

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF KITTITAS
STATE OF WASHINGTON**

**SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR PALOMINO
FIELDS PLAT BY AND BETWEEN KITTITAS COUNTY, WASHINGTON,
CLE ELUM PINES EAST LLC, AND CLE ELUM PINES WEST LLC**

RESOLUTION

NO. 2018- 065

WHEREAS, the Kittitas County Board of County Commissioners approved the Development Agreement for Palomino Fields Plat (DA-15-00001) with Resolution 2016-073 on June 7, 2016; and

WHEREAS, the Kittitas County Board of County Commissioners approved a revised Phasing Plan to allow for flexibility to maximize site soil conditions addressing treatment and disposal of improved site stormwater runoff by amending the approved Development Agreement for Palomino Fields Plat with Resolution 2017-081 on May 2, 2017; and

WHEREAS, since recording of the amended Palomino Fields Development Agreement, it was discovered that a number of scrivener errors existed in the document and that clarification was necessary regarding lot configurations and public and private road standards to ensure consistency with the previous approvals for the Palomino Fields Plat (Res. No. 2008-160, Res. No. 206-073, and Res. No. 2017-081); and

WHEREAS, Community Development Services supports the clarification and scrivener error changes provided in the Second Amendment to the Development Agreement for Palomino Fields as follows:

1. Item G and H were added to the Recitals section to reference the previously approved development agreement resolutions,
2. Item L in the Recitals section was amended to explain why this second amendment to the development agreement is necessary,
3. Item 3.2 in the Agreement section was amended to clarify that density may be moved or reconfigured consistent with the previously approved resolutions for the Palomino Fields Plat,
4. Item 6 in the Agreement section was amended to clarify that public or private roads may be utilized pursuant to the requirements of the Kittitas County Road Standards,
5. Item 10 in the Agreement section clarifies flexibility with the order of the phasing plan to meet the intent of Resolution 2017-081,
6. Items 11.4 and 11.7 in the Agreement section was amended to clarify that public or private

roads may be utilized pursuant to the requirements of the Kittitas County Road Standards;
and

NOW, THEREFORE BE IT HEREBY RESOLVED that the Kittitas County Board of Commissioners hereby grants approval of the Second Amendment to the Development Agreement for Palomino Fields as attached to correct scrivener errors and provide clarification regarding lot configurations and public and private road standards to ensure consistency for the Palomino Fields Plat.

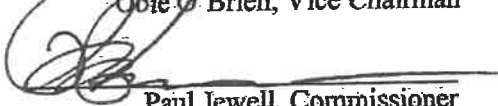
DATED this 17th day of April, 2018 at Ellensburg, Washington.

BOARD OF COUNTY COMMISSIONERS
KITITAS COUNTY, WASHINGTON

ABSENT

Laura Osiadacz, Chairman


Obie O'Brien, Vice Chairman

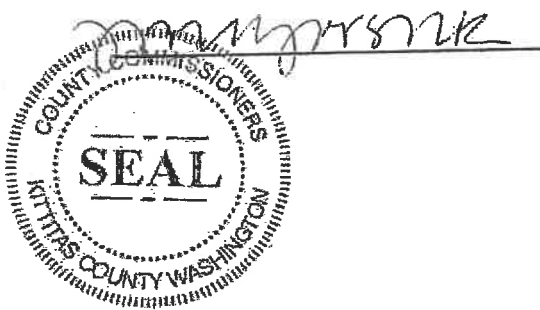

Paul Jewell, Commissioner

ATTEST:

APPROVED AS TO FORM:

Clerk of the Board- Julie Kjorsvik

Deputy Clerk of the Board- Mandy Buchholz



Greg Zempel WSBA #19125

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is made and entered into this 17th day of April, 2018 by the Cle Elum Pines East LLC and Cle Elum Pines West LLC, Washington Limited Liability Companies, hereafter referred to as "Applicant"; and Kittitas County, hereafter referred to as the "County". This Agreement is made pursuant to the Revised Code of Washington ("RCW") 36.70B.170 and Chapter 15A.11 Kittitas County Code.

RECITALS

- A. Chapter 36.70B RCW (the "Development Agreement Statute"), and Chapter 15A.11 Kittitas County Code ("Code") authorize the County to enter into an agreement between the County and all parties having an ownership interest in or control of property described in Exhibit A.
- B. The Applicant owns property located in a Portion of the W 1/2 of Section 27, T18N, R18E, W.M. accessed off of Reecer Creek Road (the "Property"). The Property is comprised of Tax Parcel Nos. 18-18-27020-0001; 0002; 0003; 0015; 0016; and 0017, and is legally described on Exhibit A, attached hereto.
- C. The Applicant submitted Kittitas County a complete application for the Palomino Fields Plat.
- D. Kittitas County Community Development Services issued a SEPA Mitigated Determination of Non-Significance (MDNS) on September 8, 2008.
- E. An open Public Hearing was held before the Kittitas County Hearing Examiner on October 9, 2008 and on October 21, 2008 recommended approval for the Palomino Fields preliminary plat.
- F. Kittitas County Board of County Commissioners (BOCC) passed Resolution No. 2008- 160 on November 18, 2008, adopting the Hearing Examiner's recommendations for approval of the Palomino Fields preliminary plat (P-07-31). Said Resolution is attached hereto as Exhibit B.
- G. Kittitas County Board of County Commissioners (BOCC) passed Resolution No. 2016- 073 on June 7th, 2016, approving a Development Agreement (DA-15-00001) for the Palomino Fields preliminary plat (P-07-31) to allow phasing. Said Resolution is attached hereto as Exhibit C.
- H. Kittitas County Board of County Commissioners (BOCC) passed Resolution No. 2017- 081 on May 2nd, 2017, amending the Palomino Fields Development Agreement (DA-15-00001) with regards to site soil conditions, stormwater and flood plain issues. Said Resolution is attached hereto as Exhibit D.
- I. This Agreement recognizes the conditions to be met in Resolution No. 2008-160 and requires the completion of those conditions to finalize every division within each phase of the approved plat.
- J. The Hearings Examiner recommendation as adopted by the BOCC, states that the Group A Water System may be developed to serve this plat in phases.
- K. The Applicant desires and intends to develop and sell the Property in five (5) consecutive phases that include individual divisions (plats) within each phase, where each final plat will meet the requirements of Kittitas County Code Title 16 and providing for the full development of the one hundred and twenty (120) residential parcels as approved under Resolution No. 2008-160.
- L. This Agreement corrects scrivener errors and provides clarifications regarding lot configuration due to stormwater and floodplain and public and private road standards, therefore being consistent with the County's comprehensive plan, zoning and development regulations, and is consistent with existing land use approval of the subject site.

NOW, THEREFORE, in consideration of the recitals (which are incorporated into the Agreement by this reference) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Applicant agree as follows:

AGREEMENT

1. **Effective Date and Termination.**
 - 1.1 **Effective Date.** The Effective Date of this Agreement is the last date upon which it was signed by the Parties hereto.
 - 1.2 **Term.** This Agreement shall be effective for five (5) years consistent with Exhibit B "Phasing Plan"; provided, however, that the term of the Agreement may be extended should the Applicant seek and justify requests for extension to the satisfaction of the Director prior to the expiration of the term. Upon expiration of such period, or as may be extended above, this Development Agreement shall automatically terminate. Upon the County granting the Final Plat for the last phase of the Project this agreement shall automatically terminate.
 - 1.3 **Termination.** This Agreement may be terminated at any time, in writing, by mutual agreement of the Parties to this Agreement.

2. **Definitions.** For the purposes of this Agreement, the following terms, phrases, words, and their derivations shall have the meaning given herein where capitalized; words not defined herein shall have meaning as provided in Webster's Dictionary. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumber provision. References to laws, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.
 - 2.1 **Agreement.** "Agreement" means this Development Agreement between Kittitas County, Washington and Cle Elum Pines East LLC and Cle Elum Pines West LLC, as it relates to the Palomino Fields plat in Resolution No. 2008-160 approved by the Board of County Commissioners.
 - 2.2 **Applicant.** "Applicant" means Cle Elum Pines East LLC and Cle Elum Pines West LLC, a Washington Corporation, or any of its transferees, successors or assigns.
 - 2.3 **County.** "County" means Kittitas County, Washington.
 - 2.4 **Director.** "Director" means the Director of the Community Development Services (CDS) of Kittitas County or the person providing the function of the Director of CDS.
 - 2.5 **Effective Date.** "Effective Date" means set forth in Section 1.1 of this Agreement.
 - 2.6 **Open Space.** "Open Space" means any land that is retained in a natural condition, or this is improved for outdoor recreational uses outside of residential node areas (including, but not limited to, associated infrastructure such as transmission lines, pumping facilities, and community septic facilities).
 - 2.7 **Parties.** "Parties" means Kittitas County, Washington and Applicant, Cle Elum Pines East LLC and Cle Elum Pines West LLC, a limited liability company (ies).
 - 2.8 **Project.** "Project" means the Palomino Fields Preliminary Plat as approved by the County through Resolution No. 2008-160, being a one hundred and twenty (120) unit residential community on the Property, including but not limited to: (i) single family units and (ii) open space areas.
 - 2.9 **Property.** "Property" means the site legally described in Exhibit A, attached hereto.

- 2.10 Utilities. "Utilities" includes, but is not limited to: all (i) storm water and drainage systems, infrastructure and facilities; (ii) community septic systems, infrastructure and facilities as approved by Kittitas County; (iii) dry utilities including power infrastructure and facilities, telecommunication systems, infrastructure and facilities; (iv) Group A domestic water systems; and (v) irrigation infrastructure and facilities.
3. Project Elements.
 - 3.1 Permitted Uses. Any permitted use as allowed by the Kittitas County Zoning Code at the date vested by the applications and as permitted by Resolution No. 2008-160 attached hereto as Exhibit B.
 - 3.2 Residential Densities. The Residential Densities for the Palomino Fields Plat have been established by Kittitas County through the adoption of Resolution No. 2008-160. The approved preliminary plat map, attached hereto as Exhibit C, shows the approximate locations and boundaries of lots established for the Palomino Fields Plat by said Resolution. This density may be moved, adjusted, and reconfigured to address soil site conditions, stormwater scenarios, along with possible floodplain preservation on existing and adjacent lands all being consistent with the previous approved Resolutions (Res. No. 2008-160, Res. 2016-073 & Res. No. 2017-081. Barns, outbuildings, garages, shops and the like are allowed within the Palomino Fields Plat.
 - 3.3 Non-Residential Densities and Intensities. The Non-Residential Densities and Intensities for the Palomino Fields Plat have been established by Kittitas County through the adoption of Resolution No. 2008-160. The preliminary plat map, Exhibit C, shows the Non-Residential Densities and Intensities established for the Palomino Fields Plat by said Resolution.
 - 3.4 Building Sizes. Individual residential buildings shall not exceed 6,500 square feet. Barns, outbuildings, garages, shops and the like are allowed within the Palomino Fields Plat.
4. Mitigation Measures, Development Conditions, and Other Requirements. The Palomino Fields Plat shall meet the mitigation requirements as provided for in the SEPA Mitigated Determination of Non-Significance (MDNS) issued on September 4, 2008 by Kittitas County and attached hereto as Exhibit D and those requirements for the Palomino Fields Plat as provided for in Kittitas County Resolution No. 2008-160.
5. Development Standards.
 - 5.1 Drainage and Water Quality Requirements. The owner of each parcel shall be responsible to meet Eastern Washington Storm Water guideline requirements as established for the Palomino Fields Plat as it pertains to that individual parcel. Road drainage shall be the Eastern Washington Storm Water guidelines.
 - 5.2 Landscaping. The areas not containing residential structures and driveways shall become owned by residents and may be landscaped with grasses, trees and other plants that do not require irrigation water that would exceed the irrigation allotment for the individual parcel. Maintenance or non-maintenance of such landscaping shall be the responsibility of residents of the development and will not be the responsibility of the County.
 - 5.3 Other Development Features. There may be an entry monument placed at the entry to the Palomino Fields Plat. Other development features may be developed within the plat that is homogenous with residential development.
6. Road and Sidewalk Standards. Bowers Road, if desired to become a public road, shall meet Kittitas County Road Standards with said extension design being approved by Kittitas County and adopted onto the County Public Road System by Kittitas County Board of County Commissioners by the appropriate process. Internal roads may be developed as public or private

- roads as allowed by the Kittitas County Road Standards. All internal roads shall be designed and constructed to Kittitas County Road Standards. Sidewalks are not required within the Palomino Fields Plat and are not being constructed as a condition of this Agreement.
7. **Affordable Housing.** Affordable housing is not required nor will it be provided within the Palomino Fields Plat.
 8. **Infrastructure Requirements.**
 - 8.1 **Domestic Water.** Group A Water Systems, as defined by WAC 246-294-010, include systems having 15 or more connections. Phases of the Palomino Fields Plat shall be served by a Group A Water System per the statutory requirements and as approved by the Washington State Department of Health. The water system will be constructed in phases commensurate with the phased development as shown on Exhibit E attached hereto.
 - 8.2 **Irrigation Water.** The first eight (8) lots of Phase 1, shall be provided irrigation water by Cascade Irrigation District. All other phases shall be provided irrigation water by the Ellensburg Water Company. The irrigation distribution system shall be owned privately and the design, maintenance and operation of said irrigation distribution system shall be approved by the district or company providing the irrigation water, or, if the district does not have an approval process, designed by an Engineer licensed in the State of Washington. The irrigation system will be constructed in phases commensurate with the phased development shown on Exhibit G attached hereto.
 - 8.3 **Sewage Disposal.** Any Community Septic Systems, which may serve two to seven parcels, will be designed by a licensed designer and approved by Kittitas County. The Community Septic Systems will be constructed in phases commensurate with the phased development as shown on Exhibit E. The Community Septic Systems will not be required to be developed prior to final platting of each or any phase but will be constructed simultaneously with buildings as permitted by the Kittitas County Community Development Services Department and the Kittitas County Health Department. Prior to receiving Occupancy Permit for any building constructed the community septic system shall be completed and approved by the Kittitas County Health Department.
 - 8.4 **Storm Drainage.** The owner of each parcel shall be responsible to maintain the storm water field established for the Palomino Fields Plat as it pertains to that individual parcel. Road drainage shall meet the Eastern Washington Storm Water guidelines. The Applicant shall develop the Palomino Fields Plat in accordance with a storm water permit issued by the Washington State Department of Ecology. Storm water systems shall be designed in each phase to manage total storm water of completed phases that is generated by a 24-hour, 25-year storm event.
 - 8.5 **Fire Protection.** Sprinklers shall be located in each residence to provide Fire Protection for the residence and will be constructed to current standards. Neither system wide storage tanks nor fire hydrants are required for the Project.
 - 8.6 **Other Infrastructure Requirements.** Utilities, including, but not limited to, dry utilities such as power, phone and internet shall be provided to the property line of each parcel.
 9. **Parks and Open Space Preservation.** The Parks and Open Space Preservation for the Palomino Fields Plat have been established by Kittitas County through the adoption of Resolution No. 2008-160. The identified open space tracts shall be proportionately owned by tenants in common, and retained by each home owner, and will be assessed, taxed, and foreclosed upon each building lot not fulfilling their obligation.
 10. **Phasing.** The Project will be constructed and receive final plat approval through the development of individual divisions (plats) within each of the five (5) Phases. The description of the Phasing

Plan is provided in Exhibit E. Phasing may occur consecutively in the order as shown in Exhibit E. The Applicant can complete more than one phase with each final plat submittal.

11. Development Review Processes, Procedures and Standards for Implementing Decisions.
 - 11.1 Standards for Implementing Decisions. Kittitas County shall base its decisions on the Kittitas County Code and per decisions in Resolution No. 2008-160 as further modified for phased development by this document.
 - 11.2 Plat Application. The County will process final plats for each phase of the approved preliminary plat as defined in Kittitas County Code Title 16. Each final plat will be assessed processing fees as exist at the time of submittal.
 - 11.3 SEPA Determination. The County has reviewed, processed and issued a Mitigated Determination of Non-Significance (MDNS) for the preliminary Palomino Fields subdivision and such determination shall be used for impact evaluation. Each final plat will be evaluated in terms of its contribution to the 24- hour, 25-year storm event for the accumulation of all final plats within the Palomino Fields project.
 - 11.4 Roads. Consistent with the conditions for Palomino Fields noted in Resolution No. 2008-160, the County will review and approved engineering designs of road(s) and other infrastructure elements within the County Right of Way. Any private or public roads within the project will be constructed to the Kittitas County Private or Public Road Standards. If a county public road is proposed, the road must be constructed prior to petitioning the County Commissioners to take the road onto system. There is no guarantee, per county code, that a road will be accepted onto the county road system.
 - 11.5 Grading. The County will review any grading permit necessary to meet the Kittitas County Code.
 - 11.6 Reimbursement To The County For Review Processes. The Applicant will pay, pursuant to the fee structure adopted by Kittitas County, any fee required to achieve final plat approval for each phase of the plat.
 - 11.7 Access. Access will be established from Reecer Creek Road along the North boundary line of the property by means of a new County Right of Way, if the Kittitas County Commissioners decide to take this road on as part of the county road system per county code, established from Reecer Creek Road in alignment with the existing Bowers Road and as indicated within the approved preliminary Palomino Fields Plat.
 - 11.8 Homeowner Association. At the conclusion of the development of the Palomino Fields community a Homeowner Association will be created to govern residential areas, community facilities, storm water facilities, and road improvements within residential nodes and open space. The Group A Water System shall be owned, operated and maintained by an entity established, owned and operated by a designate of the Applicant. Said designate shall establish operation procedures and rates as may be approved by the Washington State authorities having jurisdiction if and when required by State Law.
 - 11.9 Design Review. Design Review shall be provided for under a Declaration of Covenants, Conditions and Restrictions ("CC&Rs"). Design Review shall be determined by the Applicant and shall be consistent with applicable Kittitas County Code. The Design Review provisions shall include standards for home design, materials, methods and construction, including, but not limited to, siting for wind and solar considerations, siting for view considerations, setbacks and height restriction. After the expiration of this Agreement, the Homeowner Association, if established, may have the right to adopt further Design Review restrictions as may be permitted consistent with the CC&Rs, Bylaws and Articles of Incorporation. Kittitas County Code will apply if CC&Rs are less restrictive than requirements of the Kittitas County Code.


12. A Build-Out or Vesting Period for Applicable Development Standards. The Applicant may construct one or more divisions within Phase(s) of the project per building season. The Project is anticipated to be completed within 5 years.
13. Process for Amending the Development Agreement. This Agreement may be amended by mutual consent of all of the parties to this Agreement and will follow Kittitas County Code.
14. Any Other Appropriate Development Requirement(s) or Procedure. Any developer may further improve the property within Palomino Fields characteristic to residential development which meets Kittitas County Code and conditions for Palomino fields noted in Resolution No. 2008-160.
15. Model Home. The Applicant, or a designate of the Applicant, may construct a model home, real estate sales facility, or a temporary construction office to be operating for construction or real estate office purposes prior to, or in commencement with, the initial stages of the development. Said facility (ies) shall be required to be operated and licensed as a real estate office under the laws of the State of Washington or by Kittitas County Code as applicable. Upon completion of the final plat of the final phase, or upon selling of the last lot, the model home, real estate sale facility, or construction offices will be decommissioned or transferred over as one of the one hundred and twenty (120) single family residences.16.
16. Miscellaneous and General Provisions.
 - 16.1 Governing Law. This Agreement shall be governed by the laws of the State of Washington and the Kittitas County Code as vested by the Palomino Fields application. Each party represented is duly authorized to sign and perform its obligations under this Agreement. The parties intend this Agreement to be interpreted to the full extent authorized by law as an exercise of the County's authority to enter into development agreements. Neither this Agreement nor any provision hereof may be waived, modified, amended or terminated except by a written agreement of the parties hereto.
 - 16.2 Successors. This Agreement and the rights set forth herein run with the land and shall be binding upon the successive owners and assignees of the development.
 - 16.3 Enforcement. Any party to this Agreement may enforce the terms of this Agreement. No party shall be in default under this Agreement unless it has failed to perform for a period of twenty-one (21) days after written notice of default from the other party. The performance period may be extended to allow a reasonable time period to cure the default. Any notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. All parties to this agreement shall have all rights and remedies provided by law.
 - 16.4 Notices. All notices or other communications under this Agreement shall be delivered to the addresses after each signature. Notices shall be in writing and either; (i) delivered personally; (ii) sent by facsimile transmission with an additional copy mailed first class; (iii) deposited in the U.S. Mail with certified mail postage prepaid and return receipt requested; or (iv) delivered by nationally recognized overnight delivery service with signature required. Notice by hand delivery or facsimile shall be effective upon receipt. If deposited in the mail, notice shall be deemed delivered seventy-two (72) hours after deposit. If sent by overnight delivery, notice shall be deemed delivered forty-eight (48) hours after deposit.
 - 16.5 Counterparts and Recording. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Pursuant to RCW 36.70B.190, this Agreement or memorandum thereof shall be recorded with the Kittitas County Auditor and during the

term of this Agreement shall be binding on the parties, their successors and assigns.
Approved as to form:

IN WITNESS THEREOF, this Agreement is effective on the date of the last signature below.


KITTITAS COUNTY

Approved as to form:

Name: 
~~Laura Osiadacz, Chairman~~
Dated: 4/17/18

By: _____
Name _____
County Prosecuting Attorney
Dated: _____

CLE ELUM PINES EAST LLC & CLE ELUM PINES WEST LLC

By: 
Its: PAT DENSON, Manager
Dated: 4-13-18