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**CLARKS CREEK FARM, LLC,
AND JAKE STERINO, INC.**

DEVELOPMENT AGREEMENT

DRAFT

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DEVELOPMENT AGREEMENT
Between
PIERCE COUNTY
And
CLARKS CREEK FARM, LLC, and JAKE STERINO, INC.

1. **Date and Parties.** This Development Agreement, for reference purposes, is dated the ____ day of _____, 2020, and is entered into by and between COUNTY OF PIERCE, a political subdivision of the State of Washington, and CLARKS CREEK FARM, LLC, and JAKE STERINO, INC.

2. **Definitions.** When used in this document, unless the context clearly indicates otherwise, the following words, when capitalized, shall be defined as set forth in this Section.
 - 2.1 “Agreement” means this document.

 - 2.2 “Agreement Term” shall mean the ten year period of time that the Agreement shall be in full force and effect, said period commencing on the ____ day of _____, 2020, and ending on the ____ day of _____, 20____.

 - 2.3 “Applicable Law” shall mean the provisions of this Agreement, and any County code, regulations, policies, standards and specifications of whatsoever kind or nature issued by the legislative or executive branches of the County government that were in effect on the Effective Date, and as more fully described in Agreement section 8.

 - 2.4 “Acquisition Property” is that portion of the Farm Property that the County intends to purchase for the Canyon Road Northerly Extension (CRP 5643). This acquisition property will include right-of-way and easements necessary for the Canyon Road Northerly Extension and is being addressed through conventional right-of-way acquisition processes separate from this agreement.

 - 2.5 “County” means Pierce County, Washington.

 - 2.6 “Effective Date” means the date that the County Council authorized the Pierce County Executive to execute this Agreement, which is the ____ day of _____, 2020.

 - 2.7 “Exhibits” are the documents that are attached to this Agreement and all of which are incorporated herein by this reference. The Exhibits are identified as follows:
 - DA 1 - Cover Sheet with notes for Site Development and Site Overview
 - DA 2 - Existing Conditions Along 52nd Street & Development Conditions w/DA
 - DA 3 - Proposed Conditions with Existing Roadway
 - DA 4 - Proposed Conditions with Existing Roadway Continued
 - DA 5 - Future Canyon Road Widening Driveway Approach

- DA 6 - Architectural Plan, ADA Restrooms, Office Building Exiting Plan and Pallet Storage
- DA 7 - Conceptual Compensatory Storage Plan
- DA 8 - Photograph of Permitted Signs with Dimensions
- DA 9 - Illustration of Acquisition Property
- DA 10 - Legal Description for the Farm Property

Any time the capitalized word “Exhibit” is used in the Agreement it shall be a reference to one of these listed Exhibits, unless the context clearly states otherwise.

- 2.8 “Farm Stand”, shall mean the approximately 6,300 square foot seasonal retail facility and its associated trellis, outdoor plant storage and sales area, vehicle parking and related facilities that is open from April 1 through the last Sunday before Christmas each year to sell farm produce, flowers, wreaths and other agricultural and related items. The Farm Stand and associated accessory facilities and related improvements are located on Pierce County Tax Parcel Nos. 0420192017 and 0420192032 as set forth in the site plan attached hereto as Exhibit DA -1.
- 2.9 “Future Development” means new development on the Farm Property after the Effective Date, other than the currently existing Farm Stand, the Loading Dock Addition to the Cooler Building, the ADA accessible bathrooms, and other buildings included on the plan.
- 2.10 “Loading Dock Addition to the Cooler Building”, or “Loading Dock Addition”, shall mean the approximately 2,500 square foot loading dock expansion of the Cooler Building located on Pierce County Tax Parcel Number 0420193703 that is currently under construction.
- 2.11 “Owners” shall mean the record title holders of the fee simple interest in the Farm Property. When referring to a specific parcel of land that is included within the definition of Farm Property, the reference shall be to the “Owner”, with the parcel number being referred to following thereafter in the Agreement text.
- 2.12 “Party” shall mean any of the entities listed in paragraph 1. The plural shall mean all of the entities listed in paragraph 1.
- 2.13 “Permitted Uses” are uses allowed outright on the Farm Property during the Agreement Term, without further zoning approval, subject only to the Applicable Law, and as more fully described in section 5 below.
- 2.14 “Farm Project” is defined as the currently existing uses, and future planned farming-related uses on the Farm Property that are allowed by this Agreement, which includes potential expansion of existing uses, and related parking and accessory uses, as set forth in the DA exhibits. Such uses also include produce packing, cold storage, and produce distribution serving the Sterino farm properties and other small local farm operations,

the Farm Stand, and the Loading Dock Addition to the Storage Building, all of which collectively are the Farm Project.

- 2.15 “Major Amendment” is a proposed change to the Agreement that would either: 1) allow any use, other than a Permitted Use, to occur on any portion of the Farm Property; or 2) would change the Agreement Term; or 3) would terminate the Agreement. Only the County Council may, by ordinance, approve a Major Amendment.
- 2.16 “Minor Amendment” means a change to the Agreement that is not a Major Amendment.
- 2.17 “Farm Property” means the approximately 103 acres of real property located within the County, legally described in Exhibit DA-10, identified as Pierce County Tax Parcel Nos. 0420192703, 0420192017, 0420192032, 0420192029, 0420192023, 0420192014, 0420193703, 0420193001, 0420194009, 0420194034, 0420194037, 0420194007, 0420194053, 0420195701, and 0420191008, all of which are pictorially illustrated on Exhibit DA-1, as well as any farm lands that are administratively added to this Agreement pursuant to the provisions of paragraph 13.3 below.

3. General Recitals, Public Benefit Goals and Agreement Purpose.

- 3.1 The Owners and Pierce County wish to enter into this Development Agreement to provide for the long-term planning and development of the Farm Property as described more fully below.
- 3.2 To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Washington State Legislature enacted RCW 36.70B.170 through 36.70B.210 (the “Development Agreement Statute”), which authorizes a local government to enter into a development agreement with the owner of real property to establish certain development rights and responsibilities.
- 3.3 Chapter 18A.100 of the Pierce County Code sets forth the provisions and procedures for applying for, reviewing and approving project development agreements. This Development Agreement has been processed, considered and executed in accordance with those County and State requirements.
- 3.4 The Farm Property is approximately 103 acres in size and has approximately the following zoning designations: 19 acres of Rural Separator; 7 acres of Rural Farm; and 76.5 acres of Agricultural Resource Land. The Farm Property is located within the Mid-County Community Plan. Approximately 92 acres of the Farm Property is actively farmed agricultural land having long term commercial significance.
- 3.5 The Farm Property includes a produce packing, cold storage and distribution facility serving small local farmers. The facility combines and consolidates produce from a

number of local farmers for resale to supermarkets and other large produce purchasers. The facility provides a market that might not otherwise exist for produce from other small farms in Pierce County.

- 3.6 The entire Farm Property provides for a vertically integrated farming operation, and keeps over 92 acres of land in active agricultural uses with over 80% of that use being in agricultural use open space.
- 3.7 The Farm Property has over 2,000 lineal feet of frontage on 52nd Street East. Although 52nd Street East is currently an arterial road, the County Transportation Improvement Plan contemplates that 52nd Street East will become a very significant major arterial, providing a needed north south link from south County into the industrialized area of Fife and the Port of Tacoma and to other major state and federal highways.
- 3.8 The Farm Stand and the trellis for hanging baskets adjacent to the Farm Stand building are for the purpose of providing fresh local produce and other agricultural and horticultural products for sale to the community, as well as to provide related products, in a rural produce stand atmosphere that helps with the economic sustainability of the adjoining agricultural uses.
- 3.9 As set forth in PCC 18I.35.010, it is in the public interest to enhance and encourage agricultural development operations within the County and for the County to promote public health, safety and welfare and to support and encourage agricultural operations in the County.
- 3.10 Goal MC LU-1.2 of the Mid-County Community Plan provides: “The preservation of agricultural lands is a priority.”
- 3.11 Goal MC LU-2.1 of Community Plan provides “The continuation of agricultural practices should be encouraged and shall be promoted when such practices are conducted in an environmentally responsible manner.”
- 3.12 Goal MC LU-2.4 the Community Plan provides: “Limited provisions may be made for light commercial and industrial uses within the Rural Separator area when directly associated with an existing agricultural, forestry, or natural resource related uses. Examples of such limited light commercial and industrial uses include agricultural product and supply sales, horticultural nurseries, veterinary services, and commercial stables.”
- 3.13 Goal MC LU-9 of the Community Plan states that the County should “Recognize agriculture as an important resource for the plan area.”
- 3.14 Goal MC LU-9.2.1 of the Community Plan provides: “The Agricultural Resource Lands designated properties in the north section of the community planning area shall be given high priority because of the value of the agricultural soils in those areas.”

herein.

5. Permitted Uses.

- 5.1 During the term of this Agreement the use types that shall be permitted on the Farm Property are the uses set forth in this Agreement and shall be referred to as the Permitted Uses. The use types identified herein shall be as defined and described in PCC Chapter 18A.33 on the Effective Date. All existing uses are approved as is, subject to any conditions set forth in the Agreement.
- 5.2 Future Expansion Plan. Plans for future development on the Farm Property include the following and shall be deemed included as Permitted Uses, subject only to the conditions set forth in this Agreement:
- (1) A new tractor barn pole building;
 - (2) Expansion of the cold storage facility;
 - (3) Construction of the Loading Dock Addition;
 - (4) Enclosure of the shipping dock area by adding walls and freight doors;
 - (5) Expansion of the Farm Stand building (subject to changes in future zoning conditions) on tax parcels 0420192032 and 0420192017 to the maximum allowed;
 - (6) Addition of a 12 x 12 dock office;
 - (7) Addition of two ADA restrooms (Item 7 on Exhibit DA-1, and illustrated on Exhibit DA-6), and the remodel of existing bathrooms attached to the Cooler Building to a single ADA compliant bathroom to serve the office building and the Cooler Building (Item 7 on Exhibit DA-1 and illustrated on Exhibit DA-6) and to be constructed within the time frame set forth below;
 - (8) Relocation of the Rhubarb Hot Houses (illustratively shown on Exhibit DA-1, but the actual location may vary from year to year based on the Owners farming needs, without further County approval);
 - (9) Expansion of the parking areas and drive lanes in order to accommodate the parking needs of the farm operations and customers and to match up with the new accesses to be constructed by the County as part of the road improvements (DA Section 6.3 and Exhibit DA -5);
 - (10) New Produce Storage Cooler (Exhibit DA -1, Item 4);
 - (11) Roof existing concrete area (Exhibit DA -1, Item 3); and
 - (12) Construction of stormwater and storm conveyances systems in order to accommodate the above uses, the portion of which that will serve current uses to be constructed no later than 2021.

All of these enumerated uses on the Farm Property are illustrated in the Exhibits attached hereto and are deemed “Permitted Uses” during the Agreement Term.

- 5.3 During the Agreement Term, the applicable development regulations that will apply to Permitted Uses, except to the extent expressly modified herein, shall be the regulations in effect on the Effective Date.

- 5.4 The County Engineer reserves the right to restrict left turn movements from 52nd Street East to the property in the event that roadway capacity or safety concerns arise on 52nd Street East. Owners will be notified by the Office of the County Engineer if or when this determination is made and will be given the opportunity to design and construct turn lanes on 52nd Street East in order that left turn movements into the site can still occur (see section 6.3.2 for further details).
- 5.5 Once the County has constructed its transportation system improvements on 52nd Street East, landscaping as required to meet the minimum requirements for the Mid-County Community Plan for the Farm Stand, shall be constructed along the road frontage adjacent to tax parcel 0420192017. No further landscaping shall be required for the Farm Project, except for perimeter and interior parking lot landscaping as illustrated in Exhibit DA-3.
- 5.6 The construction of the Loading Dock Addition shall not trigger any modifications to the remainder of the existing structure, except to the extent necessary to assure the structural integrity of the connection of the Loading Dock Addition to the existing structure.
- 5.7 The expansion of the Farm Stand shall not trigger any modification to the remainder of the existing structure, except to the extent necessary to assure the structural integrity of the connection in case of future expansion to the existing structure.
- 5.8 Within 60 days of the Effective Date all items in 6.7 must be complete and ready for inspection by the County. Upon inspection and approval, the Planning and Public Works Director shall issue a Commercial Occupancy Permit (reference application no. 951374) to document that the Agricultural Equipment and Supply Storage, Maintenance and Office Building and the Cooler Buildings are approved for commercial uses. The permit conditions shall address any basic health or life safety improvements needed to the existing buildings. Regular inspections shall be conducted by the Fire Marshall to assure continued compliance of the permit conditions.

6. Development Standards.

6.1 Traffic Impact Fees. No traffic impact fees are required for any of the existing or Permitted Uses, with the following exceptions:

- (1) The Owners shall pay the traffic impact fee for the existing Farm Stand indoor and outdoor retail areas. The amount of this Traffic Impact Fee shall be based on the following calculation:

$$\text{Farm Stand Indoor Retail} = (\text{General Retail Land Use Rate for TSA B}) \times 6300 \text{ s.f.}$$

$$\text{Farm Stand Outdoor Retail} = (\text{General Retail Land Use Rate for TSA B}) \times$$

4,100 s.f. x 50% reduction

It is acknowledged that the traffic impact fee required by this section (\$45,257.00) has been paid.

- (2) The Owners shall pay Traffic Impact Fees for any future expansion of the Farm Stand indoor and outdoor retail areas, as contemplated in [section 5.2 (5)] in accordance with Title 4A Impact Fees.

6.2 Completion of Site Development Improvements for Existing Farm Stand. The Owner shall submit and obtain approval of a Site Development Permit and construct:

- (1) a new access to the west of the Farm Stand, eliminate the current westerly access to the Farm Stand, and modify the east access of the Farm Stand to County Standard Detail (PC.F 3.1) and,
- (2) the on-site storm water system and compensatory storage required for the Farm Stand.

Permit applications that are consistent with the terms of this Development Agreement shall be promptly processed. and shall be subject to payment of the applicable County review and inspection fees. The Owners shall obtain the Site Development Permit and complete the required construction within 6 months of the Effective Date.

6.3 Access. There are five existing accesses to the Farm Property from 52nd Street, two of which shall be permanently closed and the remaining three shall be allowed to remain open, subject to the following provisions (reference exhibit DA-5).

6.3.1 At a minimum the County will provide for and construct the following as part of the Canyon Road Northerly Extension (CRP #s 5643 and 5498):

- a.) Re-build Driveway approaches as per Pierce County Standard Drawing PC.F4.7 and exhibit DA-5 as well as appropriate transitions into the property. The driveways will have a 35-foot-wide throat and tapers in accordance with the above noted standard drawing.
- b.) Sidewalk along the Farm Property's frontage on 52nd Street East.

6.3.2 The current design plans for 52nd Street East allow for unrestricted access for left turning movements into the Farm Project driveway approaches. However, the parties recognize that roadway capacity issues or safety concerns could reach a point where elimination of left turning movements into the site is warranted. It is expected that this will occur as traffic volumes approach 9,000 Average Daily Trips (ADT). When traffic volumes reach these levels the County will coordinate with the Owner to either restrict left turn movements at the driveway approaches or at their own expense the Owner will have the option to construct left turn lanes on 52nd Street East to accommodate left turns into the Farm Project.

- 6.3.3 The County will address all storm water impacts that are a result of any improvements it constructs and shall not use any portion of the Farm Property to accommodate storm water runoff from the County Road Project.
- 6.3.4 Road construction shall be managed in such a way so that there will be access to all businesses during normal business hours.
- 6.3.5 After construction of the three driveway approaches as part of the Canyon Road Northerly Extension there shall be no other access points to 52nd Street East from the Farm Property. All existing farming access points to 52nd Street East will be closed and farming access to the Farm Property will be via one of the three driveway approaches.
- 6.3.6 The County will allow all existing improvements constructed for the Farm Stand in and on the Acquisition Property, including landscaping, signage, except for the pole sign, and parking, to be relocated outside of the right of way area and onto the remaining Farm Property, subject to the following:
 - 6.3.6.1 Owners shall be responsible for the construction of any necessary onsite improvements to access the three driveway aprons to be constructed by the County under the terms above, including the relocation of improvements currently existing within the Acquisition Property. Provided, County is aware that an internal driveway and associated parking will need to be constructed from the existing paved area to the new westerly driveway approach, as illustrated in the attached Exhibits, and the same are hereby authorized.
 - 6.3.6.2 Owners shall be responsible for obtaining necessary permits from the County to construct the new parking areas, driveways and approaches and other internal improvements that will be necessary to accommodate the changes made by the County as a result of the County Road Project. Permit applications that are consistent with the terms of this Development Agreement shall be promptly processed. The Owner shall be required to have a 20 foot no-turn distance for the new driveway approaches being constructed by the County (see exhibit DA-5).
 - 6.3.6.3 Any personal property located in the acquisition area will have to be relocated in accordance with the terms of the right-of-way purchase or easement purchase executed between the County and the Owner.

6.4 Restrooms. A restroom is required for the Farm Stand (reference building permit # 950603). The Farm Stand is a seasonal use, open only from April 1 through the last Sunday before Christmas. The plan set forth on Exhibit DA-6 is how the Owner proposes to address the bathroom requirement. The Owner is also converting an

existing bathroom that is part of the dock building to an ADA accessible bathroom as set forth in Exhibit DA-6. The necessary permits for these restrooms must be obtained and the bathrooms constructed within six months of the Effective Date.

- 6.5 Signage. The sign plan for the Farm Property, including the size and number of signs, is set forth in Exhibit DA-8 and is hereby approved. The existing Pole Sign must be removed within sixty days of the Effective Date. The approved signage shall constitute the total non-exempt business signage and business identification signage allowance for all Agricultural Product Sales uses on the Farm Property. No additional non-exempt business signage or business identification signage for Agricultural Product Sales uses shall be permitted without a corresponding reduction in existing signage so there is no net increase in square footage. The Sign Plan is consistent in design, scale and scope with signage for other produce markets and produce stands in the community. Provided, the Owner may apply for a replacement sign for the Pole Sign, and the replacement sign shall be permitted so long as it meets the design criteria of the Mid-County Sub-Area Plan.
- 6.6 Landscaping. No additional landscaping will be required for the Farm Project, except as shown on Exhibit DA-3.
- 6.7 Agricultural Equipment Building Requirements. The Agricultural Equipment and Supply Storage, Maintenance and Office Building shall have no storage higher than twelve feet from the ground level, the Emergency Exiting Plan attached as Exhibit DA-6 shall be posted on all bulletin boards and at least two conspicuous places in the Building. All rolling doors shall remain in their fully open position anytime the building is occupied. There shall be no fuel storage in or around the Building, except that which exists in farm equipment that is stored in the building. The second-floor balcony door shall have a railing approved by the Building Official that will be at least 42 inches high and with no gaps of more than 4 inches in width. Diesel Fuel Storage, if any, shall be outside of all buildings, and will either be mobile with spill protection approved by the Fire Marshal wherever they are to be located, or can be converted to a permanent location after review and approval by the Fire Marshal. Intended fuel storage location is illustrated on Exhibit DA-4.
- 6.8 Completion of loading dock improvement (reference building permit # 878253) on back of existing Cooler Building as per Section 5.2 (3). The Owner shall complete and obtain final approval of all permits related to this improvement within six months of the Effective Date.
- 6.9 Rhubarb Hot Houses (Reference Exhibit DA-3). It is understood that the Rhubarb Hot Houses may be relocated to other farm field locations within the Farm Property. It is also understood that it is the nature of Rhubarb farming that fill soil is necessary to keep the Rhubarb roots well drained as they do not grow well with “wet feet”. Relocation of the Rhubarb Hot Houses will also require relocation and placement of soil. As this is an agricultural activity it is agreed that this relocation and placement of

soil for the Rhubarb Hothouses does not need to be in compliance with County flood regulations related to fill in a floodplain.

6.10 Completion/Failure to Perform/Failure to Obtain Required County Permits. The Owner agrees to complete 5.8 6.1, 6.2, 6.4 and 6.8 of this agreement within the timeframes identified therein. ~~In the event the Owner failsure~~ to complete the improvements required in Sections 5.8 6.1, 6.2, 6.4 and 6.8, the Planning and Public Works Department may submit an immediate request to the County Council to terminate this Development Agreement and pursue existing code violations covered by those Sections.

7. **State Environmental Policy Act.** Except as set forth below, environmental review under the State Environmental Policy Act (SEPA) is complete for all Permitted Uses. Any future development other than for the Permitted Uses approved in this Agreement, shall comply with the SEPA process, as adopted by the County, unless the proposal is categorically exempt.

8. **Applicable Law.**

8.1 The rules, regulations, policies standards and specifications applicable to any future development activity on the Project shall be the provisions of the Development Agreement, and where not addressed by the Development Agreement, the rules and regulations in effect as of the Agreement Date, all of which shall be considered the “Applicable Law”, subject to the limitations described in paragraph 8.3. To the extent any County adopted code, regulation or policy, conflicts with the Agreement terms, the Agreement terms shall control. The Applicable Law shall apply to all activities, including development activities on the Farm Property, during the Agreement Term.

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

8.3 Notwithstanding the foregoing, all applications for Subsequent Approvals shall comply with the most current versions of the International Building Code, International Fire Code and other construction codes in effect at the time of such applications. The Subsequent Approvals are the applications for land use approvals and permits, other than the Farm Stand that are necessary for the development of the Farm Project as determined by the Owner and as consistent with the Agreement terms. The Subsequent Approvals will be reviewed under the Applicable Law. The Subsequent Approvals shall include, without limitation, the following: Major and Minor Amendments to the Agreement, improvement agreements, and other agreements related to the Farm Project, use permits, site development permits, building permits, lot line adjustments, sewer and water connection permits, certificates of occupancy, preliminary and final plat approvals, interlocal agreements, developer extension agreements, landscaping plan approvals, hydraulic project approvals, water system reports for major water infrastructure systems, clearing and grading permits, storm drainage construction plans

and design of individual facilities, building permits for water reservoirs and pump stations, 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.

- 8.4 Upon expiration or earlier termination of the Agreement term, the future use and development activity on the Farm Property shall be subject to the regulations duly adopted by the County without regard to the Agreement terms and conditions. Provided, however, if a complete building permit application is submitted prior to the end of the Agreement Term, the application shall be vested to the Permitted Uses under this Agreement so long as the building permit issued on said application remains in full force and effect and construction is substantially completed within 18 months of the date the County notifies the Owners that the building permit is ready to be issued.
- 8.5 Any development to occur within the Farm Property during the Agreement Term shall do so in conformity with the provisions of the Agreement. For purposes of the Agreement, development means any activity that affects the temporary or permanent use of any land within the Farm Property, and/or results in the alteration of the surface or subsurface of land within the Farm Property, and that is regulated in whole or in part by the County.
- 8.6 Except as otherwise noted in the Agreement, during the Agreement Term, Owners shall have the vested right to develop the Farm Property, or any portion thereof, in accordance with the provisions of the Agreement, and the County codes and regulations in effect on the Agreement Application Date.
- 8.7 The provision of paragraphs 8.1 through 8.6 notwithstanding, the County reserves the right for the County Council to modify a condition of the Agreement if the County Council determines its modification is necessary as a result of a serious threat to the public health and safety, and the modification is the minimum necessary, both in content and duration, to alleviate the adverse consequences to the public health and safety that would be caused by the serious threat. Provided, no modification shall occur until consultation with Owners has occurred in order to seek its input on how to modify the Agreement so as to address the serious threat to the public health and safety, while minimizing the impact on the Project development and the Agreement's intent and purpose. The Parties agree to use the Agreement's dispute resolution process set forth in Section 10 regarding any dispute over the appropriate way to modify the vested rights of Owners. If the modification is mandated by governmental action other than the County's, then the County agrees that Owners shall have the right, at its sole discretion and expense, to contest the governmental action.
- 8.8 This Agreement shall not limit the County's authority to exercise its power of eminent domain.

9. Canyon Road East Northerly Extension Project. This paragraph is intentionally left

blank.

10. Dispute Resolution.

- 10.1 The Parties agree that they intend, in the spirit of good faith and fair dealing, to try to amicably resolve any dispute that may arise between them. If they are unsuccessful in resolving the dispute between themselves, then they shall, before commencing binding arbitration, participate in non-binding mediation in accordance with the provisions of this Article.
- 10.2 Mediation may be requested by either party once the Parties have first met and not been able to resolve their dispute amongst themselves and said mediation shall be subject to the conditions in the following paragraphs.
- 10.2.1 The Parties agree, in good faith, to attempt to resolve any dispute at mediation.
- 10.2.2 The Parties shall each be responsible for one-half (1/2) of the mediator's fee, and one-half (1/2) of the mediation services fee (except the County shall pay all the mediation services fee under paragraph 9.3), if applicable. Each Party shall be responsible for its own costs and fees incurred in the mediation process and in preparing for the mediation.
- 10.2.3 The Parties shall first try to select a mediator without the use of a mediation service.
- 10.2.4 The Parties, if unsuccessful in choosing a mediator without using a mediation service, shall use the services of WAMS in Tacoma, Washington, and if unable to agree on a WAMS mediator, then WAMS shall appoint a mediator for the mediation process.
- 10.2.5 The Parties will proceed through the mediation in good faith, until such time as a settlement is reached or the mediator, in his/her professional opinion, determines that an impasse has been reached and a mediated agreement is not possible.
- 10.2.6 If the mediator declares an impasse, then either Party may demand binding arbitration. The arbitration shall proceed under the rules of arbitration set forth in the Uniform Arbitration Act as amended and adopted in the Revised Code of Washington before one arbitrator, except as modified by the Agreement terms.
- 10.2.7 WAMS shall be the arbitration service and if the Parties cannot agree to the arbitrator then WAMS will select the arbitrator.
- 10.2.8 The costs of the Arbitration service and the arbitrator shall be shared equally between the Parties, but the Arbitrator shall award costs and reasonable attorney

fees incurred since the mediation in preparing for and participating in the arbitration to the substantially prevailing party. The decision of the arbitrator shall be final and be binding upon the parties and may be enforced in a court of competent jurisdiction. Provided, this paragraph shall not apply in the case of the use of the Arbitrator to determine the amount to be awarded to Sterino as a result of the County acquiring the Acquisition Property. In that case the provisions of paragraph 10.2.6 and paragraphs 9.2 and 9.3 shall apply.

10.2.9 Venue for mediation and arbitration shall be Tacoma, Washington, at the WAMS offices, unless the Parties agree otherwise. If WAMS is no longer in business at the time that a dispute arises, then their successor company shall be used. There shall be no presumption of draftsmanship taken into consideration in determining what interpretation is to be given to any particular provisions. Section and paragraph headings and numbering are for convenience and ease of reference and shall not be used to interpret the meaning of the Agreement language. All terms and words used in this Agreement, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context or sense of this Agreement or any paragraph or clause herein may require, the same as if such words had been fully and properly written in the number and gender.

11. Severability and Agreement Interpretation.

- 11.1 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. This Agreement shall be construed to reserve to Pierce County only that authority which is prohibited by law from being subject to a mutual agreement with consideration.
- 11.2 If any provision of the Agreement is determined to be unenforceable or invalid pursuant to a final decree or judgment by a court of law with jurisdiction or the arbitrator in the dispute resolution process under Section 10 above, then the remainder of this Agreement not decreed or adjudged unenforceable or invalid shall remain unaffected and in full force and effect, subject to the provisions of Section 19.
- 11.3 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 any portion of this Agreement to be unenforceable or invalid, 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 of this Agreement has been completed. If the parties do not mutually agree to modification within forty-five (45) days after the court ruling, then either party may initiate the dispute resolution proceedings in Section 10, to determine the modifications that

implement the intent of this Agreement and the invalid provision in a method and manner that would be legal.

11.4 In the event of any administrative, legal or equitable action or other proceeding instituted by any person not a party to this Agreement challenging the validity of any provision of the this Agreement, or any subsequent action taken by the parties to implement the Agreement conditions, the Parties shall cooperate in defending such action or proceeding to settlement or final judgment, including all appeals. Each Party shall select its own legal counsel.

11.5 If any provision of this Agreement, including the Exhibit provisions, shall be determined to be void or voidable by any court of competent jurisdiction should a third party bring a challenge, or as a result of arbitration under Section 10 provisions, such determination shall not affect any other provision of this Agreement and all such other provisions shall remain in effect. It is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions one which would render the provision void or voidable and the other of which would render the provision valid, the provision shall have the meaning which renders it valid.

11.6 Each provision of the Agreement shall be construed to be at all times in accord with the general tenor of the language so as to reach a fair and equitable result.

12. Notices.

12.1 Any notice or communication required by the Agreement must be in writing, and may be given either personally, electronically with evidence of receipt, or by express delivery service, return receipt requested. If given personally, or by registered or certified mail, such notice or communication shall be deemed to have been given and received upon actual receipt. If signature is refused, then the date of refusal shall be deemed the date of delivery. If delivery is made electronically, either by e-mail or facsimile transmission, a notice shall be deemed to have been given when delivered to the person to whom it is addressed, and there is electronic confirmation that it was received. If the notice is given personally, then it shall be deemed delivered on the date it is actually delivered to the receptionist or other competent person at the addresses set forth herein. Such notices or communications shall be given to the Parties at their addresses set forth below:

To County: _____

Facsimile: _____

Email: _____

With a copy to: _____

Facsimile: _____
Email: _____

To Owners: Sterino Farms
Attn: Jake Sterino
6116 52nd St. E.
Puyallup, WA 98371
Email: jake@sterinofarms.com

With a copy to: Loren D. Combs
VSI Law Group, PLLC
P.O. Box 2102
Tacoma, WA 98401
Email: ldc@vsilawgroup.com

12.2 Primary Contact. In order to provide for the efficient and effective conveyance of information regarding ongoing operations on the Project, the Parties have identified the following people as their primary contact person for all correspondence, other than official notice required to be given to the persons identified in section 12.1:

County: _____

Facsimile: _____
Email: _____

Owners: _____

Facsimile: _____
Email: _____

12.3 Either Party may change its contact information, either for official notices under paragraph 12.1, or for general information under paragraph 12.2, by sending its new contact information to the other Party in the same manner as is provided for sending the other Party notice under the provisions of paragraph 12.1.

13. Amendments to the Agreement.

13.1 This Agreement may be modified, including termination of the Agreement or any part thereof, at any time, but only by the Parties by written agreement, and subject to the requirements relating to Minor Amendments and Major Amendments as the case may be. Provided, however, the consent of Parties owning portions of the Farm Property not affected by such amendment shall not be required.

- 13.2 A Major Amendment may only be approved by the County Council, after a public hearing and in compliance with the Agreement dispute resolution provisions, unless Owners have consented to the Major Amendment.
- 13.3 A Minor Amendment shall be approved administratively by the Planning & Public Works Director. A Minor Amendment shall be consistent with the intent and purposes of this Agreement and in furtherance of one or more of the goals and policies set forth herein. A Minor Amendment may include adding additional real property to the Agreement's definition of Farm Property so long as the real property to be added is contiguous to the Farm Property and the owner of the real property consents to be bound by the Agreement terms and conditions.
- 13.4 All amendments to the Agreement shall be recorded with the Pierce County Auditor's Office.

14. Miscellaneous Provisions.

- 14.1 No Third-Party Beneficiaries. 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 shall have any right of action based upon any provision of this Agreement.
- 14.2 Recording. Pursuant to RCW 36.70B.190, this Agreement shall be recorded with Pierce County Auditor and during the term of this Agreement shall be binding on the parties, their successors and assigns. Upon the termination of the Agreement the Parties shall execute an agreement acknowledging that the Agreement has been terminated and is of no further force and effect. The County shall be responsible for arranging for the recording and payment of recording fees, if any.
- 14.3 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.
- 14.4 Time is of the Essence. Time is of the essence of this Agreement and every provision. 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.
- 14.5 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. This Agreement constitutes the entire agreement of the parties and incorporates all prior discussions and agreements. The County and the Owners participated in the negotiation and drafting of this Agreement. If a dispute should arise with regards to the meaning or interpretation of any Agreement provision there shall be no presumption of draftsmanship as to the Agreement provision, and the Agreement shall be interpreted most favorably to achieve the Agreement's purpose. This Agreement replaces and

supersedes the Agreement between Jake Sterino and Sterino Family Partners, LLC and Pierce County Planning and Land Services (now Pierce County Planning and Public Works Department) dated March 31, 2014. Neither Owners or the County, nor any of their agents, have made any statement, promises or agreements verbally or in writing in conflict with the terms of this Agreement. Any and all representations by either of the parties or their agents made during negotiations prior to execution of this Agreement and which representations are not contained in the provisions hereof shall not be binding upon either of the Parties. This paragraph shall not require the execution of any document that expands, alters or in any way changes the terms of this Agreement. The Parties agree to work together and in good faith to implement the provisions of the Agreement.

- 14.6 Cooperation. The parties shall not unreasonably withhold requests for information, approvals or consents provided for in this Agreement. The Parties agree to take further actions and execute further documents, either jointly or within their respective powers and authority, to implement the intent of this Agreement. The County and Owners agree to work cooperatively to achieve the mutually agreeable goals as set forth in this Agreement, subject to each Parties exercise of independent judgment.
- 14.7 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.
- 14.8 Default: Notice: Rights on Default. No party shall be in default under this Agreement unless it has failed to perform following written notice of default from the other party. Notice of default shall allow for a thirty (30) day period of cure for the non-defaulting party. Each notice of default shall specify the nature of the alleged fault and the manner in which the default may be cured satisfactorily. A party not in default under this Agreement shall have all rights and remedies provided by law or equity, including without limitation: issuance of a stop work order, injunction, damages, action for specific performance, or to require action consistent with this Agreement. Nothing herein will operate to prevent the County from taking legal action regarding noncompliance that threatens public health, safety or welfare prior to the expiration of the thirty (30) day cure period following notice of default. No such action or proceeding will operate to automatically terminate this Agreement, nor shall it release either party from any promise or obligation herein nor shall it release either party from any liability or obligation with respect to any breach of this Agreement occurring prior to the commencement of any legal action by the County.
- 14.9 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 modifications; (2) to the best knowledge of the certifying party, (a) no notice of default has been sent under Agreement paragraph 14.8 or specifying the date(s) and

nature of the notice of such 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.

- 14.10 Assignment: Covenant to Run With the Land. The rights, obligations, conditions and interests under this Agreement shall run with the land and shall inure to the benefit of and be binding upon the Owners and their successors and assigns. The Owners shall have the right to convey, assign, apportion or otherwise transfer any and all of its rights, obligations, conditions, and interests under this Agreement. Within three (3) days of the effective date of Owners' conveyance, assignment, apportionment, or other transfer of its rights under this Agreement, the Owners must provide notice to the County of the same. Owners must also, within this three (3) day period, provide the County with a copy of the legal documents that indicate the conveyance, assignment, apportionment or other transfer. From and after the effective date of such conveyance, assignment, apportionment or other transfer, any reference to Owners in this Agreement, as it relates to the portions of the Farm Property in which he no longer has an ownership interest, shall be deemed to be a reference to the conveyee, assignee, apportionee or transferee and will release Owners from legal action under this Agreement that arises after the effective date of such conveyance, assignment, apportionment, or other transfer to the extent the legal action relates to the portion of the Farm Property in which he no longer has an ownership interest. Provided, however, this Agreement creates no in personam right, responsibility or obligation, except to the extent the person has an ownership interest in the Farm Property.

15. Authority to Enter into the Agreement.

- 15.1 The County is authorized to enter into this agreement pursuant to the authority given by RCW 36.70B.170 et. seq. and PCC Chapter 18A.100 relating to entering into development agreements with owners of real property to establish the development standards and other provisions that shall apply to and govern and vest the development and use of the real property for the duration specified in the agreement.
- 15.2 The County approved the Agreement, after receiving a recommendation from PALS, and from the LUAC, as required by PCC 18A.100.080(A), after a public hearing that was held on the ____ day of _____, 2020, as required by RCW 36.70B.200 and PCC 18A.100.080(B), and by adopting ordinance _____, authorizing the Pierce County Executive to execute this Agreement.
- 15.3 The Owners are entering into the Agreement pursuant to motion of each Owner's respective governing body.

PIERCE COUNTY:

By: _____

Date: _____

ATTEST:

By: _____

APPROVED AS TO FORM:

By: _____

OWNERS:

Clarks Creek Farm, LLC

By: _____

Date: _____

Jake Sterino, Inc.

By: _____

Date: _____

STATE OF WASHINGTON)
)
County of Pierce) ss.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath, stated that they were authorized to execute the instrument and acknowledged it as the _____ of Pierce County to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____.

NOTARY PUBLIC
Print Name: _____
My appointment expires: _____

STATE OF WASHINGTON)
)
County of Pierce) ss.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath, stated that they were authorized to execute the instrument and acknowledged it as the _____ of Clarks Creek Farm, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____.

NOTARY PUBLIC
Print Name: _____
My appointment expires: _____

STATE OF WASHINGTON)
)
County of Pierce) ss.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath, stated that they were authorized to execute the instrument and acknowledged it as the _____ of Jake Sterino, Inc. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____.

NOTARY PUBLIC
Print Name: _____
My appointment expires: _____