

## Table of Contents

<b>The Agreement</b> .....	<b>Pages 1 –18</b>
<b>Exhibit “A” (Concomitant Agreement)</b> ...	<b>Exhibit “A”</b>
<b>Exhibit “B” (1992 Amendment Ordinance of the County Council )</b> .....	<b>Exhibit “B”</b>
<b>Exhibit “C” (Original Master Plans)</b> .....	<b>Exhibit “C”</b>
<b>Exhibit “D” (1997 Hearing Examiner’s Decision)</b> .....	<b>Exhibit “D”</b>
<b>Exhibit “E” (2000 Amendment Ordinance of the County Council)</b> .....	<b>Exhibit “E”</b>
<b>Exhibit “F” (Final Development Plan)</b> ...	<b>Exhibit “F”</b>
<b>Exhibit “G” (Parcel Legal Description )</b> ..	<b>Exhibit “G”</b>
<b>Exhibit “H” (Final Zoning Plan )</b> .....	<b>Exhibit “H”</b>
<b>Exhibit “I” (Applicable Zoning Code)</b> ...	<b>Exhibit “I”</b>

**SUNRISE**  
**MASTER PLANNED COMMUNITY**  
**DEVELOPMENT AGREEMENT**

This Development Agreement is entered into by and between the COUNTY OF PIERCE, a political subdivision of the state of Washington (hereinafter "Pierce County"), and SUNRISE DEVELOPMENT CORPORATION OF WASHINGTON, a Washington corporation (hereinafter "Sunrise").

**RECITALS**

1. The Pierce County Hearing Examiner recommended in his Report and Decision of March 14, 1986 (Exhibit "A" to Ordinance 86-92S), that the Pierce County Council execute a concomitant zoning agreement with Mt. Rainer Ventures (now Sunrise) to govern the land use, zoning, and other specified conditions proposed for the development of Rainer Terrace (now the Sunrise Master Planned Community and hereinafter referred to as the "Project"); and
2. A concomitant agreement was adopted (Exhibit A to this Agreement) by the Pierce County Council on December 6, 1986; and
3. The concomitant agreement was amended (Exhibit B to this Agreement) on October 9, 1992; and
4. The concomitant agreement contained master plans (Exhibit C to this Agreement) relating to land use, zoning, transportation, sanitary sewers, water, storm drainage, and temporary erosion control; and
5. The master plans were adopted by the Pierce County Council through Ordinance 93-124; and
6. The County Council forwarded a request from Sunrise for Major Amendments to the master plans and termination of the concomitant agreement to the Pierce County Hearing Examiner and the Planning & Land Services Department (PALS) for their review and recommendation on August 6, 1996 (Resolution 96-125); and
7. The Hearing Examiner transmitted a report, findings and recommendations to the County Council on May 20, 1997(Exhibit D); and

8. The Hearing Examiner recommended the County Council terminate the concomitant agreement, amend the 1994 Pierce County Comprehensive Plan and re-designate Sunrise from an Employment Based Planned Community (EBPC) to a Master Planned Community (MPC), replace the zone classifications of Ordinance 85-1558 with zone classifications of Chapter 18A PCC, reclassify 218.5 acres of industrial and office park classification to residential (MSF), and approve the Project as a Planned Development District (PDD); and
9. The County Council re-designated the Project from EBPC to MPC on October 5, 1999 (Ordinance 99-93S2); and
10. The County Council terminated the concomitant agreement on May 3, 2001 ((Ordinance 2000-97S) Exhibit E to this Agreement); and
11. The County Council, on May 3, 2001, requested that PALS administer the Project pursuant to the provisions of PCC 18A.75.080 for approving a final development plan and development agreement, that PALS consider the recommendations contained in the May 1997 Hearing Examiner's decision, and that all future development within the Project be regulated pursuant to the Pierce County Development Regulations, as amended, including landscaping and buffering requirements (Ordinance 2000-97S).

NOW, THEREFORE, in consideration of the promises, covenants, and provisions set forth in this Agreement, the parties agree as follows:

[REDACTED]

**1. DESCRIPTION OF PROJECT**

PCC 18A.75.080N identifies the required elements of a Project Development Agreement. This section is intended to provide those elements.

**1.1 Overall Conceptual Plan**

The Sunrise MPC is, and will continue to be, developed as a master planned

of individual projects within Sunrise shall be governed by the zoning classifications as depicted on the zoning master plan (Exhibit H).

### **1.2 Location and Density of Residential Development**

A range of residential densities will be provided throughout the Project. The least dense developments will contain two (2) units per gross acre while the most dense will not exceed 25 units per gross acre. Urban density single family development will be focused in the north and south portions of the Project, while higher densities will be interspersed throughout the middle portions of the Project.

The Hearing Examiner's decision on the most recent major amendment limits the project to a total of 2,180 single family units and 1,266 multi-family units until further environmental review is conducted and another major amendment is approved by the Hearing Examiner (Condition of Approval #9).

### **1.3 Location and Type of Commercial Development**

The majority of intense commercial development will be located southeast and southwest of the intersection of Sunrise Boulevard and 122<sup>nd</sup> Avenue. Some less intense commercial development will be located south of Sunrise Boulevard east of 110<sup>th</sup> Avenue. In addition some limited commercial development may be located north of Sunrise Boulevard at 122<sup>nd</sup> Avenue, or at the intersection of 122<sup>nd</sup> Avenue and 180<sup>th</sup> Street. The intense commercial development will most likely be one or two anchored shopping centers surrounded by various retail pads. The less intense commercial development will probably be some type of small shop, auto-oriented buildings. The limited commercial, if developed, will be some type of professional offices.

The Hearing Examiner's decision on the most recent major amendment limits the project to a total of 98.2 acres of retail and commercial uses until further environmental review is conducted and another major amendment is approved by the Hearing Examiner (Condition of Approval #9).

### **1.4 Location and Type of Open Space and Recreational Facilities**

A high percentage of the land area within the project is devoted to either open space and recreational land uses. The final development plan officially designates 152 acres as either open space or park. The actual amount of acreage at project completion will be closer to 350 when all parcels have been developed and necessary set-aside areas have been established. The location of the large officially designated open space tract is south of 184<sup>th</sup> Street centered on Horse Haven Creek



several stipulations. Sunrise sold 96 acres to the Puyallup School District in the early 1990's and the District has built their third senior high school on this property. The District anticipates developing the remaining portion of the property with a junior high and an elementary school sometime in the future.

The Hearing Examiner's decision on the most recent major amendment requires Sunrise to cooperate with adjacent property owners, the County, and the Orting School District to ensure that prior to creating student impacts to the Orting School District, an appropriate and acceptable road access from 200<sup>th</sup> Street East to Sunrise is completed. Until such time as a road access from 200<sup>th</sup> is completed and accepted by the County, building permits shall not be issued on any property within Sunrise that is also within the Orting School District (Condition of Approval 18).

#### **1.7 Location and Type of Public Facilities**

Public facilities, including transportation facilities, sanitary sewer facilities, water facilities and storm water facilities will be located and designed according to the appropriate adopted master plan or as herein amended.

In the event that right-of-way or other real property is found to be necessary for public use and is required for construction, installation or maintenance of any improvement required by the terms of this agreement, or an approved master plan, and such right-of-way or other property cannot be obtained by Sunrise through voluntary transfer, the County may exercise its power of eminent domain to acquire such property.

### **2. GENERAL OBLIGATIONS**

#### **2.1 Obligations of County**

In consideration of Sunrise entering into this agreement, Pierce County agrees that it shall comply with the project approval and all subsequent approvals.

#### **2.2 Obligations of Sunrise**

In consideration of Pierce County entering into this agreement, Sunrise agrees that it shall comply with the project approval and all subsequent approvals.

### **3. ALLOWED USES**

Requests for development permits or approvals that implement and are consistent with the approved Final Development Plan and Final Zoning plan shall be

processed and approved pursuant to Pierce County Development Regulations - Zoning (Exhibit I to this Agreement) unless this agreement states otherwise. Land uses within the project shall either be allowed outright, allowed only with approval of an Administrative Use Permit or allowed only with approval of a Conditional Use Permit.

### **3.1 Use Exceptions**

The Hearing Examiner's decision on the most recent major amendment limits the types of uses allowed within the portions of the project designated Mixed Use District (MUD) and High-Density Residential District (HRD).

#### **3.1.1 MUD Excluded Uses**

The following uses are not allowed within the portions of the project designated MUD:

- a. Fraternity or Sorority Houses
- b. Telecommunication Towers or Wireless Facilities (Level 2)
- c. Agricultural Sales
- d. Agricultural Services
- e. Forestry (Level 1)
- f. Amusement & Recreation
- g. Billboards
- h. Bulk Fuel Dealers
- i. Food Stores
- j. Lodging (Level 2)
- k. Mobile Home Sales
- l. Motor Vehicle Sales, Rental and Repair (Level 2, 3 and 4)
- m. Storage
- n. Rental & Repair Services
- o. Sales of General Merchandise
- p. Wholesale Trade
- q. Contractor Yards
- r. Motion Picture, T.V. and Radio Production Studios
- s. Printing, Publishing and Related Industries
- t. Salvage & Storage Yards
- u. Educational Facilities (Level 1)
- v. Public Safety Services (Level 3)
- w. Transportation Uses
- x. Sewage Treatment Facilities
- y. Waste Transfer Facilities (Level 2)

- z. Water Supply Facilities (Level 2)
- aa. Adult Business
- bb. Food and Related Products (Level 2)
- cc. Intermediate Manufacturing, Assembly

### **3.1.2 HRD Excluded Uses**

The following uses are not allowed within the portions of the project designated HRD:

- a. Day Care Centers
- b. Postal Services (Level 1)
- c. Telecommunication Towers or Wireless Facilities
- d. Administrative & Professional Offices (Level 1)
- e. Agricultural Sales
- f. Forestry (Level 1)
- g. Eating & Drinking Establishments (Level 1, 2, 4, 6 and 7)
- h. Food Stores (Level 1)
- i. Motor Vehicle Service (Level 1)
- j. Personal Services (Level 1)
- k. Storage

## **4. INFRASTRUCTURE DEVELOPMENT STANDARDS**

All infrastructure shall be constructed consistent with Pierce County standards unless modified by this agreement or the adopted transportation master plan, the sanitary sewer master plan, the water master plan or the storm drainage master plan.

### **4.1 Traffic Study**

As per the "MASTER TRANSPORTATION PLAN, APPENDIX 4 TO THE MASTER DEVELOPMENT PLAN", dated August, 1991: "Detailed traffic impact studies should be required for future subdivisions and commercial development phases." A comprehensive traffic study may be completed for Sunrise which will address future traffic mitigations. Until such a comprehensive traffic study (including a traffic mitigation agreement) has been completed and approved by Pierce County, Sunrise may continue development by completing a separate traffic impact study, when required, for each future subdivisions and/or commercial development.

## 5. GENERAL PROVISIONS

### 5.1 Definitions

#### 5.1.1 Applicable Law

The rules, regulations, official policies, standards and specifications applicable to the Project (the "Applicable Law") shall be those set forth in this Agreement, the Project Approval and Subsequent Approvals, and with respect to matters not addressed by this Agreement, the Project Approval, or the Subsequent Approvals, those rules, regulations, official policies standards and specifications (including County ordinances and resolutions) in force and effect on June 5, 2001.

#### A. Zoning Regulations

Requests for development permits or approvals that implement and ~~are consistent with the Final Development Plan and Zoning Plan as~~

described in Section 1 above shall be processed and approved pursuant to Pierce County Development Regulations - Zoning (18A) except as modified by this Agreement.

#### B. Road Standards

All on-site and off-site public road improvements constructed by Sunrise or their successors or assigns shall comply with the 1992 Pierce County Road Standards (Ordinance 91-111S) except as modified by this Agreement in the Transportation Master Plan.

#### C. Stormwater Standards

Drainage plans and analysis shall comply with the 1997 Pierce County Stormwater Management and Site Development Manual, Pierce County Title 18C - Development Regulations - Storm Drainage and Site Development, and Title 18E - Critical Areas, except as modified by this Agreement in the Storm Water Master Plan.

#### D. Signage Standards

Signage shall be regulated pursuant to Pierce County Development Regulations - Signs (18B).

#### **E. Critical Areas Standards**

Critical Areas shall be regulated pursuant to Pierce County Development Regulations - Critical Areas (18E).

##### **5.1.2 Project Approval**

The Project Approval is the PUD for the Sunrise Master Planned Community, and is evidenced by the Examiner's findings of fact and conclusions of law dated May 20, 1997 and Pierce County Ordinance #2000-97s.

##### **5.1.3 Subsequent Approvals**

The Subsequent Approvals are the applications for land use approvals, entitlements, and permits, in addition to the Project Approval, and necessary for the development of the Project as determined by Sunrise. The Subsequent Approvals may include, without limitation, the following: amendments of the Project Approval, improvement agreements and other agreements relating to the Project, use permits, grading permits, building permits, lot line adjustments, sewer and water connection permits, certificates of occupancy, preliminary and final plat approval, inter-local agreements, developer extension agreements, landscaping plans, shoreline permit, hydraulic project approval, water system reports for major water infrastructure system, preliminary and final plat, clearing and grading permits, storm drainage construction plans and design of individual facilities, shoreline permit, building permits for water reservoirs and pump stations, wastewater treatment plant reports, plans and specifications, collection and interceptor sewer plans and specifications, sewerage plan updates/amendments, facility plan amendments, design plans, and any amendments to, or repealing of, any of the foregoing.

#### **5.2 Governing Law**

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington.

#### **5.3 Binding on Successors; Assignment**

##### **5.3.1 Binding.**

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of Sunrise and Pierce County.

### **5.3.2 Assignment.**

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 building thereon. Sunrise shall have 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 non-judicial) or by deed in lieu of foreclosure. Consent by Pierce County shall not be required for any transfer of rights pursuant to this Agreement. Upon the transfer under this section, the transferee shall be entitled to all interests and rights and be subject to all obligations under this Agreement as to the property transferred, and Sunrise shall be released of liability as to the property transferred.

### **5.4 Recording**

Pursuant to RCW 36.70B.190, this Agreement (without Exhibits) shall be recorded with the Pierce County Auditor and during the term of this Agreement shall be binding on the parties, their successors and assigns.

### **5.5 Interpretation; Severability**

#### **5.5.1 Interpretation.**

The parties intend this Agreement to be interpreted to the full extent authorized by law as an exercise of Pierce County's authority to enter into such agreements.

#### **5.5.2 Severability.**

If any provisions of this Agreement are determined to be unenforceable or invalid by a court of law, then this Agreement shall 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 shall undertake any actions inconsistent with the intent of this 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 5.11.1 for determination of the modifications which implement the intent of this Agreement and the court decision.

**5.6 Authority**

Pierce County and Sunrise each represent and warrant it has the respective power and authority, and is duly authorized to execute, deliver and perform its obligations under this Agreement.

**5.7 Exhibits**

Exhibits "A" through "I" are incorporated herein by this reference as if fully set forth.

**5.8 Headings**

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

**5.9 Time is of the Essence**

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

**5.10 Integration**

This Agreement represents the entire agreement of the parties. There are no other agreements, oral or written, except as expressly set forth in this Agreement.

**5.11 Disputes; Default and Remedies**

**5.11.1 Dispute Resolution**

In the event of any dispute relating to this Agreement, all parties upon the request of any other party shall meet within seven (7) days of the request to seek in good faith to resolve the dispute. Pierce County shall send the appropriate department director and persons with information relating to the dispute, and Sunrise shall send an owner's representative and any consultant or other person with technical information or expertise related to the dispute.

**5.11.2 Default and Remedies**

No party shall 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 shall 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 shall be deemed a cure. Any party not in default under this Agreement shall 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.

#### **5.11.3 Relief Against Defaulting Party or Portion of Property**

In recognition of the anticipated sale(s) by Sunrise of portions of the Property to others to own, develop and/or occupy within the Project Site, the remedies under this Agreement shall be 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 claims of liability provisions apply under Section 5.5.2, any claimed default shall relate as specifically as possible to the portion of the Property involved and any remedy against any party shall be limited to the extent possible to the owners of such portion of the Property. To the extent possible, Pierce County shall 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 shall seek to utilize the severability provisions set forth in this Agreement.

#### **5.12 Authorized Agents**

Sunrise may designate agents with authority to give notices, approvals and otherwise act pursuant to this Agreement. Unless otherwise stated by Sunrise, representations and actions by its designated agents shall represent and bind Sunrise as to its respective ownership within the Project as to the matters covered by this Agreement.

#### **5.13 Term**

This Agreement shall become effective upon the date upon which this Agreement is signed by Pierce County and Sunrise. The term shall commence upon the effective date and shall continue for a period of twenty (20) years following the effective date; provided, however, that the term may be extended for up to two (2) additional terms of ten (10) years each at the request of either party.

#### **5.14 Five-year Review**

The Sunrise MPC shall be reviewed by Pierce County at least every five years until buildout. The review shall address compliance with the conditions of approval. The review may also assess whether the development is well designed, contains a balance of uses, efficiently uses public facilities and services, and provides adequate open space.

##### **5.14.1 Report**

Within thirty (30) days following the five-year anniversary of the effective date of this Development Agreement, and provided Sunrise shall have paid the fee specified below, Sunrise will prepare a report summarizing the status of the project. The report shall be made available to the Planning Director, the Hearing Examiner and Staff for review. Parties of record shall be notified of its availability for review. Contents of the report shall include, but not be limited to the following:

- A. Location and density of subsequently approved residential development.
- B. Location and type of subsequently approved non-residential development.
- C. Location and type of open space and recreation facilities.
- D. Location and type of on-site and off-site roads, utilities and infrastructure.
- E. Recommended modifications to the Project or the Development Agreement pursuant to Section 5.21 of this Development Agreement, if any.

##### **5.14.2 Comment Period**

Review and comment on the report shall be take place within 30 days of its submittal. If no comments are received by the County within the review period, the five-year review shall be deemed to be complete. Comments received during the comment period shall be referred to the Planning Director for appropriate action.

**5.14.3 Review Fee**

A review fee in the amount of \$2,500 shall be paid by the applicant at commencement of five-year review.

**5.15 Estoppel Certificate**

Within thirty (30) days following any written request which any party or a Mortgagee may make from time to time, the other party to this Agreement shall execute and deliver to the requesting person a statement certifying that: (1) this Agreement is unmodified and in full force and effect, or stating the date and nature of any modification; (2) to the best knowledge of the certifying party, (a) no notice of default has been sent under Section 5.11.2 of this Agreement or specifying the date(s) and nature of any notice of default and (b) no written notice of infraction has been issued in connection with the Project; and (3) any other reasonably requested information. Failure to deliver such statement to the requesting party within the thirty (30) day period shall constitute a conclusive presumption against the party failing to deliver such statement that this Agreement is in full force and effect without modification or default (except as may be represented by the requesting party). The delivery of estoppel certificate on behalf of Pierce County pursuant to this section shall be deemed an administrative matter and shall not require legislative action.

**5.16 No Third Party**

This Agreement is made and entered into for the sole protection and benefit of the parties, their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

**5.17 Interpretation**

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

**5.18 Notice**

All communications, notices and demands of any kind which a party under this Agreement requires or desires to give to any other party shall 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:

If to SUNRISE:

Sunrise Development Corporation  
ATTN: Harry Corliss  
15807 134<sup>th</sup> Avenue East  
Puyallup, WA 98374

with copy to:

Halsan Frey Associates, LLC  
ATTN: Carl Halsan  
P.O. Box 1447  
Gig Harbor, WA 98335

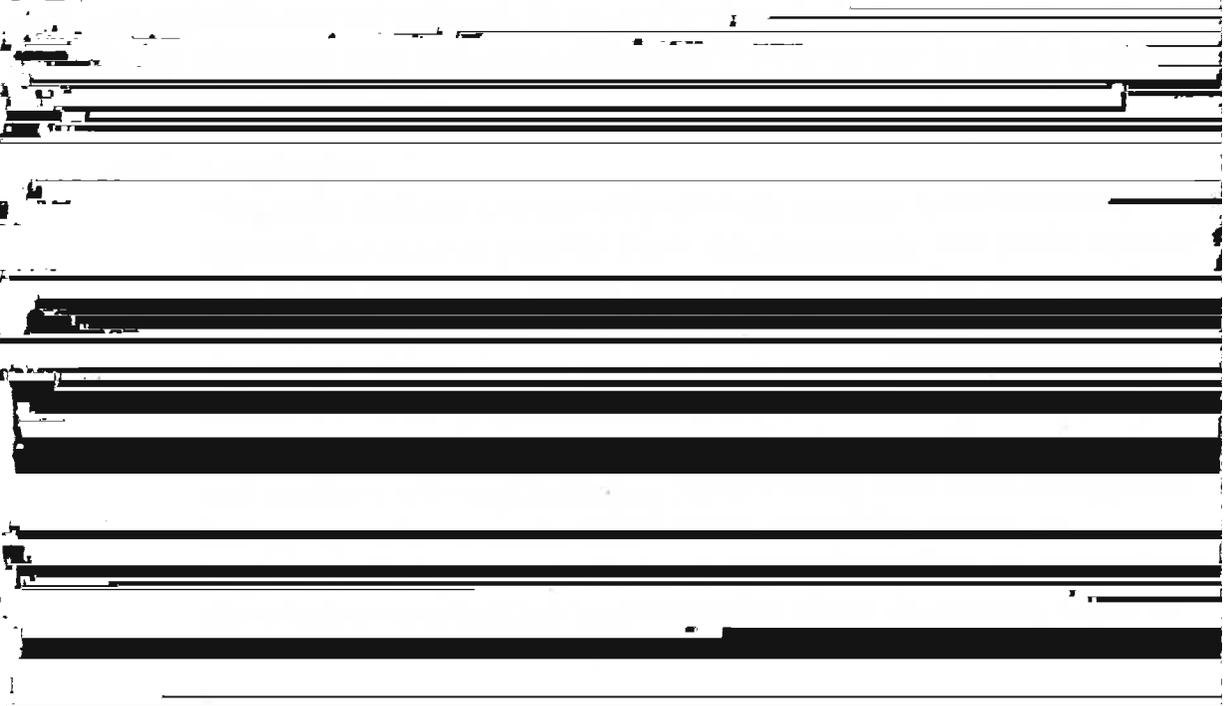
with copy to:

Fred Anderson  
PO Box 7857  
Bonney Lake, WA 98390

If to Pierce County:

Planning & Land Services Department  
2401 South 35<sup>th</sup> Street  
Tacoma, WA 98409

Notice by hand delivery or facsimile shall be effective upon receipt. If deposited in the



Pierce County's independent exercise of judgment following all applicable procedures necessary to use eminent domain power.

**5.20 Delays**

If either party is delayed in the performance of its obligations under this Agreement due to *force majeure*, then performance of those obligations shall be excused for the period of delay.

**5.21 Modification and Revocation**

**5.21.1 Modification**

The approved Sunrise Development Agreement, or any subsequent approval, including, but not limited to the land use plan elements or conditions of approval, may be amended or modified at the request of the applicant or the applicant's successor in interest. The Director may administratively approve minor modifications to the Agreement, or any subsequent approval. Minor modifications are defined as those which do not increase the density by more than 10% of the total number of units allowed for the project or phase, those which do not increase the perimeter boundary of the project or phase by more than 5%, those which do not significantly increase impacts on transportation or the environment, and those which do not reduce buffers or open space. Modifications that do not qualify as minor shall be subject to the same procedures as the original application.

**5.21.2 Revocation**

Revocation of the Development Agreement or any subsequent approval shall be processed pursuant to the Pierce County Code as it existed on the date of execution of this agreement.

IN WITNESS WHEREOF, this Agreement has been entered into between the County and Sunrise as of the 15 day of NOVEMBER, 2001.

COUNTY OF PIERCE, a political  
subdivision of the state of Washington

SUNRISE DEVELOPMENT  
CORPORATION OF WASHINGTON, a  
Washington corporation

By:   
Its

By: 

APPROVED AS TO FORM:  
County Prosecuting Attorney's Office

By: 

10-18-01



