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Kittitas County CDS

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made this 30th day of November, 2018, by and between Kittitas County, a Washington municipal corporation (the “County”), Easton School District No. 28, a Washington municipal corporation (the “School District”), Easton Ridge Land Company, a Washington corporation, and Martens Enterprises, LLC, a Washington limited liability company. All of the foregoing entities are sometimes referred to individually hereinafter as a “Party” and collectively referred to hereinafter as the “Parties.” ERLC and Martens are collectively referred to the “Developer.”

RECITALS

- A. The Developer intends to develop approximately 445 acres of rural land within the School District boundaries and plat 89 lots (the “Project”), and to that end, filed an application with Kittitas County for a planned unit development (PD-17-00001), a conditional use permit (CU-17-00001), and a long plat (LP-17-0001) (collectively the “Application”);
- B. On May 1, 2018, the Kittitas Board of County Commissioners passed Ordinance 2018-006 (the “Ordinance”), approving the Application with conditions;
- C. The Ordinance included a condition that the Developer must enter into a development agreement with the County that would include a requirement for the Developer to provide proportionate mitigation for impacts of the Project on the School District, requiring that the impacts be mitigated to the satisfaction of the County (Conditions 1 and 30.3);
- D. The School District filed a petition under the Land Use Petition Act in Kittitas County Superior Court, Cause No. 18-2-00177-6 (the “Action”), claiming error and seeking additional assurances regarding its role in determining the proportionate share of mitigation that the Developer would provide to mitigate the impacts to the School District; and
- E. The Parties wish to resolve the Action by entering this Agreement.

Now therefore, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows.

AGREEMENT

- 1. **Development Agreement Process.** The Parties agree to the following process related to the negotiation of the development agreement related to satisfying Conditions 1 and 30.3 of the Ordinance:
 - a. Within fourteen (14) days of the County’s determination that the Developer’s development agreement application is complete, the County will provide the School District with notice of the development agreement application (the “Notice”). The Notice will be provided by certified mail to the addresses listed in Section 5.
 - b. After the Notice but not within fourteen (14) days of the open record public hearing, the Parties will engage in negotiations to determine acceptable, proportionate

mitigation measures related to any impacts of the Project on Easton School District. The Parties will negotiate in good faith using best efforts to share and obtain relevant information indicating the impacts that the Project will have on the School District.

c. The School District will have the opportunity to provide written comments and materials to the County and oral comments at the open record public hearing on the development agreement. The School District will provide a copy of written comments and materials to the County and Developer in a timely fashion so as to allow review and response prior to the open record hearing.

d. Pursuant to Conditions 1 and 30.3, mitigation measures shall be included in the development agreement.

2. **No Further Challenge to the Ordinance.** The School District will, within five (5) business days of the last Party to execute this Agreement, file with the Kittitas County Superior Court the "Stipulation and [Proposed] Order of Dismissal" in the form attached and incorporated as Exhibit A. The School District will take no further legal action to challenge the Ordinance.

3. **No Admission.** This Agreement does not constitute, nor shall it be deemed to constitute, an admission by any Party with respect to any allegation, claim, fact, or conclusion of law set forth in any legal pleading in the Action. All parties reserve any and all rights to challenge any future land use actions in accordance with the Land Use Petition Act, chapter 36.70C RCW, including the development agreement or any conditions associated therewith.

4. **Notices.** Any notice or other communication required or permitted to be given under this Agreement will be provided by certified mail to the following individuals and addresses:

Kittitas County:
Kittitas County Courthouse
205 W. Fifth, Room 213
Ellensburg, WA 98926
Attn: Neil Caulkins

Easton School District No. 28:
P.O. Box 8
Easton, WA 98925
Attn: Patrick Dehuff

Easton Ridge Land Company
and
Martens Enterprises:
Johns Monroe Mitsunaga Koloušková
11201 S.E. 8th Street, Suite 120
Bellevue, WA 98004
Attn: Duana Koloušková

With a copy to:

Perkins Coie LLP
10885 N.E. 4th St., Suite 700
Bellevue, WA 98004
Attn: Kristine R. Wilson

5. **Reasonable Cooperation.** The Parties agree to cooperate fully and to take all additional action that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.


6. **Costs, Expenses and Attorneys' Fees.** The Parties will bear their own costs, expenses and attorneys' fees as they were originally incurred in connection with the matters covered by this Agreement.

7. **Miscellaneous.** The obligations of the Parties hereunder shall be specifically enforceable and shall inure to the benefit of and be binding upon their respective successors and assigns. This Agreement constitutes the entire agreement between Parties respecting its subject matter and shall not be modified or amended except in a writing signed by all Parties. This Agreement shall be governed by and interpreted in accordance with the laws of the state of Washington. Nothing in this Agreement is intended to limit or replace any Party's obligations under applicable laws or the Ordinance. The Parties agree that any rule of construction to the effect that ambiguities are to be resolved in favor of either Party shall not be employed in the interpretation of this Agreement and is hereby waived. This Agreement shall be construed as a whole. The misplacement, addition or omission of a word or character shall not change the intent of any part of this Agreement from that set forth by this Agreement. This Agreement may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

This Agreement is effective as of the date first written above.

KITTITAS COUNTY


EASTON SCHOOL DISTRICT NO. 28



By: NEIL A. CALKINS
Its: Chief Civil Deputy Prosecutor

By: _____
Its: _____

EASTON RIDGE LAND COMPANY

MARTENS ENTERPRISES, LLC


By: Duana Kolouškova
Its: Legal Counsel, Authorized Signator


By: Duana Kolouškova
Its: Legal Counsel, Authorized Signator

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KITTITAS COUNTY

EASTON SCHOOL DISTRICT NO. 28

By: _____
Its: _____



By: Patrick Dahuff
Its: Superintendent

EASTON RIDGE LAND COMPANY

MARTENS ENTERPRISES, LLC

By: _____
Its: _____

By: _____
Its: _____

From: James Brooks [mailto:jbrooks@inlandnet.com]
Sent: Thursday, November 29, 2018 5:40 PM
To: Duana Kolouskova <Kolouskova@jmmlaw.com>
Cc: Jerry Martens <jerry@martensllc.com>; Doug Weis <dougw@inlandnet.com>
Subject: Re: Fwd: PLEASE REVIEW ASAP - Settlement of Easton School District legal action

Duana,

As counsel for Easton Ridge Land Company, you are authorized to sign the Settlement Agreement with the Easton School District on our behalf.

Thank you.

James K. Brooks
Treasurer/Controller

(509) 649-2211
(509) 649-3300 (fax)

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From: jerry [mailto:jerry@martensllc.com]
Sent: Friday, November 30, 2018 11:01 AM
To: Duana Kolouskova <Kolouskova@jmmlaw.com>
Subject: RE: Fwd: PLEASE REVIEW ASAP - Settlement of Easton School District legal action

Yes for me (Jerry). James email agreement yesterday for you to sign.

Sent from my Verizon, Samsung Galaxy smartphone

