

RETURN ADDRESS

CT6, LLC
P.O. Box 1419
Battle Ground, WA 98604

**Landing on the Cowlitz Mixed-Use Master Planned Development
Draft Development Agreement
Between the City of Castle Rock, Washington, CT6, LLC, Raymond Pieren, and MLC Ventures
LLC**

Document Title : Development Agreement

Grantors : CT6, LLC a Washington limited liability company;
Raymond Pieren; MLC Ventures LLC

Grantee : City of Castle Rock, Washington, a Washington
Municipal Corporation

Abbreviated Legal Description : Parcel 30812 including Adjusted Tract B:814
(CASTLE ROCK OUTLOT) -CROL -300, 301 14 -9N -2W
HUNTINGTON B DLC.

Parcel 308640200: 814 (CASTLE ROCK OUTLOT) -
CROL -413 24 -9N -2W HUNTINGTON B DLC FKA T-9A
PT LOT 1 BETWN

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Parcel 30864: 814 (CASTLE ROCK OUTLOT) -CROL -
355 23 -9N -2W HUNGTINGTON B DLC. EXC CROL
355A FEE 3454723

Parcel 308100100: 814 (CASTLE ROCK OU TLOT) -
CROL -298, 299 14 -9N -2W B HUNTINGTON DLC.
CR08080 LOT 2.

Parcel 30813:814 (CASTLE ROCK OUTLOT) -CROL -
302 14 -9N -2W HUNTINGTON B DLC. EXC CROL 306
FEE 639136 EXC

Parcel 6143802: 694 (HUNTINGTON B DLC) 23 -9N -
2W T-10C-2,30B INCL FEE 900326031

Parcel 308640100: 814 (CASTLE ROCK OUTLOT) -
CROL -355A 23 -9N -2W HUNTINGTON B DLC

Full Legal Description : See attached **Exhibit A**

Assessor's Property Tax Parcel Nos. : 30812, 308640200, 30864 (Pieren); 308100100
(MLC); 30813, 6143802, 308640100 (CT6, LLC)

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Draft Castle Rock Landing on the Cowlitz Development Agreement

This Development Agreement (Agreement) is entered into effective the ____ day of _____, 2023, by and between the City of Castle Rock, Washington, a Washington municipal corporation (City) and CT6, LLC, a Washington limited liability company (CT6, LLC), Raymond Pieren, and MLC Ventures LLC (collectively, Owners). For and in consideration of the mutual covenants contained herein, the City and the Owners do hereby agree as follows regarding the real property legally described in **Exhibit A**, attached hereto, and incorporated into this Agreement by reference known as the Property or Landing on the Cowlitz.

1. Recitals.

1.1 The City of Castle Rock. The City of Castle Rock is a code city organized under the laws of Washington State. It has authority to enact laws and enter into agreements to promote the health, safety, and welfare of its citizens and to control the use and development of property within its jurisdiction. This authority includes the execution of Development Agreements in accordance with the provisions of RCW 36.70B.170-.210.

1.2 CT6, LLC. CT6, LLC is a Washington limited liability company. It holds property interests in the Property and has been designated by the following property owners as the Developer of Landing on the Cowlitz (formerly known as Castle Rock Landing on the Cowlitz).

1.2.1 CT6, LLC owns tax parcel number 30813 (4.33-acres), 6143802 (6.45 acres); and tax parcel number parcel 308640100 (.34-acres).

1.2.2 MLC Ventures LLC owns tax parcel number 308100100 (1.06-acres); and

1.2.3 Raymond Pieren owns tax parcel number 30812 (20.88-acres), tax parcel number 30864 (78.34-acres), and tax parcel number 308640200 (7.81-acres).

1.3 CT6, LLC, MLC Ventures LLC, and Raymond Pieren have authorized Shane Tapani to serve as the Project Sponsor and duly authorized agent to act on their behalf. The City shall be notified in writing of any changes to the Project Sponsor or authorized agent(s).

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1.4 Master Planned Developments and Approval. The City of Castle Rock has adopted regulations governing the preparation, review, approval, and implementation of Master Planned Developments in all zoning districts in the city (CRMC 17.100). On October 25 and November 8, 2021, the Castle Rock City Council held hearings and adopted Ordinance 2021-10 approving the application for Castle Rock Landing on the Cowlitz as a Mixed-Use Master Planned Development on certain terms and conditions (Project).

1.4.1 Prior to City Council action on Ordinance 2021-10, the City issued a Revised MDNS with Mitigating Measures that were included as conditions of approval.

1.4.2 The conditions of approval in Ordinance 2021-10 and the required SEPA Mitigation Measures have been integrated into a single document and are adopted as part of this Development Agreement by this reference (**Exhibit C**).

1.5 Voluntary Agreement. The City and the Owners agree that each has entered into this Agreement knowingly and voluntarily, and that each agrees to be bound by the terms and conditions set forth herein.

1.6 Effective Date. This Agreement will be effective upon signature by all parties and will remain in full force and effect for a term of twenty years, unless extended or terminated in accordance with the provisions within this Agreement.

1.7 Materiality of Recitals. The City and the Owners agree that the foregoing recitals are material to this Agreement and that each party has relied upon the material nature of such recitals in entering into this Agreement.

2. Purpose. The general purpose of this Development Agreement is to:

2.1 Define and describe the development plan for the Property consistent with the Ordinance.

2.2 Provide for predictable designation of permitted uses and development standards for the Property.

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2.3 Provide for predictable vehicular and pedestrian access, use, and circulation to serve the Property.

2.4 Reserve transportation, sanitary sewer, and water capacity for the full development of the Property as envisioned.

2.5 Provide for the appropriate phasing of transportation and other improvements to coincide with the phased development of the Property.

2.6 Provide for vesting of development rights.

2.7 Ensure that the development of the property implements the provisions of any approved Master Planned Development and related permits as required by applicable City code.

3. Definitions.

3.1 “Conditions of Approval” shall mean Conditions of Approval of the Castle Rock Landing on the Cowlitz project adopted in Ordinance no. 2021-10 and the SEPA Mitigation Measures attached to the Revised Mitigated Determination of Nonsignificance issued by the City of Castle Rock for the project and any conditions of approval applied to future licenses, entitlements, master plan modifications, permits, or other decisions. If there is a conflict between any Conditions of Approval in the foregoing permits and decisions, the Condition of Approval in the most recent document controls.

3.2 “Development Standards” shall mean applicable provisions set forth in Titles 12, 15, 16, 17, and 18 of the Castle Rock Municipal Code, and adopted Development Policies and Public Works Standards.

3.3 “Project” shall mean Landing on the Cowlitz (formerly known as Castle Rock Landing on the Cowlitz), as approved by Ordinance no. 2021-10 and as modified pursuant to this Agreement, or through subsequent City modification processes.

3.4 “Property” shall mean that real property legally described in **Exhibit A**.

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4. Approved Mixed Use Master Planned Development.

4.1 Legal Description of Properties. The approved Castle Rock Landing on the Cowlitz Master Planned Mixed-Use Development applies to the following properties totaling approximately 118 acres legally described in **Exhibit A** hereby adopted by reference (Property).

4.1.1 Tax parcel number 30812 including Adjusted Tract B (20.88-acres), 2542 Larsen Lane SW.

4.1.2 Tax parcel number 308100100 (1.06-acres), 1955 Huntington Avenue S.

4.1.3 Tax parcel number 30813 (4.33-acres).

4.1.4 Tax parcel number 30864 (78.34-acres).

4.1.5 Tax parcel number 6143802 (6.45-acres).

4.1.6 Tax parcel number 308640100 (.34-acres).

4.1.7 Tax parcel number 308640200 (7.81-acres).

4.2 Approved Master Plan. The Castle Rock Landing on the Cowlitz Master Plan (aka Landing on the Cowlitz) as approved by the City Council includes the following documents and are hereby adopted by reference (Project).

4.2.1 Approved Master Site Plan (**Exhibit B**).

4.2.2 Integrated Conditions of Master Site Plan Approval Required SEPA Mitigation Measures. (**Exhibit C**).

4.2.3 Findings of Fact and Conclusions of Law Number 40-81 dated 09-14-21 (**Exhibit D**).

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4.2.4 All subsequent development activities must be consistent with the approved Master Site Plan unless a modification is approved in writing in accordance with the provisions of this Agreement, including the exhibits.

4.3 Modifications. The Project area within the Property may be increased, decreased, or otherwise modified by mutual agreement, in writing, of the parties in accordance with the provisions governing Minor and Major Modifications in Condition of Approval 24 of the Master Site Plan Approval (**Exhibit D**) or this Development Agreement. This may include, but is not limited to boundary line adjustments, exempt and non-exempt land divisions, the acquisition of additional property, and the execution of a long-term lease(s) with the Washington State Department of Natural Resources. Adjustment of property lines and creation or consolidation of lots following the foregoing provisions is limited to the Property. Expansions of the Project area beyond the boundaries of the Property must comply with the provisions governing Minor and Major Modifications, as applicable.

4.3.1 CT6, LLC may with the consent of the applicable property owner, propose adjustments to the boundaries of the land use areas depicted on the Master Site Plan in accordance with the provisions governing Minor and Major Modifications in the Master Site Plan approval or this Development Agreement.

The City agrees that boundary line adjustments for properties within the approved Master Plan under common ownership may be approved by the City through an expedited process, consistent with chapter 58.17 RCW, because such adjustments are not divisions of land under state law nor boundary line agreements necessary to resolve a dispute or establish boundaries of uncertain location under RCW 58.04.007. Chapter 16.34 CRMC will not apply to such boundary line adjustments. The expedited process is as outlined in **Exhibit E** and must result in the setting of monuments and recording of new legal descriptions and a map of the adjusted lots with the Cowlitz County Auditor.

4.3.2 Park and Recreational Facilities. CT6, LLC is in consultation with the Washington State Department of Natural Resources (DNR) regarding the potential for CT6, LLC to provide access to DNR land for recreational purposes, provided that the DNR properties shall not be used to satisfy the on-site recreation standards for the residential subdivision.

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5. Development Standards – Vesting. All implementing actions shall comply with the applicable provisions of the City of Castle Rock Municipal Code in effect on November 8, 2021 (which the City must keep separately intact on file for future reference), the Conditions of Approval (**Exhibit D**), and the required SEPA Mitigation Measures (**Exhibit C**), unless otherwise provided by this Agreement (collectively, Applicable Standards). The Project, as defined in Section 2.3, shall be vested to all of the Applicable Standards and may not be subject to later enacted land use control ordinances during the term of this Agreement, except as provided in Sections 5.1, 5.2, and 5.3, unless CT6, LLC elects to be subject to any later enacted land use control ordinance. CT6, LLC is entitled to build out the Project during the term of this Agreement consistent with the Applicable Standards even if a shorter approval period is established in City code for master plan, site plan, subdivision, or any other land use approval required for full buildout of the Project.

5.1 International Building and Fire Codes. All development activities shall comply with the provisions of the International Building, Fire, Mechanical, and related International Codes under chapter 19.27 RCW, in effect at the time complete applications for implementing approvals are submitted for processing.

5.2 Utility Standards. Unless other standards are specifically agreed to in this Agreement, the final engineering design of all stormwater and utility infrastructure must be in accordance with the City’s Development Policies and Public Works Standards and fire standards adopted and in force at the time that subsequent applications are submitted and deemed by the City to be complete and ready for processing. The final stormwater design shall be evaluated by the Plan Approving Authority for compliance with the drainage requirements outlined in the ordinances and rules established by the State of Washington and the City of Castle Rock at the time of application. All contributing drainage basins, courses, and pathways shall be reviewed. If existing drainage patterns are found to contribute runoff to the project site during peak flow conditions (up to and including the 100-year storm event), the overall stormwater management plan and design shall demonstrate mitigation of contributing runoff in compliance with the current stormwater regulations at the time of application.

5.3 Different Regulations. The City has the authority to impose new or different regulations to the extent required as follows, provided, that such action may only be taken by legislative act of the Castle Rock City Council after appropriate public process:

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5.3.1 To address a serious threat to public health and safety as required by RCW 36.70B.170(4); or

5.3.2 To avoid a decision by a state or federal administrative agency, or a court of competent jurisdiction, that the City's eligibility for funding, grants, program eligibility, or other resources sought by the City would be impaired (for example, if approval of any portion of the development would prohibit the City from being eligible under the National Flood Insurance Program or result in higher premium rates to the City or its property owners).

6. Modified Development Standards. The following modifications to the City Development Standards shall apply, provided that the Owners may by mutual agreement adopt more contemporary standards that have been adopted by the City. Further modifications may be approved by the City in accordance with the provisions governing Minor and Major Modifications in this Agreement.

6.1 Residential Uses. CT6, LLC contemplates pursuing a single-family detached subdivision within the residential portion of the Master Plan. If CT6, LLC later decides to pursue approval of attached housing units, not including apartments, which are already approved as part of the Master Plan, any modified standards applicable to the attached housing project, including setback requirements, will be documented through a memorandum of understanding between the City and CT6, LLC, and will not require an amendment to the Master Plan or this Development Agreement.

6.1.1 Single-family lots shall be a minimum of 3,500 square feet in size.

6.1.2 Buildings within single-family subdivisions must comply with the setback requirements for the R-2 zone except that for corner lots, in lieu of meeting those setback requirements, CT6, LLC must follow the minimum sight distance triangle and fencing requirements in Section 4.12 *Sight Obstruction* of the City's development regulations and public works standards. Sight distance triangles shall be shown on building permit drawings for buildings on the corner lots to ensure that sight distance requirements are met with the proposed building placement.

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6.1.3 Single-wide mobile homes for residential use are not allowed on the Property, individually or in a mobile home park. A single-wide mobile home means a structure designed for residential use, up to 14 feet wide, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term mobile home does not include a recreational vehicle or a manufactured or modular home built on a permanent foundation that does not meet the definition of single-wide mobile home.

6.1.4 A public park shall be dedicated with residential development. The park shall be sized at a ratio of one acre per 750 residents (mini park as defined in the Castle Rock Park and Recreation Plan, adopted 2022) anticipated in the development. The number of persons within the proposed residential development shall be calculated at the rate of 3 persons per household. Using the foregoing ratios, the required park allocation will be set according to the projected population. The park shall be developed with lawn, landscape, irrigation (if needed), fencing, at least one picnic shelter with picnic table meeting ADA requirements and standards, and an adequate playground that satisfies the needs of pre-school and upper primary aged children, or similar amenities meeting the needs of the community. The picnic shelter shall provide a minimum footprint of 12 feet by 12 feet, with a roof covering. Specific design, layout, and amenities shall be reviewed with the preliminary subdivision for the residential community.

6.2 Preliminary Plat Review Process. The City will review any preliminary plat consistent with CRMC 16.12. Final plat approval may proceed in phases, with or without the concurrent approval of individual lot site plans. It is the intent of CT6, LLC to develop and record the plat in multiple phases according to a phasing plan. CT6, LLC reserves the right to develop the phases out of order and not chronologically according to the phase number.

6.2.1 Infrastructure required for each phase must be in place, or the financial obligation to provide the infrastructure secured, at final plat approval for each phase, if necessary to serve that phase.

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6.2.2 Infrastructure must be designed to “standalone” and function in accordance with City standards, regardless of when future phases are approved and constructed.

6.2.3 The City may require as a condition of approval of each phase, that the applicant take additional measures to protect critical areas within the project boundaries from direct and indirect adverse impacts that may be attributable to project phasing, or the use of facilities such as trails. This may include but is not limited to the installation of split rail fences, gates, and/or signage.

6.2.4 The City agrees to consider an amendment to its code providing for exempt subdivisions allowed under RCW 58.17.040(2) for non-residential properties within an approved master plan. An exempt land division must be reviewed by the City through a consistency process outlined in **Exhibit E**.

6.3 **Continued Collaboration between City and CT6, LLC; Updated Environmental Review**. Once CT6, LLC has defined a specific development proposal that it intends to seek City approval for, CT6, LLC and the City agree to meet monthly, or more or less often as needed, to discuss any substantial development updates to the Master Plan until such time when the proposal is capable of approval. Either party may cancel any meeting if there is no new information to discuss. CT6, LLC and the City agree to initiate additional environmental review under the State Environmental Policy Act for specific proposals consistent with the Master Plan only if there are substantial changes from what was studied in the environmental review for the Master Plan so that the proposal is likely to have significant adverse environmental impacts, or there is new information indicating a proposal’s probable significant adverse environmental impacts.

6.4 **Critical Area Impact Mitigation**. Prior to any required critical area impact mitigation, CT6, LLC must ensure that its professional consultants with expertise in wetlands, fish and wildlife habitat, or similar field will verify actual critical areas at the time of proposed development impacts. Critical areas and impacts may be different than what was in existence at the time of Master Site Plan approval.

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6.5 Utility Infrastructure Engineering and Design Standards. With regard to minimum elevations of any proposed improvements within the Property, only structures that require a certificate of occupancy or are related to critical infrastructure operations and maintenance are required to be constructed above the 100-year flood elevation. The standards and procedures for establishing the elevation are set forth in **Exhibit J**.

6.6 Reservation of Sanitary Sewer and Water Capacity. There is hereby reserved for the exclusive use of the Property for the Project for the term of this Agreement the following capacities:

6.6.1 Up to 40,000 gallons per day of sanitary sewer via at least one pump station to be located on or in the vicinity of the Property.

6.6.2 Up to 40,000 gallons per day of potable public water.

6.6.3 Upon reaching 80 percent of the reserved capacity in Section 6.6.1 and 6.6.2, CT6, LLC may obtain additional capacity reservation from the City to serve development within the Property up to an additional 40,000 gallons per day each for water and sewer (80,000 gallons per day total each for water and sewer) upon request to serve development in an approved master plan. In addition, if a third party developer seeks the remaining capacity in the water and sewer system prior to CT6, LLC reserving the capacity needed for full buildout of the Property, the City must first offer that remaining capacity to CT6, LLC to purchase up to an additional 40,000 gallons per day each of water and/or sewer (80,000 gallons per day total each for water and sewer). The City and CT6, LLC agree to reserve to CT6, LLC the additional capacity requested by CT6, LLC pursuant to this subsection upon purchase of the additional capacity. The terms of the purchase will be negotiated between CT6, LLC and the City at the time of the requested additional water and sanitary sewer capacity, including cost and terms to CT6, LLC. If the Parties fail to reach agreement on the terms related to the purchase of the additional capacity, then the parties agree to engage in the dispute resolution process outlined in Section 8.9.1.

6.6.4 On-site well capacity may be available for onsite irrigation and fire flow needs to lessen the demand on the public water system, provided that an air gap or backflow devices

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shall be installed as determined by the City to keep this water separate from the Municipal system.

6.7 System Development Charges, Credits, and Latecomer Fees.

6.7.1 The applicant for development within the Property shall pay the appropriate water and sewer system development charge in effect at the time that an application for an implementing approval, such as a site plan or plat application, is submitted and deemed to be complete and ready for processing, and be entitled to any system development charge credits allowed under City code or the law.

6.7.2 CT6, LLC may receive sewer and water latecomer fees (current or future adopted) to the extent available under the terms of state law, the Castle Rock Municipal Code or City Development Policies and Public Works Standards pursuant to reimbursement or latecomer agreement(s). The City agrees to establish reimbursement agreements for latecomer fees at CT6, LLC's request consistent with chapter 13.20 CRMC.

6.7.3 CT6, LLC may also seek latecomer fees pursuant to reimbursement or latecomer agreements for transportation improvements pursuant to state law, Castle Rock Municipal Code, or City Development Policies and Public Works Standards. CT6, LLC will request that the City enter into a latecomer reimbursement contract consistent with chapter 13.20 CRMC.

6.7.4 The City agrees to process latecomer/reimbursement agreements for the benefit of CT6, LLC related to any street projects that CT6, LLC constructs or improves and required as a condition of development approval that benefits more than the Property, as authorized by chapter 35.72 RCW. In addition, CT6, LLC improvements must accommodate existing Huntington Avenue traffic in addition to the Project's projected traffic and latecomer fees are applicable only for future background traffic on Huntington Avenue South. CT6, LLC shall compensate the City for all staff time and expenses necessary to administer a latecomer fee/reimbursement agreement, to collect, process, and disburse latecomer/reimbursement fees, and any other costs related to the latecomer/reimbursement agreement(s) within 30 days

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of CT6, LLC's receipt of a detailed invoice detailing the tasks and time related only to the foregoing.

6.8 Dedications. The City may, at its sole discretion, defer required dedications until the completion of a phase or a subsequent phase of development has been completed. Given the uncertainty of the timing of subsequent phases of development, proposed dedications may be further deferred until such time that the City determines, in its sole discretion, that it can reasonably assume maintenance responsibilities without the completion of related improvements or without interference by subsequent construction activities.

6.8.1 Signs. In only the commercially zoned properties and the flex and industrial lots abutting the railroad, freestanding signs may be permitted subject to the following restrictions. Signs may extend to the minimum height necessary to be visible from the I-5 corridor and surrounding access roads. Where visibility from I-5 is not intended, signs are limited to a height of 40 feet to be measured from top of sign to average grade. The foregoing allowance and other provisions applicable to signs will be included in a master signage plan as required by Condition of Approval 17 (**Exhibit D**). Sign permits are required from the City of Castle Rock to install a new sign, per CRMC 17.82, and will implement the approved master signage plan.

6.9 CC&Rs. Prior to the City issuing a temporary occupancy permit for any structure in Phase 1 of the Property, CT6, LLC must record a declaration of covenants, conditions, and restrictions applicable to the Property, and form an owner's association that must address at a minimum, the association's obligation to maintain private roads, stormwater facilities, streetlights, and sidewalks and paths.

7. Transportation.

7.1 Road Standards. Access to the Property and internal circulation within the Property shall be provided in accordance with the Conditions of Approval and the approved Circulation and Access Plan depicted in **Exhibit G**.

7.1.1 All road and access improvements shall be designed and constructed by CT6, LLC in accordance with City Development Policies and Public Works Standards, except as

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modified in this Agreement including **Exhibit F**. As with any right or obligation of CT6, LLC under this Agreement, the obligations of CT6, LLC under this Section 7 will transfer to any successor by operation of Section 8.2.

7.1.2 It is understood by the parties that improvements to state highways shall be designed and constructed to WSDOT standards and are subject to WSDOT review and approval.

7.1.3 All internal private roads and utility systems within the Project shall be maintained and owned by CT6, LLC, until transferred to an owner's association, unless otherwise provided by this Agreement.

7.1.4 Sidewalks on the frontage of a lot must be installed during each phase of the Project prior to the occupancy permit being issued for a structure on that lot; provided that, all sidewalk sections or pedestrian paths must be completed within five years after the date of recording of the plat for that phase. All cross-circulation routes within the cross-circulation easements must, at a minimum, meet the City's private road standards. The Circulation and Access Plan is attached as **Exhibit G**.

7.1.5 CT6, LLC may access Larsen Lane SW within the existing right-of-way for emergency ingress and egress subject to the Conditions of Approval, including the requirement to design and construct improvements to Larsen Lane SW. Surfacing must provide an all-weather driving capability and a minimum unobstructed width of 20 feet conforming to the International Fire Code requirements for fire apparatus access roads. The City agrees to continue to maintain Larsen Lane SW before and after it is improved by CT6, LLC.

7.1.6 CT6, LLC must show sufficient right-of-way dedication for a single-lane roundabout on the Property, consistent with **Exhibit H**, on the plans submitted for the first development application. All public right-of-way as shown on the approved engineering plans shall be dedicated prior to engineering as-built approval of the first development. CT6, LLC must set aside an additional area of land on the Property for future dedication of an additional lane for the roundabout, including bicycle and pedestrian pathways consistent with code, and substantially consistent with **Exhibit H** (Set-Aside Area). CT6, LLC must dedicate the Set-Aside

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Area, at no cost to the City, when traffic growth has triggered the need for an additional dual-circulating lane within the roundabout at Huntington Avenue and the site access. CT6, LLC shall not construct any permanent structures within the Set-Aside Area, and until dedication, CT6, LLC may use the Set-Aside Area for parking, storage, landscaping, and other non-structural uses. All setbacks associated with the Set-Aside Area boundary shall be consistent with the requirements listed in chapter 17.40.060 CRMC, where the Set-Aside Area shall be treated as public right-of-way. Any future roundabout is subject to City review and approval.

7.1.7 Upon reaching the PM Peak Hour threshold for site access at Huntington Avenue South identified in **Exhibit I**, CT6, LLC shall design and construct, subject to City review and approval, the single-lane roundabout at the intersection with Huntington Avenue South substantially in conformance with **Exhibit H**.

7.1.8 CT6, LLC shall, in consultation with the City and WSDOT, establish and implement a traffic monitoring program as described in the Transportation Impact Study prepared by Lancaster Mobley dated November 13, 2023 (**Exhibit I**) and as further described in Landing on the Cowlitz Traffic Summary document dated November 14, 2023 (**Exhibit I**) and the Draft Transportation Compliance Letter dated November 13, 2023 (**Exhibit I**).

7.1.9 It is understood by the parties that the following intersections are projected to exceed acceptable levels of operation during build-out of the Project and that CT6, LLC shall make proportionate share contributions to implement required mitigation. CT6, LLC agrees to prepare and share with the City the engineering and construction cost documentation for each of the improvements described below in this Section 7.1.9 and the amount of any proportionate share required to be paid by CT6, LLC related to those improvements. In lieu of CT6, LLC paying any proportionate share under this Agreement, CT6, LLC may elect to construct any or all of the full improvements listed below and seek reimbursement from other responsible parties for their share of the cost of the improvements under Section 6.7.4 of this Agreement. If the Parties fail to reach agreement related to the amount of any proportionate share required to be paid by CT6, LLC, or the amount of any reimbursement allowed under this section and Section 6.7.4, then the parties agree to engage in the dispute resolution process outlined in Section 8.9.1.

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7.1.9.1 SR-411 at Westside Highway. The proportionate share shall be determined based on the Project's contribution of additional PM peak hour trips to baseline PM peak hour trips. The percentage increase shall be used to calculate the proportionate share based on a cost estimate for proposed improvements, unless the Parties execute a Memorandum of Agreement committing to a different method of proportionate share calculation.

7.1.9.2 I-5 Northbound Ramps at Huntington Avenue. Mitigation will be triggered when 384 additional PM peak hour trips are added to this intersection. The proportionate share shall be determined based on the Project's contribution of additional PM peak hour trips to baseline PM peak hour trips. The percentage increase shall be used to calculate the proportionate share based on a cost estimate for proposed improvements, unless the Parties execute a Memorandum of Agreement committing to a different method of proportionate share calculation.

7.1.9.3 Site Access at Huntington Avenue. It is projected that when 2,445 PM peak hour trips occur at this intersection, the addition of a second circulating lane to the roundabout will be required. When 80 percent (1,956 PM peak hour trips) of the PM peak hour trips are consumed by the Project at this intersection, CT6, LLC shall begin design of the second lane to the roundabout. CT6, LLC shall dedicate the required right-of-way area, at no cost to the City, at the time of design, to accommodate this improvement to the roundabout. The required right-of-way shall be dedicated from the Set-Aside Area depicted in Exhibit H. Any remaining property within the Set-Aside Area may be developed consistent with the Conditions of Approval and will no longer be restricted to the uses listed in Section 7.1.6. CT6, LLC shall make a proportionate share contribution to the expansion of the roundabout only if the Project is projected to create more than 1,522 PM peak hour trips at this intersection excluding internal capture trips.

7.2 Pedestrian Access and Connections. On-site pedestrian facilities must be provided consistent with the Conditions of Approval to adequately connect sidewalk and other pedestrian amenities within the Project, but in recognition that the Project includes light industrial uses. Pedestrian amenities are proposed in a manner to avoid conflicts between pedestrians and operations by CT6, LLC and its tenants. Where Industrial Collector roads are used, sidewalks are not required if an alternative pedestrian path is provided. Pedestrian

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paths may consist of asphalt instead of concrete for the Industrial Collector roads at CT6, LLC's option. Sidewalks are required for other road Types as shown on **Exhibit F**. CT6, LLC agrees to provide a letter to the City in support of a project that connects the pedestrian access along Huntington Avenue South from the north in the area of Larsen Lane, through the proposed roundabout to continue to the south. Design of the single lane and double lane roundabouts must include safe pedestrian and bicycle access.

7.3 **Trip Generation, Reservation, and Mitigation**. The Development will be subject to the findings and processes outlined in the traffic approach, attached as **Exhibit I**.

7.3.1 Reservation of transportation capacity shall be allowed for the Project to the minimum amount set forth in **Exhibit I**. Additional transportation capacity up to the maximum amount set forth in **Exhibit I** may be reserved upon reaching 80 percent of the initial capacity reservation. Updated trip generation analysis shall be provided as the basis for capacity reservation with the initial submittal for each phase, consistent with Condition of Approval 22 (**Exhibit D**).

7.3.2 Right-of-way for final build-out, including on-site and off-site right-of-way for future public roads and related improvements, and property or easements for utility infrastructure, if required by a Condition of Approval, shall be dedicated by the applicable owner at the initial implementation of each phase at no cost to the City except that CT6, LLC is not required to dedicate right-of-way on property it does not own. Construction of interim improvements appropriate to each phase of development shall be allowed by the City in its sole discretion, which will not be unreasonably withheld.

8. **General Provisions**.

8.1 **Governing Law**. This Agreement will be governed by and interpreted in accordance with the laws of the State of Washington.

8.2 **Binding on Successors, Assignment, and Release of Liability**.

8.2.1 This Agreement is binding upon and inures to the benefit of the successors and assigns of the Owners and upon the City.

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8.2.2 The parties acknowledge that development of the Project likely will involve sale and assignment of portions of the Property to other persons who will own, develop and/or occupy portions of the Property and buildings thereon. Upon the transfer under this Section, the transferee will be entitled to all interests and rights and be subject to all obligations under this Agreement, and the applicable Owner will be released from liability with respect to such portion as has been assigned and assumed. Transfers or attempted transfers that are undertaken in a manner inconsistent with these provisions will be *void ab initio* and will not excuse the performance of the Owners of any of its obligations under this Agreement.

8.2.3 An Owner has the right to assign or transfer all or any portion of the respective interests, rights or obligations under this Agreement or in the Project to other parties acquiring an interest or estate in all or any portion of the Property, including transfer of all interests through foreclosure (judicial or nonjudicial) or by deed in lieu of foreclosure, without notice or consent from the City, if the transfer is within the scope of one of the following: (a) a single-family residential parcel, a single-family residential unit or a multi-family unit, to a purchaser; (b) any property that has been established as a separate legal parcel, provided that the transferee assumes in writing all obligations of the Owner under this Agreement pertaining or proportionate to the parcel being transferred, and the transferee has not breached a similar written agreement with, or obligation to, another municipal corporation; or (c) a transfer where the Owner has bonded for, or provided other suitable assurance of performance, of all conditions set forth in the Agreement that are applicable to the parcel that is being transferred.

8.2.4 Any transfer that is not within the scope of Section 8.2.3 will not release the Owner from its obligations under this Agreement unless the City has consented in writing to such transfer. The City may not unreasonably withhold, condition, or delay its consent, and in the event the City withholds, conditions, or delays consent, the City must provide express findings therefor. The City agrees to cooperate in executing such documentation as reasonably necessary to evidence any obligations under this Agreement that have been satisfied with respect to a portion of Property that is proposed for transfer.

8.2.5 If the conditions for assignment are met under this subsection, then from and after the date of transfer, the Owner will be released of all liabilities and obligations under

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this Agreement that arise in relation to events occurring after the date of transfer and that are associated with the portion of Property being transferred. From and after the date of transfer, the transferee must exercise the rights and perform the obligations of the Owner under this Agreement for that portion of the Property acquired by the transferee. If, after release of liability, a default occurs relating to the transferred portion of the Property, such default will not constitute a default by the released party, nor will it be deemed a default as to any other portion of the Property not subject to the defaulted obligation. Notwithstanding any other provision hereof, the owner of any portion of the Property whose interest has been transferred through forfeiture, judicial or nonjudicial foreclosure, or through a deed given in lieu of foreclosure will be released of liability from and after the effective date of transfer through foreclosure or deed in lieu thereof provided, however, all liabilities, duties and obligations arising from this Agreement remain recorded encumbrances upon the Property and remain fully enforceable against the successor in interest following such forfeiture, foreclosure or deed in lieu thereof.

8.3 Recording. Pursuant to RCW 36.70B, a memorandum of this Agreement must be recorded against all Property that comprises the Project as a covenant running with the land and must be binding on the Owners, their successors, and assigns. The City must reasonably cooperate with the applicable Owners in executing such releases or partial releases of portions of the Property from this Agreement once the obligations or liabilities associated with such portions of the Property have been fulfilled.

8.4 Interpretation and Severability.

8.4.1 In the event of a conflict between provisions of this Agreement and the terms of the Exhibits, the terms of the Exhibits will prevail.

8.4.2 Invalidation or unenforceability of any provision of this Agreement will in no way invalidate or nullify the balance of this Agreement. If any provisions of this Agreement are determined to be unenforceable or invalid by a court of competent jurisdiction, then this Agreement will thereafter be modified to implement the intent of the parties to the maximum extent allowable under law. If a court finds unenforceability or invalidity of any portion of this Agreement, the parties agree to seek diligently to modify the Agreement consistent with the court decision, and no party may undertake any actions inconsistent with the intent of this

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Agreement until the modification to this Agreement has been completed. If the parties do not mutually agree to modifications within forty-five (45) days after the court ruling, then either party may initiate the dispute resolution proceedings in Section 8.9 for determination of the modifications which implement the intent of this Agreement and the court decision.

8.5 Authority. The City and the Owners each represent and warrant it has the respective power and authority, and is duly authorized, to execute, deliver, perform, and enforce its rights and the other Party's obligations under this Agreement.

8.6 Headings. The headings in this Agreement are inserted for reference only and may not be construed to expand, limit, or otherwise modify the terms and conditions of this Agreement.

8.7 Time is of Essence. Time is of the essence of this Agreement in every provision hereof. Unless otherwise set forth in this Agreement, the reference to "days" means calendar days. If any time for action occurs on a weekend or legal holiday, then the time period will be extended automatically to the next business day.

8.8 Integration. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof. There are no other agreements, oral or written, except as expressly set forth herein.

8.9 Disputes, Defaults, and Remedies. In the event of any dispute relating to this Agreement, all parties upon the request of any other party must meet within seven (7) days to seek in good faith to resolve the dispute. The City must send its chief administrative officer, or as his designee a department director and/or persons with information relating to the dispute, and the Owners must send an owner's representative and any consultant or other person with technical information or expertise related to the dispute. The parties must use good faith efforts to directly resolve all claims, disputes, and other matters in question between the parties arising out of or relating to this Agreement.

8.9.1 For disputes on amounts arising under Section 6.6.3 and Section 7.1.9, the Parties must refer the issues and costs in dispute to a mutually acceptable licensed engineer with at least 10 years of development experience ("Arbiter"). The Parties may each provide written information to the Arbiter regarding their positions. The Arbiter shall provide a

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written decision on the amount of the costs in dispute within ten (10) business days after the date such dispute is referred to him/her. The decision of the Arbiter shall be final and binding on the Parties and may be enforced by any court of competent jurisdiction. The Arbiter's fees incurred in resolving such dispute shall be shared equally by the Parties.

8.9.2 No party will be in default under this Agreement unless it has failed to perform under this Agreement for a period of thirty (30) days after written notice of default from any other party. Each notice of default must specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the thirty (30) day period, then commencement of the cure within such time period and the diligent prosecution to completion of the cure will be deemed a cure. Any party not in default under this Agreement will have all rights and remedies provided by law including without limitation damages, specific performance, or writs to compel performance or require action consistent with this Agreement. The prevailing party (or the substantially prevailing party if no one party prevails entirely) will be entitled to reasonable attorneys' fees and arbitrator fees, expert fees, costs and out of pocket expenses, including attorney's fees, costs and out of pocket expenses incurred on any appeal.

8.9.3 In recognition of the anticipated sale(s) by an Owner of portions of the property to others to own, develop and/or occupy, the remedies under this Agreement must be reasonably tailored to the Property or parties as provided in the remaining provisions of this subsection. After the transfer of portions of the Property for which the release of liability provisions apply under Section 8.2, any claimed default must relate as specifically as possible to the portion of the Property involved and any remedy against any party will be limited to the extent reasonably possible to the owners of such portion of the Property. To the reasonable extent possible, the City may seek only those remedies which do not adversely affect the rights, duties, or obligations of any other non-defaulting owner of portions of the Property under this Agreement and must seek to utilize the severability provisions set forth in this Agreement. The City will have no liability to any person or party for any damages, costs, or attorney's fees under this Section 8.9.3 so long as the City exercises reasonable and good faith judgment in seeking remedies against appropriate parties or portions of the Property.

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8.10 Mortgage Rights. Any person who is the beneficiary of a deed of trust or mortgagee (Mortgagee) of a mortgage secured against all or any portion of the Property (Mortgaged Parcel) who has provided written notice to the City of the Mortgagee's interest in the Mortgaged Parcel is entitled to notice of default and opportunities to cure as provided in this section. Any Mortgagee may provide written notice to the City requesting a copy of all notices of default and correspondence, claims or litigation related thereto or the Mortgaged Parcel. For each Mortgagee who has provided such notice, the City during the remaining term in this Agreement must notify such Mortgagee of any event of default, claim or litigation relating to an Owner or the Mortgaged Parcel under this Agreement and provide the same opportunity to cure such event of default, within the times provided below, as provided to the Owner under this Agreement. Notwithstanding any other provision of this Agreement, this Agreement may not be terminated by the City in the event of default as to any Mortgagee either (1) who has requested notice but has not been given notice by the City or (2) to whom notice of default is given by the City and to which either of the following is true:

8.10.1 The Mortgagee cures a default involving the payment of money by the Owner within sixty (60) days after notice of default; or

8.10.2 For defaults which require title or possession of all or any portion of the Property to effect a cure, then:

the Mortgagee agrees in writing, within ninety (90) days after its receipt of written notice of default, to perform the defaulted obligation allocable to the Mortgaged Parcels conditioned upon the Mortgagee's acquisition of the Mortgaged Parcel by foreclosure (judicial or nonjudicial) or through a deed in lieu of foreclosure;

the Mortgagee commences foreclosure proceedings to acquire title to the Mortgaged Parcel within ninety (90) days and thereafter diligently pursues the foreclosure to completion; and

the Mortgagee (or any purchaser of the Mortgaged Parcel at foreclosure, trustee's sale or by deed in lieu of foreclosure) promptly and diligently cures the default after obtaining title or possession. Subject to the foregoing, if Mortgagee delivers a notice of default to the City, then the Owner's rights and obligations under this Agreement may be transferred to the Mortgagee

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or to any purchaser of the Mortgaged Parcel at a foreclosure, trustee's sale or conveyance by deed in lieu of foreclosure.

8.11 Estoppel Certificate. Within thirty (30) days following any written request which a party or a Mortgagee may make from time to time, the other party to this Agreement must execute and deliver to the requesting person a statement certifying that: (a) this Agreement is unmodified and in full force and effect, or stating the date and nature of any modification; and (b) to the best knowledge of the certifying party (i) no notice of default has been sent under Section 8.9 of this Agreement or specifying the date(s) and nature of the notice of such default and (ii) no written notice of infraction has been issued in connection with the Project. Failure to deliver such statement to the requesting party within the thirty (30) day period will constitute a conclusive presumption against the party failing to deliver such statement that this Agreement is in full force and effect without modification (except as may be represented by the requesting party) and that there are no notices of default nor infraction (except as may be represented by the requesting party). The delivery of an estoppel certificate on behalf of the City pursuant to this section will be deemed an administrative matter and will not require legislative action. The City will not have any liability to the requesting party or to any third party for inaccurate information if it provides the estoppel certificate in good faith and with reasonable care.

8.12 No Third-Party Beneficiaries, Except for the mortgagee rights under Section 8.10, this Agreement is made and entered into for the sole protection and benefit of the parties hereto and their successors and assigns. No other person has any right of action based upon any provision of this Agreement.

8.13 Interpretation. This Agreement has been reviewed and revised by legal counsel for both parties and no presumption or rule that ambiguity will be construed against the party drafting the document will apply to the interpretation or enforcement of this Agreement.

8.14 Notice. All communications, notices and demands of any kind which a party under this Agreement requires or desires to give to any other party must be in writing and either (i) delivered personally, (ii) sent by facsimile transmission with an additional copy mailed first class, or (iii) deposited in the U.S. mail, certified mail postage prepaid, return receipt requested, and addressed as follows:

- a. To the City of Castle Rock:

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Carie Cuttonaro, Clerk-Treasurer
PO Box 370
Castle Rock, WA 98611
Phone: 360-274-8181, Ex. 303
Email: cuttonaro@ci.castle-rock.wa.us

b. To CT6, LLC:

Shane Tapani
P.O. Box 1419
Battle Ground, WA 98604
Phone: 360-687-1148
Email: shanet@tapani.com

c. To Owners:

Raymond Pieren
503-541-3785
backinoregon1@gmail.com
944 NW Hill Avenue, Roseburg, OR 97471

MCL Ventures, LLC.
Mike Canton
360-608-7808
cantonsells@yahoo.com
4404 Willamette Ct, Vancouver, WA 98661

8.15 Cooperation. The parties may not unreasonably withhold requests for information, approvals or consents provided for in this Agreement. The parties agree to take reasonable further actions and execute further documents, either jointly or within their respective powers and authority, to implement the intent of this Agreement. The City agrees to work cooperatively in good faith with CT6, LLC to achieve the mutually agreeable goals as set forth in this Agreement, subject to the City's independent exercise of judgment.

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8.16 Delays. If either party is delayed in the performance of its obligations under this Agreement due to Force Majeure, then performance of those obligations will be excused for the period of delay.

8.17 Third Party Legal Challenge and Indemnification.

8.17.1 Except and to the extent resulting from the City's negligence or intentional act(s) or omission(s), CT6, LLC agrees to hold the City harmless from, defend and indemnify it against, any and all fines or penalties that result or arise directly or indirectly from CT6, LLC's negligent or intentional acts.

8.17.2 Except and to the extent resulting from CT6, LLC's negligence or intentional act(s) or omission(s), the City agrees to hold CT6, LLC harmless from, and indemnify it against, any and all fines or penalties that result or arise directly or indirectly from the City's sole negligent or intentional acts.

8.17.3 In the event any legal or equitable action or other proceeding is instituted by a party, entity, or organization (including governmental units), their officials or agents, challenging the validity of any provision of the City's approval and/or implementation of the Ordinance, this Agreement, or any actions precipitating the same, then the Parties hereto must reasonably cooperate in entering a joint defense agreement.

8.17.4 Unless otherwise agreed, joint defense counsel will be selected through the following process:

CT6, LLC must present to the City its preferred attorney and related credentials and unless the City can provide a verifiable objection to such attorney, whether related to prior experience, general knowledge or otherwise, that attorney will be engaged for joint representation; (b) If the preferred attorney of CT6, LLC is not engaged, then (i) CT6, LLC must present to the City a list of three attorneys and such attorneys' credentials; (ii) from such list, the City must identify the attorney (if any) with which the City is willing to engage for joint representation pursuant to this Agreement; (c) in the event that none of the candidates are acceptable to the City, then each party must propose a list of three candidates with qualifications, and a combined list of

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the six attorneys must be provided to a mutually agreed-upon neutral, independent person for selection of the attorney that such person believes is best suited to jointly represent the City and CT6, LLC.

If the parties enter into a joint defense agreement then CT6, LLC will bear all costs of, and hold the City harmless from and otherwise indemnify the City against the costs of the defense and reasonable investigation of any such claim, lawsuit or liability, incurred from the joint defense, including all attorney fees associated with the joint defense, provided, however, that in no event will CT6, LLC be obligated to pay the costs and attorney fees associated with any claim, action, or lawsuit arising from the negligence of the City or the inability on the part of the City to fulfill an obligation under this Agreement. Neither CT6, LLC nor the City may settle a claim or lawsuit challenging this Agreement without the consent of the other, which consent may not be unreasonably withheld. Notwithstanding any suggestion to the contrary herein, consistent with the provisions of hereof, CT6, LLC will not be liable for the costs and attorney fees associated with any claim, action, or lawsuit arising from the negligence of the City or the inability on the part of the City to fulfill an obligation under this Agreement or that involves a legal proceeding between the City and CT6, LLC, including its successors and assigns.

Nothing herein may preclude either party from retaining its own independent legal defense at its own expense in lieu of, or addition to, entering a joint defense agreement although if a joint defense agreement is entered into the City will bear the cost (and will not be reimbursed by CT6, LLC) for the costs of retaining its own independent legal defense.

8.17.5 Insurance Required. The City of Castle Rock and CT6, LLC shall obtain and keep in force during the terms of this Agreement Comprehensive General Liability insurance coverage in the amount of \$2 million.

8.18 Authority to Approve Agreement.

8.18.1 By executing this Development Agreement, Owners represent and warrant that they have taken all necessary steps under their corporate authorities to authorize such act, and that execution of this Development Agreement is valid and binding for all purposes.

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8.18.2 By executing this Development Agreement, the City represents and warrants that it has taken all necessary steps under its corporate authorities to authorize such act, and that its execution of this Development Agreement is valid and binding for all purposes, subject only to subsequent appeals filed in accordance with RCW 36.70B.200.

Signatures on the following page.

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City of Castle Rock, Washington,
a Washington municipal corporation

CT6, LLC,
a Washington limited liability company

By: _____
Its: _____

By: _____
Its: _____

MLC Ventures LLC,
a Washington limited liability company

Raymond Pieren

By: _____
Its: _____

By: _____
Its: _____

Exhibits

Exhibit A: Property Legal Description

Exhibit B: Approved Master Plan

Exhibit C: Integrated Conditions of Master Site Plan Approval Required SEPA Mitigation Measures

Exhibit D: Findings of Fact and Conclusions of Law Number 40-81 dated 09-14-21

Exhibit E: Consistency Review Process Documentation:

Consistency Notice

Expedited BLA Consistency Form

Expedited Short Subdivision Consistency Form

Exhibit F: Roadway Sections

Exhibit G: Circulation and Access Plan

Exhibit H: Right-of-Way Set-Aside Area

Exhibit I: Traffic Approach Documentation:

Traffic Summary

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Development Agreement Transportation Impact Study
Example Transportation Compliance Letter

Exhibit J: Utility Infrastructure Engineering and Design Standards