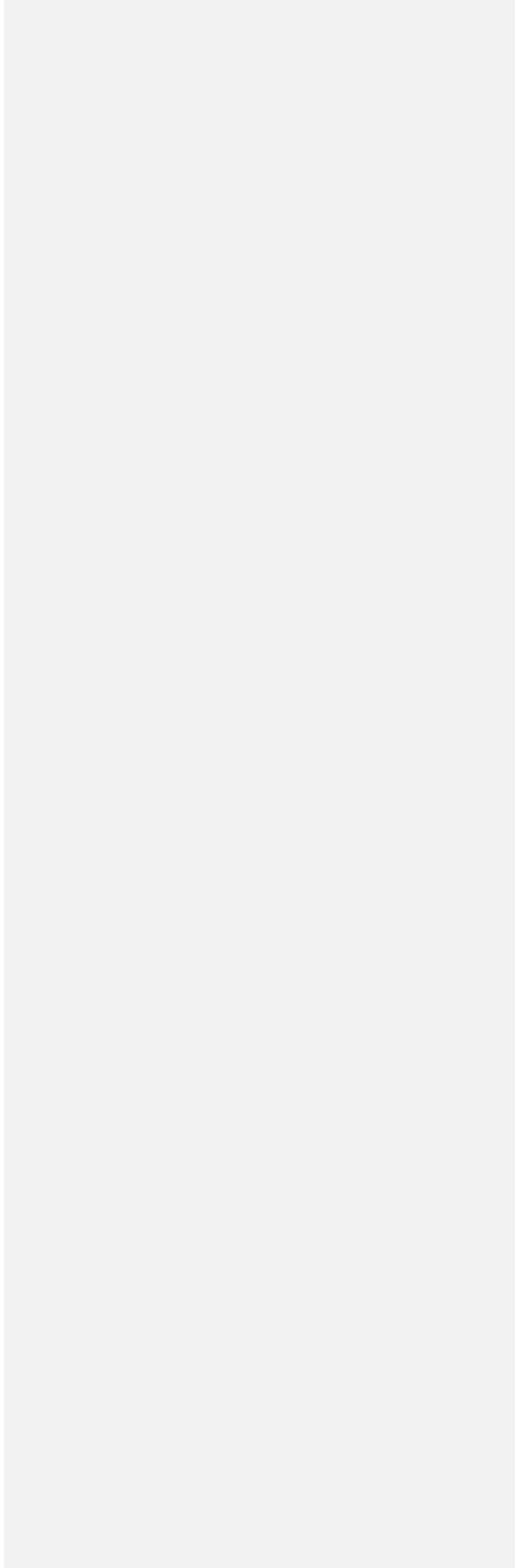


EXHIBIT "A-1"

Legal Description of the Land:

[Formal legal description of Lot 2 of the Short Plat to be provided]

Remlinger/City of Carnation

EXHIBIT "B"

Form of Earnest Money Note

*[see attached]*

Remlinger/City of Carnation



EARNEST MONEY PROMISSORY NOTE

\$120,000.00

Seattle, Washington

\_\_\_\_\_, 2023

FOR VALUE RECEIVED, [**REMLINGER ENTITY**], a Washington limited liability company ("**Maker**"), promises to pay to Chicago Title Insurance Company, 3002 Colby Avenue, Suite 200, Everett, Washington ("**Title Company**"), the sum of ONE HUNDRED TWENTTY THOUSAND AND NO/100ths DOLLARS (\$120,000.00) to be held in escrow for the benefit of both Maker and THE CITY OF CARNATION, a political subdivision of the State of Washington ("**Seller**").

The indebtedness evidenced by this promissory note (this "**Note**") is the Earnest Money described in the Real Property Purchase Agreement between Maker, as "Purchaser", and Seller dated effective \_\_\_\_\_, 2023 ("**Purchase Agreement**"). Title Company will hold this Note in escrow. This Note is not subject to interest.

The indebtedness evidenced by this Note will only be due as provided by the terms and conditions of the Purchase Agreement.

Upon Maker's payment in full of the indebtedness evidenced by this Note, the entire amount so paid will be conclusively deemed to be the "Earnest Money" under the Purchase Agreement, and Title Company will deposit, hold, pay and refund such Earnest Money in accordance with the terms of the Purchase Agreement. Title Company's acceptance of this Note will be conclusively deemed to be Title Company's agreement to the terms of this Note.

This Note will be construed and enforced in accordance with the laws of the State of Washington, and venue for any action to enforce or collect this Note will be in Seattle, King County, Washington.

[**REMLINGER ENTITY**],  
a Washington limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

EXHIBIT "C"

Form of Statutory Warranty Deed

Recording Requested by and  
After Recording Return to:

[\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]

STATUTORY WARRANTY DEED

Grantor: THE CITY OF CARNATION, a political subdivision of the State of Washington
Grantee: [REMLINGER ENTITY], a Washington limited liability company ("Purchaser"),
Abbreviated Legal Description: [\_\_\_\_\_] Complete legal description on Exhibit A.
Assessor's Tax Parcel ID#: [\_\_\_\_\_]

For the consideration of [Ten and no/100 Dollars], and other valuable consideration, THE CITY OF CARNATION, a political subdivision of the State of Washington ("Grantor"), does hereby convey and warrant to [REMLINGER ENTITY], a Washington limited liability company ("Grantee"), the real property situated in King County, Washington, legally described on Exhibit A attached hereto and incorporated herein.

SUBJECT TO: Items listed on Exhibit B attached hereto and incorporated herein.

[Signatures Follow]

DATED: This \_\_\_\_ day of \_\_\_\_\_, 2024.

GRANTOR:

CITY OF CARNATION, a political  
subdivision of the State of Washington

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney for the City of  
Carnation, WA, a political subdivision  
of the State of Washington

STATE OF WASHINGTON

COUNTY OF \_\_\_\_\_

ss.

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of **THE CITY OF CARNATION**, a political subdivision of the State of Washington, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington,  
residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_

EXHIBIT A  
TO STATUTORY WARRANTY DEED

Legal Description

[TO COME]

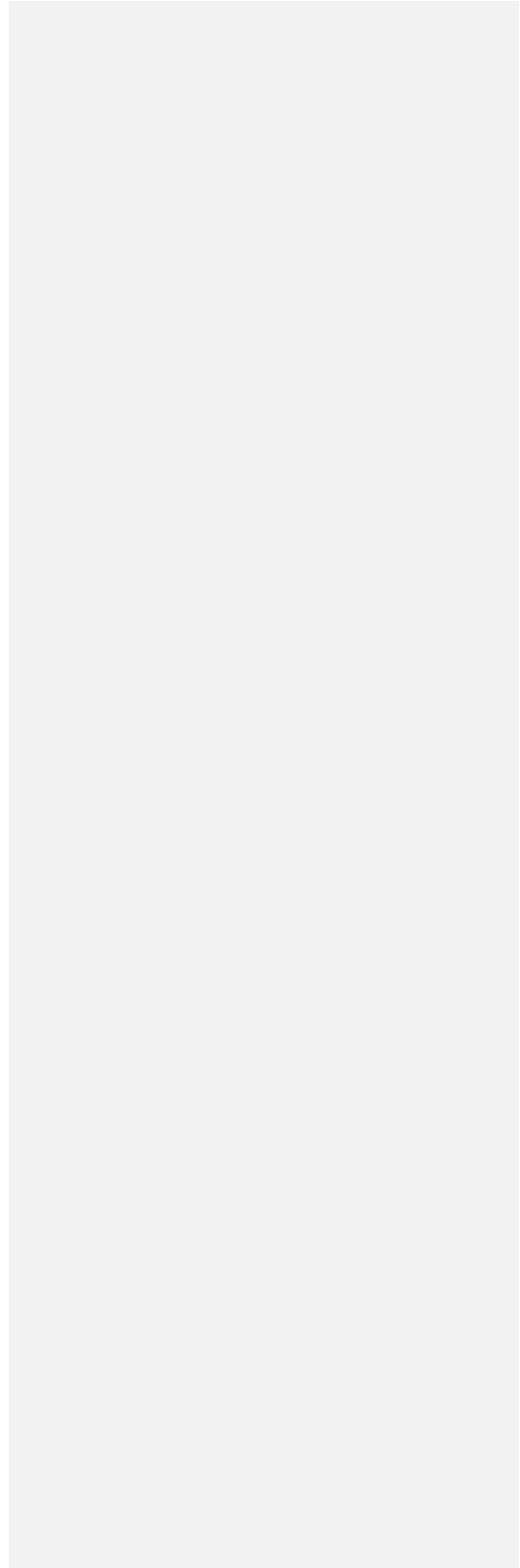


EXHIBIT B  
TO STATUTORY WARRANTY DEED

Permitted Exceptions

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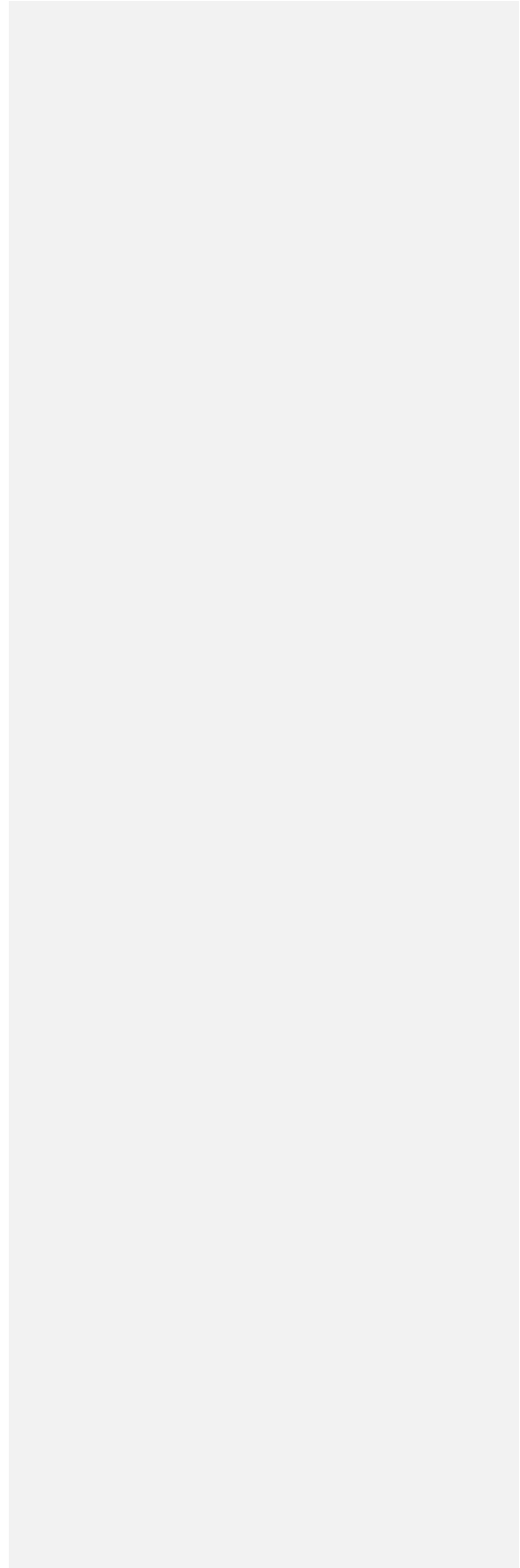


EXHIBIT "D"

Project Concept Drawing

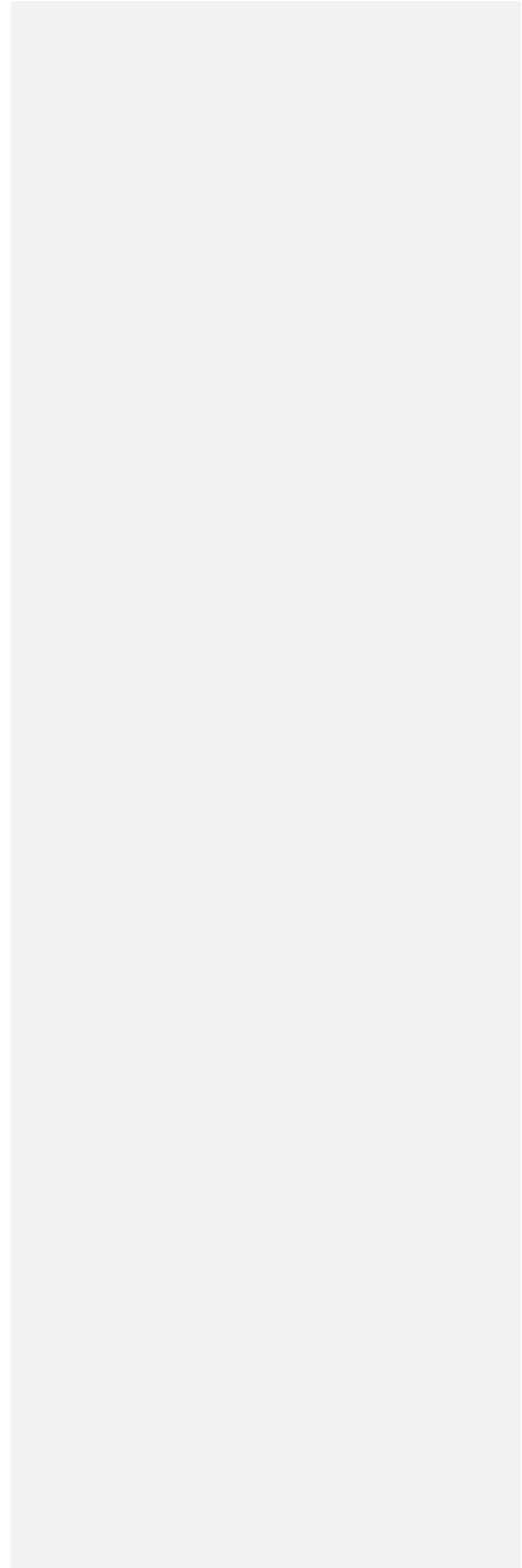


EXHIBIT "E"

Form of Development Agreement—Attached  
[TBD]

