

**DEVELOPMENT AGREEMENT BETWEEN THE CITY OF TIGARD
AND LF8, LLC.**

This DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this __ day of August __, 2013 (the "Effective Date"), by and between the City of Tigard ("City") and LF8, LLC, an Oregon limited liability company ("Developer").

RECITALS

A. Empire Investment Properties, LLC, an Oregon limited liability company, obtained subdivision approval for two parcels located at 9350 and 9420 S.W. Lehman Street, Washington County Tax Map 1S126DC, Tax Lot Nos. 3310 and 3200 totaling 0.76 acres (the "Real Property") into eight (8) lots for two-story single-family homes under City of Tigard Subdivision Approval (Sub) 2007-00006 (the "Greco Estates Subdivision Approval").

B. The name of the proposed subdivision located on the Real Property is Greco Estates Subdivision.

C. As of the Effective Date of this Agreement, the subdivision plat for the Greco Estates Subdivision has not yet been approved or recorded.

D. Developer has acquired the Real Property and intends to complete development of the Greco Estates Subdivision as conditioned in the Greco Estates Subdivision Approval (Case File #SUB2007-00006).

E. Developer desires to begin construction of two (2) homes in the Greco Estates Subdivision prior to subdivision plat approval and recording, subject to the terms and provisions of this Agreement. One house to be constructed on existing tax lot #3301 and one house on existing tax lot #3200.

F. Upon approval of this agreement by City Council, City will consent to Developer's construction of two (2) homes on the existing tax lots referenced in subsection E above prior to subdivision plat approval and recording, subject to Developer's execution of this Agreement and subject to the terms and conditions of this Agreement.

A G R E E M E N T S

NOW, THEREFORE, the parties agree as follows:

ARTICLE 1. AGREEMENT FOR PRE-APPROVAL DEVELOPMENT.

Subject to the terms, conditions and provisions of this Agreement, the City shall approve the construction of two (2) residential homes – one on each existing tax lot (#3301 & 3200) as referenced in Recital E above (the "Residential Homes"). The obligations, duties and responsibilities of the parties with regard to the construction of the Residential Homes shall be as provided in this Agreement.

ARTICLE 2. DEVELOPER’S DUTIES AND RESPONSIBILITIES.

2.1 Storm and Sewer Connection. Developer shall not connect either Residential Home authorized under this Agreement to a public storm or sewer line until such storm and/or sewer line has received final approval from the City Engineer.

2.2 Compliance with Greco Estates Subdivision Approval. Developer shall construct the Residential Homes authorized under this Agreement in accordance with all terms and provisions of the Greco Estates Subdivision Approval (Case File #SUB2007-00006). Failure to construct the Residential Homes in such a manner may cause the need to amend the Greco Estates Subdivision Approval to be consistent with the Residential Homes as constructed.

2.3 Compliance with Building Codes. Developer shall construct the Residential Homes authorized under this Agreement in accordance with the terms and provisions of all applicable building codes.

2.4 Greco Estates Subdivision Plat Approval. Developer shall diligently proceed to construct the Residential Homes authorized under this Agreement in accordance with the terms and provisions of the Greco Estates Subdivision Approval and shall perform all duties and conditions reasonably necessary to obtain final plat approval for Greco Estates Subdivision.

2.5 Indemnification The Developer hereby agrees to indemnify, defend and hold harmless the City, its officers, directors and employees, from and against any and all claims, demands, damages, losses, liabilities, actions, lawsuits and other proceedings, judgments and awards, and costs and expenses (including without limitation reasonable attorneys' fees and court costs incurred in connection with the enforcement of this indemnity or otherwise at both trial and appeal level whether or not a trial or appeal ever takes place), arising out of the negligence, fraud or any willful act or omission of the Developer, or any of its officers, directors, agents or employees, in connection with this Agreement or the Developer's work hereunder. Except liability arising out of the sole negligence of the City and its employees. Such indemnification shall also cover claims brought against the City under state and federal workers' compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

2.6 Performance Guarantee. The Developer shall submit a performance guarantee satisfactory to the City in the amount of 100% of the estimated cost of the conditioned public infrastructure.

ARTICLE 3. CITY’S DUTIES AND RESPONSIBILITIES.

3.1 Acceptance of Building Plans. Upon Developer’s execution of this Agreement, the City shall accept the Developer’s submittal of the plans and applications for building permits for the Residential Homes.

3.2 Issuance of Building Permits. Upon approval of this agreement by the City Council , the City shall release Building Permits for the Residential Homes outlined in E above.

3.3 Issuance of Certificates of Occupancy. The City shall issue Certificates of Occupancy for the Residential Homes to Developer after the City red line comments have been addressed, the City has approved the plat and contacted Washington County, and the house is deemed complete and all necessary public infrastructure has received final approval by the City Engineer.

ARTICLE 4. TERM OF AGREEMENT; CONTINGENCIES.

4.1 Term. Developer’s obligations hereunder shall commence on the Effective Date of this Agreement and shall end on the date that the final plat for the Greco Estates subdivision is recorded

4.2 Contingencies. This Agreement shall be expressly contingent upon the following:

4.2.1 Developer’s approval and execution of this Agreement; and

4.2.2 City’s approval and execution of this Agreement.

4.2.3 Developers Submission of a satisfactory performance guarantee.

ARTICLE 5. GENERAL PROVISIONS.

5.1 Notices. Whenever any notice, consent, approval, demand or request is required or permitted under this Agreement, such notice, consent, approval, demand or request shall be in writing and shall be delivered by hand, sent by registered or certified mail, return receipt requested, or send by pre-paid nationally recognized overnight courier service to the addresses set out below or to such other addresses as are specified by written notice given in accordance herewith.

CITY: City of Tigard
13125 SW Hall Blvd.
Tigard, OR 97223
Attn: _____

with a copy to: SUB2007-00006 Land Use Case File

DEVELOPER: LF 8, LLC
5285 Meadows Road, Suite 171
Lake Oswego, Oregon 97035
Attn: Jeff Smith

with a copy to: Charles E. Harrell
BUCKLEY LAW P.C.
5300 Meadows Road, Suite 200
Lake Oswego, Oregon 97035

All notices, consents, approvals, demands or requests delivered by hand shall be deemed given upon the date so delivered. Those given by mailing as hereinabove provided shall be deemed given on the date which is three (3) business days after the date on which such notice, demand, or request is so deposited in the United States Mail. Those given by pre-paid nationally recognized overnight courier service shall be deemed given on the next business day after being sent by such courier.

5.2 Survival. The provisions of Section 2.5 hereof shall survive the completion of the Developer's work and City's obligations hereunder or any earlier termination of this Agreement.

5.3 No Obligation to Third Parties. None of the responsibilities and obligations of the Developer or the City under this Agreement shall in any way or in any manner be deemed to create any liability to, or any rights in, any person or entity other than the specific parties to this Agreement.

5.4 Modifications. Neither any change nor modification of this Agreement nor any waiver of any term or condition hereof shall be valid or binding on the parties hereto, unless such change, modification, or waiver shall be in writing and signed by the party to be bound thereby.

5.5 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto, their successors, and permitted assigns.

5.6 Duplicate Originals. For the convenience of the parties hereto, any number of counterparts hereof may be executed, each such counterpart shall be deemed to be an original instrument, and all of such counterparts shall together be deemed one and the same instrument.

5.7 Construction. This Agreement shall be interpreted, constructed, and enforced in accordance with the laws of the State of Oregon. The titles of the articles and sections herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms or provisions herein. The parties agree that they have both participated equally in the negotiation and preparation of this Agreement and no court construing this Agreement or the rights of the parties hereunder shall be prejudiced toward either party by reason of the rule of construction that a document is to be construed more strictly against the party or parties who prepared the same.

5.8 Entire Agreement. This Agreement is intended by the parties hereto to be the final expression of their agreement with respect to the subject matter hereof and is the complete and exclusive statement of the terms thereof.

5.9 Assignment. This Agreement shall not be assigned by the Developer to anyone without the prior written consent of the City, and any such assignment by the Developer without the prior written consent of the City shall be null, void and of no force and effect. This Agreement shall not be assigned by the City without the prior written consent of the Developer. Upon any permitted assignment of this Agreement by the City or Developer, the assigning party shall cause the assignee to expressly assume in writing the assigning party's obligations under this Agreement first arising or accruing after the date of the assignment. Notwithstanding the foregoing, Developer, without the consent of the City, shall have the right to assign this Agreement in connection with the sale of all or substantially all of the assets of Developer or to a party controlling, controlled by, or under common control with Developer.

5.10 Authorized Representatives. Any consent, approval, authorization, or other action required or permitted to be given or taken under this Agreement by the Developer or the City, as the case may be, shall be given or taken by the authorized representative of each. For purposes of this Agreement, (a) the authorized representative of the Developer shall be John Wyland; and (b) the authorized representative of the City shall be _____. Any party hereto may from time to time designate other or replacement authorized representatives by written notice from its authorized representative to the other parties hereto. The written statements and representations of any authorized representative of the Developer or the City shall for the purposes of this Agreement be binding upon such party for whom the authorized representative purports to act, and the other parties hereto shall have no obligation or duty whatsoever to inquire into the authority of any such representative to take any action which he/she proposes to take, regardless of whether such representative actually has the authority to take any such action.

5.11 Terminology. All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and all terms used herein in the singular shall include the plural, and vice versa.

5.12 Time of Essence. Time is of the essence of this Agreement.

5.13 Consent. Whenever the consent or approval of one of the parties is required pursuant to the terms of this Agreement, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

5.14 Attorney's Fees. If a suit or an action is instituted in connection with any controversy arising out of this Agreement or to enforce any rights hereunder, the prevailing party shall be entitled to recover such amount as the court may adjudge reasonable as attorneys' or paralegals' fees and costs of litigation at trial or on any appeal or review, in addition to all other amounts provided by law.

5.15 Governing Law; Venue. The law of the State of Oregon, excluding its conflict of law rules, shall govern the interpretation, validity and performance of this Agreement. Exclusive jurisdiction and venue for any dispute pursuant to this Agreement shall be in the state and federal courts of Washington County, Oregon.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

DEVELOPER:

LF 8, LLC.

By: _____

CITY:

CITY OF TIGARD, OREGON

By: _____