

**RETURN TO:**

Velikanje Halverson, P.C.  
Attention: James C. Carmody  
P. O. Box 22550  
Yakima, Washington 98907

**DEVELOPMENT AGREEMENT**

The information contained in this boxed section is for recording purposes only pursuant to RCW 36.18 and RCW 65.04, and is not to be relied upon for any other purpose and shall not affect the intent of any warranty contained in the document itself.

**Reference number(s) of related document: NA**

**Grantors: (1) CLARY UNION GAP, LLC and JAMES E. CLARY and TERRI L. CLARY**

**Grantee: (1) CITY OF UNION GAP**

**Abbreviated Legal Description:** SP 95-69: Lot 4; Ptn. of SE1/4 SW1/4 of Sec. 31, T13N, R19, E.W.M.; Ptn. of NE1/4 SW1/4 of Sec. 31, T13N, R19, E.W.M.

**Complete legal descriptions can be found on pages 7 and 9 of this document.**

**Assessor's Tax Parcel ID Nos.:** 191331-43401, 191331-34001, 191331-34002, 191331-31044

**DEVELOPMENT AGREEMENT**

This Agreement is entered into as of the \_\_\_\_ day of March, 2010 by and between the City of Union Gap ("City" or "Union Gap") and Clary Union Gap, LLC and James E. Clary and Terri L. Clary (collectively "Clary") for the purpose of confirming and memorializing conditions and requirements for grant of variance pursuant to Hearing Examiner's Decision issued in *In the Matter of an Application for Variance of a Subdivision Code Requirement Submitted by: Clary Union Gap, LLC, File No. V-02-2009*. This Agreement relates to portions of property described in the attached Exhibit "A". This Agreement is authorized by RCW 36.70B.170, et seq.

## RECITALS

- A. Whereas, the City of Union Gap, is seeking to facilitate the development of commercial and light industrial-zoned property in the vicinity of Valley Mall Boulevard and Longfibre Road; and
- B. Whereas, Clary Union Gap, LLC, a Washington Limited Liability Company, as to an undivided 39.5% interest and James E. Clary and Terri L. Clary, husband and wife, as to an undivided 60.5% interest, as Tenants in Common (collectively "Clary") are the owners of real property legally described in attached Exhibit "A"; and
- C. Whereas, City and Clary entered into that certain Development Agreement dated March 4, 2008 for the purposes of establishing development standards and procedures for development of portions of the Clary property together with construction of other public work improvements contemplated by SIED Contract No. YC LRB 07; and
- D. Whereas, Clary has proposed to subdivide the subject property by short plat as described in the attached Exhibit "B"; and
- E. Whereas, Clary applied for and requested a variance from the Union Gap subdivision code under City of Union Gap File No. V-02-2009; and
- F. Whereas, the variance was granted by the Union Gap Hearings Examiner on January 28, 2010; and
- G. Whereas, the granted variance requires that Clary LLC and City of Union Gap execute a development agreement incorporating variance conditions and approvals;

Now, therefore be it resolved that the parties hereby agree as follows:

## AGREEMENT

1. Proposed Short Plat. Clary owns certain real properties located in the City of Union Gap, legally described on the attached Exhibit "A".

Clary's proposed short plat (the "Short Plat") will subdivide the property described in the attached Exhibit "A" into three lots in accordance with the short plat drawing attached hereto as Exhibit "B". The new lots shall be designated as "Lot 1," "Lot 2," and "Lot 3," as identified on the attached Exhibit "B".

Lot 1 of the Short Plat is developed with an auto dealership, parking, and a vehicle sales area. It is contemplated that Lot 1 will be owned by Clary Union Gap, LLC following recording of the short plat. Lots 2 and 3 will be owned by James E. Clary and Terri L.

Clary. Deeds confirming partition of the property will be recorded in conjunction with the filing of the short plat.

Approximately 45 acres of undeveloped land legally described on the attached Exhibit "C" is situated adjacent to and west of the Short Plat. Given that Chapter 9.34 of the Union Gap Municipal Code prohibits direct access to individual lots from Valley Mall Boulevard, the City desires to plan for access to the above-described 45 acres from collector arterial streets, such as Longfibre Road.

2. Dedication. In accordance with the terms of the variance granted on January 28, 2010 under File No. V-02-2009, and to accommodate the City's plan to provide appropriate access to the above-described 45 acres:

Clary Union Gap, LLC shall dedicate to the City of Union Gap 60 feet in width of right-of-way extending from Longfibre Rd. to the west edge of the Short Plat in accordance with the drawing attached hereto as Exhibit "B" (the "Right-of-Way"). The exact width and configuration of the Right-of-Way has been determined by preliminary engineering, and final design shall not differ in any material respect from the referenced drawing attached hereto as Exhibit "B."

In addition to the foregoing dedication of Right-of-Way, Clary Union Gap, LLC shall also grant to the City of Union Gap a utility easement eight (8) feet in width which runs parallel to the dedicated Right-of-Way and which also extends from Longfibre Road to the west edge of the Short Plat in accordance with the referenced drawing attached hereto as Exhibit "B".

3. Development of Street and Utility Improvements Along Right-of-Way: The dedicated Right-of-Way shall be for street and utility purposes, and improvements shall be developed as follows:

- a. When Clary Union Gap, LLC elects to develop Lot 2 or Lot 3 of the Short Plat, it shall submit development permit applications for City review and approval and pay all applicable application fees as may be required by the Union Gap Municipal Code in effect at the time such applications are submitted and deemed complete.
- b. The City of Union Gap shall not issue a development permit for Lot 2 or Lot 3 of the Short Plat unless street and utility improvements are provided for on the above-described Right-of-Way in accordance with this agreement.
- c. The size and extent of street and utility improvements on the Right-of-Way shall be determined through permit review following application to develop Lot 2 or Lot 3.
- d. The size and extent of street and utility improvements required of Clary Union Gap, LLC (or its successors) on the Right-of-Way shall be commensurate with and in proportion to the proposed development on Lot 2 or Lot 3 of the Short Plat. If the

Right-of-Way has not been improved at the time a land use application is submitted for development and/or use of Lot 2 or Lot 3 of the Clary Short Plat, the applicant shall be required to construct the following improvements to Right-of-Way:

- (i) If development is proposed for Lot 2 and not Lot 3, then curbs, gutter, and sidewalks shall be installed along the entire north edge of the dedicated Right-of-Way (as depicted in Exhibit "B"), along with asphalt pavement to accompany the installed curbs, gutter and sidewalks, consisting of a minimum width of 30 feet.

If development is proposed for Lot 3 and not Lot 2, then curbs, gutter, and sidewalks shall be installed along the entire south edge of the dedicated Right-of-Way (as depicted in Exhibit "B"), along with asphalt pavement to accompany the installed curbs, gutter and sidewalks, consisting of a minimum width of 30 feet.

Under either scenario above, where one Lot is developed and then the remaining Lot is developed at a later time, the applicant shall be required to finish the street in the dedicated Right-of-Way so that it will have curbs, gutter, and sidewalks on both the north and south sides of the street and so that the street will otherwise meet the City's street construction standards.

If development of Lots 2 and 3 is proposed at the same time, the applicant shall be required to install a complete street within the dedicated Right-of-Way to include curbs, gutters and sidewalks on both the north and south sides of the street and the street shall be installed in such manner that it will otherwise meet the City's street construction standards.

- (ii) The street must have a turn-around designed in accordance with provisions of section D103.4 of the 2006 Edition of the International Fire Code. The turn-around must be an all weather road. Portions of the turn-around outside of the required street may be gravel surfacing.
- (iii) Portions of the turn-around outside of the dedicated Right-of-Way may be a temporary easement to be vacated upon extension of the street.

- (iv) Full street improvements may be required as warranted by development of Lots 2 and/or 3.
  - e. In the event that an applicant requests a permit to develop or subdivide any of the property described in Exhibit "C" prior to development of Lot 2 or Lot 3 of the Short Plat, the City of Union Gap shall require that applicant to construct full street and utility improvements on the Right-of-Way from Longfibre Road to the western edge of the Clary property. The street to be constructed shall be consistent with City of Union Gap's street construction standards as may be applicable to the applicant depending upon the nature of the proposed development on any of the property described in Exhibit "C" and its associated impacts.
  - f. In the event that street and utility improvements are constructed on the Right-of-Way and subsequent development of the property described in Exhibit "C" or on any lot of the Short Plat requires expansion or modification of any kind to the then-existing improvements on the Right-of-Way, the City of Union Gap shall require the applicant proposing such development to expand, add to, reconstruct, or otherwise modify the Right-of-Way and existing improvements.
  - g. Clary Union Gap, LLC and its assigns, heirs, and/or successors in interest shall be responsible for compliance with this agreement. Any subsequent development permit application shall also be subject to applicable City of Union Gap, state and federal laws, rules, and regulations to the extent that such laws, rules or regulations are not inconsistent with this Development Agreement.
4. Prior Development Agreement. This Agreement shall supplement the terms, conditions and provisions more particularly set forth in that certain Development Agreement by and between City and Clary dated March 4, 2008. Prior Development Agreement shall remain in full force and effect except as specifically modified by this Agreement. Clary Union Gap, LLC, James E. Clary and Terri L. Clary shall remain jointly and severally liable for any outstanding obligations or responsibilities under the Prior Development Agreement.
5. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their successors, heirs, assigns, and personal representatives.
6. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Jurisdiction over and venue of any suit arising out of or related to this Agreement shall be exclusively in the state and federal courts of Yakima County, Washington.
7. Attorney's Fees. In the event that any lawsuit is instituted by either party to this Agreement arising out of or pertaining to this Agreement, including any appeals and collateral actions relative to such lawsuit, the substantially prevailing party as determined by the court shall be entitled to recover its reasonable attorney's fees, expert witness fees, and all costs and

expenses incurred relative to such lawsuit from the substantially nonprevailing party, in addition to such other relief as may be awarded.

8. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to this matter. It may not be modified except in a writing signed by the party against whom enforcement of the modification is sought.

9. Waiver. The waiver by a party of a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach by that party. No waiver shall be valid unless in writing and signed by the party against whom enforcement of the waiver is sought.

10. Severability. This Agreement is expressly made and entered into under the authority of RCW 36.70B.170 et seq. Should any court of competent jurisdiction find any provision of this Agreement to be invalid under RCW 36.70B or otherwise, the remainder of this Agreement shall remain in full force and effect.

11. Recording. This Agreement shall be recorded in the Yakima County Auditor's office.

12. Reservation of City Authority. As required by RCW 36.70B.170(4), and notwithstanding the terms of this Agreement, Union Gap reserves the right to establish and impose new or different regulations or to impose new mitigating measures to the extent required to address a serious threat to public health or safety.

13. Public Hearing and City Council Approval. This Agreement has been approved following a public hearing pursuant to RCW 36.70B.200.

Executed as of the date and year first above written.

**GRANTOR:**

Clary Union Gap, LLC

By: \_\_\_\_\_  
Kelly Clary, Member

By: \_\_\_\_\_  
Bryce Clary, Member

By: \_\_\_\_\_  
James E. Clary, Member

**GRANTEE:**

City of Union Gap, Washington

By: \_\_\_\_\_  
Jim Lemon, Mayor

By: \_\_\_\_\_  
Terri L. Clary, Member

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

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

Approved as to Form by:

\_\_\_\_\_  
Bob Noe, City Attorney

STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF YAKIMA     )

I certify that I know or have satisfactory evidence that Kelly Clary is the person who appeared before me, and said person acknowledged that said person signed this instrument, and on oath stated that said person is authorized to execute this instrument on behalf of **CLARY UNION GAP, LLC** to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of March, 2010.

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





STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF YAKIMA        )

I certify that I know or have satisfactory evidence that Terri L. Clary is the person who appeared before me, and said person acknowledged that said person signed this instrument, and on oath stated that said person is authorized to execute this instrument on behalf of **CLARY UNION GAP, LLC** to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of March, 2010.

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

STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF YAKIMA        )

I certify that I know or have satisfactory evidence that Jim Lemon is the person who appeared before me, and said person acknowledged that said person signed this instrument, and on oath stated that said person is authorized to execute this instrument on behalf of **CITY OF UNION GAP, WASHINGTON**, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_\_ day of March, 2010.

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

Exhibit A

Lot 4 of that Short Plat recorded in Book 95 of Short Plats, Page 69, Records of Yakima County, Washington.

Exhibit B

Exhibit C

Assessor's Tax Parcel No. 191331-31044

The Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 31, Township 13 North, Range 19 East, W.M., records of Yakima County, Washington.  
EXCEPT the North 344 feet thereof.

ALSO EXCEPTING therefrom the following:

Beginning at a point on the east line of said SE  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 31, which point bears South  $00^{\circ}53'58''$  East, 325.05 feet from the Northeast corner of said Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$ ; thence parallel with said North line, North  $89^{\circ}54'05''$  West, 669.24 feet to a point on the West line of said Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$ ; thence along said West line, South  $00^{\circ}54'19''$  East, 15.0 feet; thence North  $89^{\circ}52'03''$  East, 669.20 feet to a point on the East line of said Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$ ; thence along said East line, North  $00^{\circ}53'58''$  West, 12.30 feet to the point of beginning.

Assessor's Tax Parcel No. 191331-34001

The East  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 31, Township 13 North, Range 19 East, W.M., records of Yakima County, Washington.

Assessor's Tax Parcel No. 191331-34002

The West  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 31, Township 13 North, Range 19 East, W.M., records of Yakima County, Washington.  
EXCEPT for the North 25 feet for County Road Right of Way.  
AND EXCEPT the South 40 feet for County Road Right of Way.

**CITY OF UNION GAP, WASHINGTON  
RESOLUTION NO. 856**

**A RESOLUTION** authorizing the Mayor to sign a Development Agreement with Clary Union Gap, LLC and James E. Clary and Terri L. Clary (Property Owners) as required as a condition for subdivision variance approval issued by the City's Hearing Examiner.

**WHEREAS**, Clary Union Gap, LLC, a Washington Limited Liability Company, and James E. Clary and Terri L. Clary, (collectively "Clary") jointly own as tenants in common real property situated within the City of Union Gap;

**WHEREAS**, Clary has proposed to subdivide their property by short plat;

**WHEREAS**, Clary applied for and requested a variance from the Union Gap subdivision code under City of Union Gap File No. V-02-2009 in connection with its application for the short plat; and

**WHEREAS**, the variance was granted by the Union Gap Hearing Examiner on January 28, 2010;

**WHEREAS**, the variance the Hearing Examiner granted requires that Clary and the City of Union Gap execute a development agreement incorporating the variance conditions and approvals set forth in the Hearing Examiner's decision; and,

**WHEREAS**, the parties (Clary and the City) have drafted a development agreement meeting the requirements of the Hearing Examiner's decision on the variance;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UNION GAP, WASHINGTON, HEREBY RESOLVES as follows:**

The Mayor is authorized to sign a Development Agreement with Clary meeting the conditions for variance approval provided by the Hearing Examiner in his January 28, 2010 decision granting the variance with conditions.

**PASSED** this 22nd day of March 2010.

\_\_\_\_\_  
Jim Lemon, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Kathryn Thompson, CMC, City Clerk

\_\_\_\_\_  
Robert F. Noe, City Attorney