



**CITY OF SULTAN  
DEVELOPER/SUBDIVISION AGREEMENT  
TIMBER RIDGE ESTATES**

GRANTOR: **TIMBER RIDGE PROPERTIES, LLC**  
GRANTEE: **CITY OF SULTAN, a municipal corporation**  
Parcel Numbers: **28083300304100, 28083300300700, 28083300300900  
28083300300800, and 28083300300300**

**THIS AGREEMENT**, by and between the City of Sultan, a Municipal Corporation, hereinafter referred to as “City,” and Timber Ridge Properties, LLC, c/o Rodney Friese, (formerly RTG Limited Partnership LLC) hereinafter referred to as the “Developer”;

**WHEREAS**, on November 19, 2004 RTG Limited Partnership LLC filed an application for approval of the Timber Ridge Estates Preliminary Planned Unit Development (PUD) and Plat and that Application was assigned City File Number FP-PUD-04-002: and

**WHEREAS**, on February 28, 2005 an Open Record Hearing was conducted by the City of Sultan Hearing Examiner which was continued to and concluded on March 3, 2005; and

**WHEREAS**, on March 9, 2005, the Hearing Examiner issued a Recommendation to Deny the PUD without prejudice and to return the preliminary subdivision for correction; and

**WHEREAS**, RTG filed a timely Request for Reconsideration and submitted revised project plans and documentation dated April 18, 2005 all of which were received by the City on April 27, 2005; and

**WHEREAS**, the hearing Examiner set the Hearing for further hearing in an Order issued on March 18, 2005; and

**WHEREAS**, the Reconsideration Hearing was reopened and concluded on May 12, 2005; and

**WHEREAS**, on May 23, 2005 the hearing Examiner issued a Recommendation Revised After Reconsideration that recommended that the City Council Deny the Planned Unit Development without prejudice and return for correction; and

**WHEREAS**, RTG filed a request for Reconsideration to allow the Hearing to be reopened; and

**WHEREAS**, the Hearing Examiner denied the request for Reconsideration and noted no right of Reconsideration is provided from a Recommendation issued following Reconsideration (see footnote14 on the Recommendation dated May 23, 2005); and

**WHEREAS**, on June 22, 2005 the City Council conducted a Closed Record Hearing to consider the Findings, Conclusions, and Recommendations of the Hearing Examiner and Recommendations of City Staff; and

**WHEREAS**, City Staff at the Closed Record Hearing referenced the Hearing Examiner comment on page 17 of his may 23, 2005 Recommendation. “The concept of residential development on the subject property is clearly and unequivocally in conformance with the adopted Comprehensive Plan and applicable zoning, subject to the critical areas limitations”; and

**WHEREAS**, City Staff noted the Hearing Examiner found compliance with SMC 16.68.060 and SMC 16.80.100 is lacking; and

**WHEREAS**, City Staff noted for the record they do not concur with the Hearing Examiner’s conclusions and interpretation of SMC 16.68.060 and SMC 16.80.100 provided both verbal comments and written information supporting their position and recommendation to approve the application based on their interpretation of SMC 16.68.060 and SMC 16.80.100; and

**WHEREAS**, City Staff placed in the record the entire record for the project which was reviewed by the seven member City Council prior the Closed Record Hearing; and

**WHEREAS**, RTG representatives including legal counsel, engineering and wetland consultant made argument, in support of the City’s Staffs Recommendation and interpretation of SMC 16.68.060 and SMC 16.80.100; and

**WHEREAS**, members of the public attending the Closed Record Hearing were given an opportunity to comment on the Hearing record and on the Hearing Examiners Recommendation, the Recommendations and Comments of City Staff and Applicant representatives; and

**WEREAS**, the City Council upon completion of the Closed Record Hearing on June 22, 2005 accepted the Hearing Examiner’s Findings of the Fact and Conclusions Numbers 1 through 19 and 26 through 40 of the Hearing Examiner’s May 23, 2005 Recommendation (Exhibit B) and rejected the Hearing Examiner’s Findings and Conclusions Numbers 20 through 25 of the May 23, 2005 Recommendation regarding his interpretation of SMC 16.68.060 and SMC 16.80.100 (Exhibit C) and accepted the City Staff’s argument and proposed Findings and Conclusions an Recommendations on the interpretation of SMC 16.68.060 and SMC 16.80.100 and the Conditions of Approval (Exhibit D); to wit:

**NOW, THEREFORE BASED UPON THE EVIDENCE IN THE RECORD THE CITY COUNCIL OF THE CITY OF SULTAN, GIVING DUE DEFERENCE TO THE EXPERIENCE AND INTERPRETATION OF STAFF AND PURSUANT TO SMC 16.10.090(C) MAKES THE FOLLOWING FINDINGS OF FACT TO SUBSTITUTE FOR FINDINGS AND CONCLUSIONS 20-25 OF THE HEARING EXAMINER:**

20. The proposed grading is consistent with the requirements of Chapter 16.68 SMC. The grading meets the requirements of SMC 16.68.040 (D). Though the project will alter most of the steep slopes on the site, and new retained slopes will be created, this disturbance is the minimum necessary to allow development of the site consistent with the comprehensive plan and zoning regulations for the property. Further, the resulting slopes would most likely be stable and not prone to geologic instability. Though the physical character and visual quality of the site would change, the changes would be the minimum necessary to achieve development consistent with the comprehensive plan and development regulations density requirements. As a result, the council finds that (1) the site is physically suitable for the design and siting of the proposed development; and the proposed development will result in minimum disturbance of sensitive areas to achieve development of the site consistent with the comprehensive plan and development regulations; (2) the grading and excavation proposed will not result in soil erosion, silting of lower slopes, slide damage, flooding, severe scarring or other geologic instability or a fire hazard that would affect health, safety and general welfare, and slopes will be planted with native and self-sufficient vegetation; (3) consistent with development allowed by the comprehensive plan and development regulations, the proposed development retains the visual quality of the site, the aesthetic qualities of the area and the neighborhood characteristics by utilizing proper structural scale and character, varied architectural treatments and appropriate plant materials; and (4) the proposed development is in conformance with the adopted comprehensive plan and the zoning district in this it is located.

The proposed grading also meets all of the requirements of SMC 16.68.060. To the extent possible, the project does avoid a “shelving” effect with the two roads. The terrain requires parallel road design, unless more extensive grading is to occur. Lot design is consistent with the road layout, and required density under the comprehensive plan development regulations. With this background, the council finds : (1) the project meets the criteria of SMC 16.68.060 (A) and is physically suitable for the design and siting of the proposed development and will result in minimum disturbance of sensitive areas; and (2) the project meets the criteria of SMC 16.68.060 (B) and will not result in soil erosion, silting of lower lopes, slide damage, flooding, severe scarring or any other geologic instability that would affect health, safety and the general welfare and disturbed slopes will be planted with native or self-sufficient vegetation. As to the criteria under SMC 16.68.060 (A) the council specifically finds that criteria (A) (4) and (A) (5) are met. The project is consistent with the comprehensive plan and development regulations does adapt to the natural hillside topography, terrain and vistas to the extent possible by development to the required density. Development is close to the streets, lots are appropriately oriented, and lot shapes

vary to the extent possible to achieve minimum size to accommodate the natural terrain. The project also is consistent with (A) (5) by the extensive areas that are preserved, recognizing that the project must coexist on the site at the same time. As to the criteria under SMC 16.68.060 (B) the council specifically finds that those criteria have been achieved consistent with the density required by the comprehensive plan and development regulations. Slopes have been designated for landform grading to the extent possible. Retaining walls have been placed to minimize grading while achieving required density.

21. The SMC requires buffers for regulated streams and wetlands. The standard buffer widths for the streams and wetlands on this site are: Type 3 streams = 100 feet; Type 5 stream = 25 feet; and Category 3 wetlands = 50 feet. SMC 16.80.040. Non-riparian wetlands less than 5000 SF in area are exempt from regulation under the SMC. Even though the evidence does not clearly establish whether the 640-square feet wetland is a riparian wetland, RTG has treated it as if it were a regulated wetland by proposing mitigation for filling it.

An extended buffer width requirement applies where a regulated stream or wetland is adjacent to a steep slope:

Where lands adjacent to a stream or wetland display a continuous slope of 25 percent or greater, the buffer shall include such sloping areas. Where the horizontal distance of the sloping area is greater than the required standard buffer, the buffer shall be extended to a point 25 feet beyond the top of the bank of the sloping area.

[SMC 16.80.040(C)]. Though this requirement is no optional, this requirement is subject to the innovative design processes of SMC 16.80.100.

Both streams and Wetland A are adjacent to areas of continuous slopes exceeding 25% and are thus subject to the extended buffer width requirement, unless the innovative design criteria of SMC 16.80.100 are satisfied.

22. The SMC generally bars all residential lots from required buffers. Buffers however may be adjusted in several ways, by averaging, by reduction, and by the innovative design process of SMC 16.80.100. There is no need to consider the criteria of buffer width averaging or reduction, since the proposal seeks approval of an innovative design, which addresses wetland and stream protection and preservation in a creative manner. As a result, and approved innovative design may deviate from the standards of SMC 16.80.080(C).

Five criteria must be met to secure approval of an innovative design:

1. The innovative design will result in a net improvement of the functional values of the stream or wetlands and their buffers;
2. The innovative design has been approved by the state resources agencies with jurisdiction;

3. the innovative design is consistent with the purpose of objectives of this chapter [SMC 16.80]
4. The innovative design will not be materially detrimental to the public welfare or injurious to property or improvements in the vicinity and zone in which the subject property is located.

Those criteria, as the next three findings demonstrate, have been met in this case.

23. Timber Ridge Estates that the width of the buffer between the rear of most of the house lots and the Type 3 streams is 50 feet. The width of the buffer between the rear of most of the house lots and the Type 5 stream is 25 feet, the standard buffer width. Finally the width of the buffer between the rear of most of the house lots and the Category 3 Wetland A is generally 25 feet, with a small area of buffer up to 75 feet wide. Exhibit 14 A. All in all the project deviates from the standard buffer width area by 118,532 while providing 119,384 of extra buffer in other areas, primarily located in the northeast and southwest corners of the site. In addition the proposal contains a variety of activities to enhance an existing stream corridor and to remove two culverts. These actions will greatly improve the quality of the Type 3 stream.
24. The innovative design process is an alternative to buffer width reduction or averaging, and so long as its criteria are satisfied, standards described in SMC 16.80.080(C) for buffer width reduction do not need to be satisfied.
25. The innovative design will result in a net improvement of the functional values of the streams and/or wetlands, and their buffers. Though the design has not yet been approved by state agencies with jurisdiction, those agencies will not act to consider the proposal until preliminary approval is given by the City. This preliminary approval therefore should be conditioned upon compliance with the satisfaction of all criteria imposed by state agencies. The purposes of Chapter 16.80 SMC are to promote the general health and public welfare and to preclude land use development inconsistent with critical area preservation. The innovative design proposed will lead to a net improvement in the streams and wetlands and buffers to be preserved. As a result the design should be approved to promote the general health and public welfare and to better achieve critical area preservation.

**NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**Section 1 Conditions of Approval:**

The Developer shall conform with the Conditions of Approval of the City Council, as set forth below:

This Preliminary Planned Unit Development Subdivision is subject to compliance with all applicable provisions, requirements, and standards of the Sultan Municipal Code, standards adopted pursuant thereto, and the following special conditions:

## **General –**

1. The general configuration, lot shapes and sizes, setbacks, site density, and areas of open space shall be as indicated on Exhibit 2, subject to these Conditions of Approval. Revisions to approved preliminary Planned Unit Developments are regulated by SMC 16.10.160(D) and (E); revisions to approved preliminary subdivisions are regulated by SMC 16.28.360. The final PUD map shall be recorded as an amendment to the underlying zoning following Final PUD approval.
2. In accordance with SMC 16.28.340, the applicant shall prepare a developer agreement subject to approval of the City. The agreement shall specify the requirements for construction of all infrastructure improvements, including plan submittals, inspections, bonding, private improvements, right-of-way improvements and facilities associated with the PUD, including improvements to all common areas.
3. The Applicant shall include screening fences consistent with SMC 16.12.120 at the rear property line of lots 36-38, 44-45, and 49-50 prior to final inspection of homes.
4. The Applicant shall establish a Homeowners' Association to assume responsibility for maintenance of common areas. The Homeowners' Association shall be recorded with the final Plat. The wording and conditions of the Homeowners' Association shall be subject to City approval prior to final plat.
5. The Applicant/Developer shall maintain the landscaping, open space improvements, drainage facilities, and other common areas within the site for a three year period following installation. Such maintenance shall be secured with a performance bond filed with the City. Subsequent to the three-year period, maintenance responsibility shall be passed to the Homeowners' Association.

## **Parking –**

6. Areas of no parking that need to remain open for proper access shall be clearly marked and/or signed.

## **Open Space and Landscaping –**

7. Trails and related split rail fencing shall be constructed prior to occupancy of homes as generally indicated on the master plan (Exhibit 2). Split rail fencing shall also be provided on both sides of the north-south connector trail to meet the requirements of Chapter 16.72 SMC.
8. Exercise and play equipment shall be installed in the recreation areas along the trail to meet the requirements of Chapter 16.72.
9. A fee in lieu in the amount \$25,318.95 shall be paid by the Applicant for that portion of the recreation requirement of Chapter 16.72 SMC not constructed on site.

**Wetland, Streams, and Steep Slopes –**

10. Wetland and stream impacts shall be mitigated in accordance with the Wetland and Stream Mitigation Plan, as revised (Exhibit 14f) and as recommended in the May 4, 2005 letter from Graham-Bunting Associates. The Applicant shall maintain and monitor wetland and stream mitigation for a three-year period following installation. Such mitigation shall be secured with a performance bond filed with the City in the minimum amount of. \$5,780.70.
11. Prior to occupancy, the Applicant shall install solid fencing on the edge of residential lots adjacent to wetlands, streams, their buffers, or buffer average areas.
12. The Applicant shall coordinate with Washington Department of Fish and Wildlife to remove on-site stream culverts as part of site development. Culvert removal shall occur prior to occupancy.

**Water –**

13. The Developer/Owner is responsible for any necessary improvements to the City's water system in order to provide water to the site. The Developer/Owner shall be required to extend on-site water lines to adjacent properties to south. Water connections must be made within one year of notice.

**Sewer –**

14. The Developer/Owner is responsible for any necessary improvements to the City's sewer system in order to provide sewer service to the site.

**Surface Water Management –**

15. During grading and construction activities, the Developer shall retain and manage on-site surface and storm water within the site per the recommendations of the approved construction stormwater pollution prevention plan.
16. The Developer shall inspect weekly, maintain, and repair all temporary and permanent erosion and sediment control BMP's to assure continued performance. During the wet weather construction period, the access road and on-site utilities shall be phased to minimize open soil exposure. Due to the steepness of the site, work may be curtailed during rain events.
17. The temporary stormwater management facilities shall be constructed before any significant amount of site clearing or grading commences.

**Transportation –**

18. Timber Ridge Road shall be designed with additional traffic calming measures, including:

- a. A traffic circle at the intersection of Timber Ridge Road and Meadow Drive as shown on the master site plan
  - b. Signing at the entrance of Timber Ridge Road from Sultan Basin Road stating “Residential Street” and signing the street load limit.
19. The design for Sultan Basin Road shall be modified to reduce the road grade to improve site distance as specified by the City’s traffic consultant and per the approval of the City Engineer.
  20. Street trees shall be provided along the site frontage of Sultan Basin Road as shown on the master site plan.
  21. Streets shall be designed with vertical curb, except at driveways, to prevent parking on sidewalks.
  22. Final street design, including paving, sidewalks, frontage improvements, parking and emergency access must be approved by the City Engineer prior to construction.
  23. Street lighting shall be required on Sultan Basin Road and on all on-site streets. Prior to site development, the applicant shall submit a detailed lighting plan that depicts continuous street illumination throughout the PUD to City staff for review and approval. SMC 16.10.120(B) (4) (a).

**Other –**

24. The Applicant shall demonstrate sufficient water flow from the proposed fire hydrants for review and approval by the City Engineer and Fire District prior to issuance of occupancy permits.
25. Prior to construction, the Applicant shall prepare an erosion control plan subject to review and approval by the City Engineer.
26. During construction, the Developer shall ensure that trucks are cleaned before leaving the site. The Applicant shall provide street cleaning of Sultan Basin Road during site clearing, grading, and filling to promptly clean up any dirt, mud, or other material deposited on public streets, and shall be responsible for cleaning storm drains in public streets that are impacted by the construction.
27. All site improvements, including streets, sidewalks, bicycle lanes, frontage improvements, drainage improvements, open space landscaping and improvements, and other common area improvements shall be completed prior to Final Plat, with the exception of the final paving of streets. Alternatively, the City may approve a financial bond or assurance for items not completed prior to Final Plat. All site improvements, not including individual homes, must be installed prior to final inspection of the first home.
28. The existing houses and structures shall be moved, demolished, or otherwise modified so that they are in compliance with Sultan Municipal Code prior to the issuance of Plat engineering permits.

29. The Applicant/Developer shall pay traffic, recreation, and school impact fees and their administrative processing costs in accordance with Chapters 16.112 and 16.116 SMC.

**Section 2 Plan Submittals, Review, Construction, Inspections, and Bonding:**

1. The Developer agrees that the construction of any infrastructure items or additions thereto, shall not commence until the following conditions have been fulfilled:
  - A. The Developer shall furnish the City with four sets (4) of detailed plans for the proposed improvement, or additions thereto, at the Developer's own expense, prepared by a qualified engineer currently licensed in the State of Washington.
  - B. The above plans shall require the review and approval by the City of Sultan and its Engineer, and the cost of such review shall be at Developer's expense.
2. The construction of the Developer's proposed improvements or additions thereto, for the subdivision shall be supervised by the city in such a manner and at such times as the city deems reasonably necessary to assure that construction of the improvements and additions thereto will conform with the approved plans and specifications and minimum City standards. The developer herewith agrees to allow such access and inspections and agrees to cooperate providing reasonable advance notice of his construction schedule during the various construction phases as requested by the city. The developer further agrees to deposit the sum of \$8,000.00 with the city to be applied against the City's cost for all engineering fees and expenses incurred by the city for inspections including special testing if required by the City. The Developer shall schedule and pay for testing services and copy testing reports to the city. In addition, special inspections for the installation of the extensive retaining walls shall be included. Normal city inspections will involve an allowance of four (4) hours per day in addition to any time required beyond the 4 hours when underground utilities are being installed. For the purpose of this agreement, the anticipated daily site inspections will involve approximately four (4) hours per day for a five (5) month construction period for a total of four hundred and forty (440) hours based on twenty two (22) working days at four (4) hours per day. The city will provide detailed invoices to the Developer for that billing period. The city shall withdraw funds from the deposit amount until the balance approaches \$4,000.00. Once the balance approaches \$4,000.00 the city will request additional funds from the Developer so the balance of the deposit does not drop below \$4,000.00.
3. The Developer's proposed improvements, or additions thereto, shall not be accepted for service and use until the same have been fully inspected, approved and accepted by the city council.

**Section 3 Final Approval, Acceptance of Improvements and Maintenance Bonds:**

Upon performing all requirements as set forth in this Agreement and providing the appropriate maintenance bond(s), the city shall accept the public improvements as provided for in this Agreement, and issue final approval of the subject subdivision.

#### **Section 4 Intent and Termination of Agreement and Term of Preliminary Plat:**

This Developer/Subdivision Agreement is intended to memorialize the requirements of law for the preliminary approval of the subject subdivision. To the extent of any inconsistency between this Agreement and the requirements of law, the requirements of law shall control. This Agreement shall terminate and have no further effect upon:

- A. Completion of the subdivision in accordance with the terms of this Agreement, or
- B. Expiration of the 24 month term from date of preliminary PUD approval unless an extension is granted under Section 16.10.150 B., or
- C. Expiration of the five (5) year term for preliminary approval of the subject subdivision commencing on July 13, 2005 and ending on July 12, 2005, 2010, or
- D. Termination by the city if the Developer is not proceeding in accordance with the requirements of law.

#### **Section 5 Covenants and Assigns:**

Covenants to Run with Land. All provisions, agreements, rights, powers, standards, terms, covenants and obligations of and arising from this Agreement shall be binding upon the parties and their respective heirs, successors and assigns.

#### **Section 5 Recordation:**

Recordation of Agreement. This agreement shall be recorded with the Snohomish County Auditor.

**Section 6 Authority:**

Authority. The undersigned covenant and represent that they are fully authorized to enter into and execute this Agreement.

**CITY OF SULTAN**

By \_\_\_\_\_ Date \_\_\_\_\_  
Mayor

Attest:

By \_\_\_\_\_ Date \_\_\_\_\_  
City Clerk

Approved as to form:

By \_\_\_\_\_ Date \_\_\_\_\_  
City Attorney

**TIMBER RIDGE PROPERTIES, LLC.**

By \_\_\_\_\_ Date \_\_\_\_\_  
Rodney Friese, Manager

STATE OF WASHINGTON)  
County of Snohomish )

I certify that I know or have satisfactory evidence that Rodney Friese signed this instrument and on oath stated that he was authorized to execute the instrument and acknowledged it as the Manager of Timber Ridge Properties, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Notary Public for the State of Washington.  
My appointment expires: \_\_\_\_\_

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**TIMBER RIDGE ESTATES SUBDIVISION**

**(See attached Drawing C-2 of 39 titled "SUBJECT PROPERTIES")**