

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made this ____ day of March, 2004 between the City of Sultan, a Washington municipal corporation, (hereinafter "City"), Valwork 2000, a Washington joint venture (hereinafter "Valwork") and Willow Run East Homeowners Association, a Washington nonprofit corporation (hereinafter "Homeowners").

WHEREAS, on November 6, 2003 City issued a Notice and Order (the "Notice and Order") to Valwork concerning the alteration of streams and wetlands and requiring submittal of a mitigation plan and the plan's performance:

WHEREAS, Valwork appealed the Notice and Order to the City's hearing examiner:

WHEREAS, the hearing examiner allowed Homeowners to intervene in the appeal;

WHEREAS, at the hearing scheduled to consider the appeal, the City, Valwork and Homeowners agreed on a conceptual plan of action to resolve all issues; and

WHEREAS, the parties wish to document their agreements and the conceptual plan of action in a Memorandum of Understanding;

NOW, THEREFORE, City, Valwork and Homeowners agree as follows:

1. **Hearing date.** The parties hereby agree to the continuance of the hearing on appeal from February 25, 2004 until May 4, 2004 at 1:00 pm. If this matter is not resolved based upon the remaining terms of this Memorandum of Understanding, City will issue proper and timely notice to the public ten days in advance of May 4, 2004 of the hearing and the parties shall notify the hearing examiner of the reconvened hearing by close of business April 26, 2004. If this matter is resolved based upon the remaining terms of this Memorandum of Understanding, no later than April 28, 2004 the parties shall file both a notice of withdrawal of appeal and a notice of withdrawal of the Notice and Order.

2. **Books and Records.** Whether the matter is fully resolved or not, within twenty (20) days of the execution of this Memorandum of Understanding, Valwork agrees to deliver to Homeowners all original financial and other records, funds, warranties and property Valwork has concerning the Homeowners Association.

3. **Mitigation plan and mitigation.** The parties agree to the following process to resolve the issues of submittal of a wetland mitigation plan and mitigation:

a. **Initial thirty days.** Valwork shall have 30 days from the date of this agreement to determine whether it is feasible either to (1) perform necessary

wetland mitigation and create a recreational amenity as required by city code to consist of an environmentally sensitive walking path or trail and a picnic area on Tract 999, or (2) if option 1 is unfeasible, to perform necessary wetland mitigation and create the required recreational amenity on Tract 999 as expanded by a boundary line adjustment adding square footage from Lot 108 to Tract 999. If neither option is feasible as determined by Valwork in its sound discretion, it shall notify the other parties before the expiration of the initial thirty days, and the appeal of the Notice and Order will be heard on May 4, 2004. If one or both options are feasible, as determined by Valwork, it shall notify the other parties before the expiration of the initial thirty days and Valwork shall submit a wetland mitigation plan incorporating the recreational amenities to the City. If the option selected requires additional area to be added from Lot 108, Valwork shall also submit at the same time an application for a boundary line adjustment.

b. Subsequent thirty days. City shall reasonably review the mitigation plan submitted to determine compliance with City requirements as of the date of preliminary plat approval September 14, 1998 (the vesting date). The plan shall be reviewed based upon the wetland and stream buffers and typing done by Randy Middaugh and accepted by the City on October 7, 1998. If a boundary line adjustment is included, it shall be processed in accordance with the provisions of City Code. Copies of the mitigation plan and any boundary line adjustment shall be supplied to Homeowners for review and comment to the City. If the City rejects the mitigation plan, and Valwork does not amend the plan in a fashion acceptable to the City, before expiration of the subsequent thirty days, the City shall notify the other parties and the appeal of the Notice and Order will be heard on May 4, 2004. If the City accepts the mitigation plan, notice shall be supplied to the hearing examiner and provision shall be made for the withdrawal of the notice of appeal and the withdrawal of the notice and order.

c. Additional terms if mitigation plan incorporating recreational amenities is accepted. If the City accepts the mitigation plan, the following additional terms shall apply:

i. Valwork at its expense shall cause the work to be done in the timeframe directed by the City in its acceptance of the mitigation plan. The parties acknowledge that Valwork does not want to do the work itself. Accordingly, Valwork shall secure three bids for the work required by the mitigation plan incorporating recreational amenities. The bids shall be submitted to City and homeowners for comment. After receipt of said comment, Valwork shall select a bidder to accomplish the work in accordance with the bid submitted and the approved mitigation plan. If the option selected includes a boundary line adjustment, Valwork at its expense shall cause the boundary line adjustment to be completed no later than completion of the work required by the mitigation plan. All bids shall contain a contractor one year warranty.

ii. No bond; deposit. Valwork shall not be required to post a maintenance bond for the improvements installed. Valwork shall be required to post a cash deposit of \$250 with City to provide a fund to purchase replacement plants for mitigation plantings that may not survive. If after two years completion of work, said funds are not drawn or used, the deposit shall be returned to Valwork.

iii. Watering. City agrees to provide watering and monitoring of wetland plantings installed in accordance with the mitigation plan accepted and the plantings installed.

4. Integration. This is a complete agreement and understanding for the resolution of the Notice and Order only. This Memorandum of Understanding is not intended to modify or impair any other rights or claims of the parties associated with that certain development commonly known as Willow Trace of Willow Run.

This agreement may be signed in counterparts with each signature representing a final signature to this agreement based on the first date appearing below.

Dated this ____ day of March, 2004

City of Sultan

by _____
BEN TOLSON, MAYOR

Valwork 2000

by _____ k 3/10/04

Willow Run East Homeowners Association

by _____ 3/19/04