

## DEVELOPMENT AGREEMENT

This Development Agreement (this “**Agreement**”) is entered into as of this \_\_\_\_ day of \_\_\_\_\_ 2024 (the “**Effective Date**”) by and between the following parties:

CITY OF BANKS (“**City**”)  
Jolynn Becker, City Manager  
13680 NW Main Street  
Banks, OR 97106

THE HOLT GROUP, INC. (“**Holt**”)  
Attn: \_\_\_\_\_  
1300 Esther Street, Suite 200  
Vancouver, WA, 98660-2875

### RECITALS

- A.** Holt is under contract to purchase the approximately 206 acres of real property legally described on **Exhibit A** attached hereto and depicted on **Exhibit B** attached hereto (collectively, the “**Property**”).
- B.** The City of Banks is an Oregon municipal corporation (“**City**”) located in Washington County, Oregon that is responsible for land use planning and permitting on all land within its corporate boundaries pursuant to ORS Chapters 197 and 227, the City’s Comprehensive Land Use Plan, the Banks Municipal Code (“**BMC**”), and the City’s Public Works Design Standards that govern the design and construction of public improvements (together with the codes and regulations of certain other jurisdictions that also govern the design and construction of public improvements). The City and Holt are sometimes referred to herein, collectively, as the “**Parties**” and, individually, as a “**Party**.”
- C.** Holt intends to develop the Property with housing, commercial and industrial buildings, open space, and recreational improvements, including a citywide park with a bicycle and pedestrian railroad overcrossing to nearby public property (collectively, the “**Project**”). A copy of Holt’s preliminary/conceptual plan for the Project is attached as **Exhibit C** and incorporated herein by this reference.
- D.** The City owns and operates a municipal water system, consisting of a source, treatment, storage and distribution facilities, that is the exclusive source of potable water for all properties and development within the City of Banks. The demand for potable water in recent years during the dry season has exceeded the capacity of the City’s municipal water system, which has led to water supply shortages, the imposition of conservation measures, and the curtailment of new development that increases the demand for potable water from the City’s system.

- E.** At the time of execution of this Agreement, the City has in place BMC 152.003(D) (Adequate Utilities) and Resolution 2022-03, as amended, which collectively require all residential subdivision developers to ensure that there is sufficient potable water available, through either existing capacity in the City’s municipal water system or by providing one or more new sources of water, to serve the potable water demand estimated for their proposed developments or otherwise satisfy the requirements of BMC 152.003(D) and Resolution 2022-03 (collectively, the “**Water Supply Obligations**”).
- F.** In addition to constraints on the availability of water in the City, the City is also lacking sufficient parkland for its existing population and there are existing safety hazards at the Aerts/OR 6 and Banks Rd/Aerts Rd intersections.
- G.** Holt has submitted, or will submit, an application to the City for, among other permits and approvals required for development of the Project, approval of (i) a comprehensive plan map amendment, (ii) a zoning map amendment, (iii) a master plan, (iv) a subdivision preliminary plat, and (v) conditional use permit for the Citywide Park, with respect to the Project (collectively, the “**Development Permits**”).
- H.** Holt and the City now desire to establish the infrastructure improvements to be constructed to permit development of the Property upon issuance of the Development Permits and to agree upon (i) the methods for funding the cost of those infrastructure improvements and (ii) the timing of construction of those infrastructure improvements.

**NOW, THEREFORE**, based on the foregoing Recitals, which are incorporated herein by this reference, the mutual covenants provided for in this Agreement, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**Section 1.** Definitions. Capitalized terms used and not defined herein shall have the meanings assigned to such terms in **Exhibit D** attached hereto.

**Section 2.** Not a Statutory Development Agreement. The Parties recognize and agree that this Agreement is not, and shall not be construed to be, a statutory development agreement under ORS 94.504 to 94.528, is not intended to implement and shall not be subject to the requirements of ORS 94.504 to 94.528.

**Section 3.** Not a Land Use Decision, appeal by Writ of Review only. The Parties understand and agree that the City’s approval of this Agreement does not constitute a land use decision and is not a land use decision under state law, but instead contemplates a series of land use applications that Holt or its successors will submit for decision by the City. Consideration and approval of this Agreement by the City requires a public hearing, and when signed, this Agreement constitutes the City’s final decision with regard to the matters addressed herein. This Agreement, when signed, may be appealed by any Party with standing to Circuit Court through a Writ of Review process under ORS 34.010 to 34.102.

**Section 4.** Effective Date and Term. This Agreement shall be effective upon full execution and delivery by the authorized representatives of all Parties (“**Effective Date**”). This Agreement shall be, and remain, in force for a period of twenty (20) years from the Effective Date, after which it shall expire automatically and become null and void (the “**Termination Date**”), except that any entitlements (land use permits and approvals, land divisions, and building permits), easements, dedications, water rights, and the like granted to or by the City, Washington County, or Holt shall remain valid and continue to impose on-going obligations and benefits on the holder thereof.

**Section 5.** Amendment and Modification. This Agreement may be amended or modified prior to the Termination Date, including an extension of the Termination Date, only upon the mutual written agreement of both Parties. The Mayor, or any designee thereof, is authorized to execute this Agreement and any amendments on behalf of the City and to approve minor modifications to this Agreement or the exhibits attached hereto without necessity of further public hearings (which minor modifications include, without limitation, changes in scope, location, or design of the Improvements, revisions to the Project Schedule (defined below), or any combination of the foregoing). The City Manager is authorized to execute and approve amendments to the Project Schedule without the necessity of further public hearings or approvals from other municipal officials.

**Section 6.** Applicable Development Standards. This Agreement and all development specifically described herein (including, without limitation, Holt’s division of the Property and development of the Project) shall be subject to the City’s land usage and land division standards in Title XV of the BMC and the City’s Public Works Design Standards that are in effect on the Effective Date, except as specifically modified by this Agreement. Alternatively, Holt may elect, in its sole and absolute discretion, to proceed with and be bound by the City’s land usage standards, land division standards, or both as each is set forth in the version of Title XV of the BMC that is in effect on the date Holt submits a land division or development application as provided in ORS 92.040 and ORS 227.178(3).

**Section 7.** Project Schedule; Time of the Essence; Home Occupancy Timing.

7.1 Project Schedule. A project schedule is attached hereto as **Exhibit E** and incorporated herein by this reference (the “**Project Schedule**”). The Project Schedule is intended to outline the order of operations and sequence of Improvements and actions needed for the Project to succeed in a timely manner.

7.2. Time is of the Essence. Time is of the essence with respect to the performance of all of the City’s obligations under this Agreement.

7.2.1. Automatic Extension. In addition to any other rights or remedies with respect thereto, if the City fails to perform any of its obligations in this Agreement within the time period set forth in this Agreement including, without limitation, the Project Schedule, Holt’s obligation to construct each Improvement affected thereby will be deferred by a period equivalent

to the delay in performance by the City. This automatic extension shall supersede any conditions of approval within the Development Permits.

7.2.2. Written Notice. Both Parties shall use commercially reasonable efforts to comply with the Project Schedule subject to delays outside of the reasonable control of each Party and delays caused by the other Party. Promptly after learning of an event that may result in a Party being unable to comply with a component of the Project Schedule, the applicable Party shall provide written notice thereof to the other Party and the Parties will negotiate a reasonable adjustment to the Project Schedule.

7.3 Application of Project Schedule and Exhibits to Home Occupancy Timing. The Project Schedule and other Exhibits sometimes correlate Improvements to the home occupancy of a specific number of dwelling units, in which case a final certificate of occupancy shall not be granted for the specified dwelling unit (or those in addition to it) until the Improvement is operational. By way of example only, the Transportation Improvement Table in **Exhibit G** indicates that the Aerts Rd/OR 6 Intersection Improvement (Roundabout) must be operational before the occupancy of 174 dwelling units. The one-hundred seventy-fourth (174) dwelling unit on the Property, and any subsequent dwelling units on the Property, will receive a final certificate of occupancy only after the Aerts Rd/OR 6 Intersection Improvement (Roundabout) is operational. When calculating dwelling units, model homes are excluded from all dwelling unit counts for the timing of Improvements.

**Section 8.** Water Improvements. The water system improvements (collectively, the “**Water Improvements**”) are described and depicted on **Exhibit F** which includes a conceptual plan for the location of the Water Improvements and other water system improvements contemplated herein (the “**Water Improvements Map**”), and includes the “**Water Improvements Table**,” which details the Water Improvements and specifies the timing of when said Improvements must be constructed.

8.1. Deep Well #3.

8.1.1. City Responsibilities. The City hereby agrees to, at its sole cost and expense, perform all of the following:

8.1.1.1. Prepare and submit to the Oregon Water Resources Department and Oregon Health Authority the Transfer Application.

8.1.1.2. Permit Deep Well #3.

8.1.1.3. Determine that the Project is not required to develop Well #4 (as identified in the City’s Water System Master Plan) provided that (i) TVID water is obtained pursuant to Section 8.7.2 below, and (ii) Deep Well #3 achieves the target yield of 0.29 MGD peak season reliable capacity, based upon the report provided by Holt pursuant to the methodology in Section 8.1.2.3

8.1.2. Holt Responsibilities: Holt hereby agrees to, at its sole cost and expense, perform all of the following:

8.1.2.1. Obtain signature on Consent by Deeded Landowner form for the Transfer Application from the owner of the Property.

8.1.2.2. Design and construct Deep Well #3.

8.1.2.3. Provide the City an analysis of whether Well #3 can provide the required 0.29 MGD of peak season reliable supply capacity, pursuant to the following methodology: (i) within 90 days of the completion of Well #3 construction, a constant-rate test will be performed for a minimum duration of 48-hours; (ii) Straight line projections will then be used to estimate the drawdown in the well after 90 days of continuous pumping (including interference from existing wells and seasonal water level variability) to determine the peak season reliable supply capacity of the well.

8.2. Chlorination Facility.

8.2.1. City Responsibilities: The City hereby agrees to, at its sole cost and expense, perform all of the following:

8.2.1.1. Design, permit, and construct the Chlorination Facility.

8.2.1.2. Own and maintain the Chlorination Facility.

8.2.2. Holt Responsibilities: None.

8.3. 1.0 MG Reservoir

8.3.1. City Responsibilities: The City hereby agrees to, at its sole cost and expense, perform all of the following:

8.3.1.1. Acquire property and construction easements necessary for construction of the Reservoir.

8.3.1.2. Design the Reservoir and provide a copy of the Reservoir design to Holt for its review and approval.

8.3.1.3. Obtain any and all permits and pay all permit and recording fees necessary for construction of the Reservoir.

8.3.1.4. Own and maintain the Reservoir.

8.3.2. Holt Responsibilities: Holt hereby agrees to, at its sole cost and expense, perform all of the following:

8.3.2.1. Upon the City's request, cause to be prepared (i) any surveys needed for any property line adjustment or land division that is necessary for the Reservoir and (ii) a topographic survey to be used in connection with the design of the Reservoir.

8.3.2.2. Review the City's proposed design of the Reservoir and not unreasonably withhold its approval thereof.

8.3.2.3. Construct the Reservoir.

8.4. Railroad Water Main Crossings.

8.4.1. City Responsibilities: The City hereby agrees to, at its sole cost and expense, perform all of the following:

8.4.1.1. Promptly review applications for permits for construction of the Railroad Water Main Crossings.

8.4.1.2. Execute and deliver all utility crossing permit applications and right of entry applications necessary to obtain the approval of the Railroad Water Main Crossings from the railroad(s) with jurisdiction over same.

8.4.2. Holt Responsibilities: Holt hereby agrees to, at its sole cost and expense, perform all of the following:

8.4.2.1. Prepare permit applications for City execution and obtain any permits or approvals from the railroad required for construction of the Railroad Water Main Crossings.

8.4.2.2. Design the Railroad Water Main Crossings, draft applications and pay application fees for all utility crossing permit applications and right of entry applications needed for Railroad Water Main Crossings.

8.4.2.3. Construct the Railroad Water Main Crossings.

8.5. East Loop/Aerts Road Water Main.

8.5.1. City Responsibilities: The City hereby agrees to, at its sole cost and expense, perform all of the following:

8.5.1.1. Promptly review applications for permits for construction of the East Loop/Aerts Road Water Main.

8.5.2. Holt Responsibilities: Holt hereby agrees to, at its sole cost and expense, perform all of the following:

8.5.2.1. Design, permit, and construct the East Loop/Aerts Road Water Main.

8.6. Spring Upgrades.

8.6.1. City Responsibilities: The City hereby agrees to, at its sole cost and expense and perform all of the following:

8.6.1.1. Design, permit, and construct the Spring Upgrades.

8.6.1.2. Own and maintain the Spring Upgrades.

8.6.2. Holt Responsibilities: None.

8.7. TVID Water

8.7.1. City Responsibilities: The City hereby agrees to, at its sole cost and expense, perform all of the following:

8.7.1.1. Support Holt's attempt to obtain permission to use Tualatin Valley Irrigation District ("TVID") water to provide irrigation to open spaces and parks within the Project.

8.7.2. Holt Responsibilities: Holt hereby agrees to, at its sole cost and expense, perform all of the following:

8.7.2.1. Work with TVID to use water currently allocated for the golf course for irrigation of the proposed open spaces and parks within the Project.

8.7.2.2. If Holt obtains TVID water, or another source of non-potable water other than from the City, install the Non-Potable Water Main (Purple Pipe) for irrigation of public and HOA open spaces, parks, stormwater facilities, and collector planter strips.

8.8. Water Supply. The City agrees that construction of the Water Improvements will satisfy in full Holt's Water Supply Obligations under BMC 152.003(D) and City of Banks Resolution 2022-03 with respect to providing adequate water supply and, as a result, upon completion thereof there will be water of a sufficient quality and quantity available to serve 100% of the Project's projected water needs. Prior to construction of the Water Improvements, (i) the existing lot lines of the Property may need to be adjusted, (ii) large lot land divisions may be required, or (iii) both (collectively, "**Preliminary Land Divisions**") in order to facilitate property acquisition, phasing, or both. City agrees that it will not apply the requirements of BMC 152.003(D) or City of Banks Resolution 2022-03 to any Preliminary Land Divisions.

**Section 9. Transportation Improvements.** The transportation system improvements (collectively, the “**Transportation Improvements**”) are described and depicted on **Exhibit G** which includes a conceptual plan for the location of the Transportation Improvements and certain other Project related transportation improvements (the “**Transportation Improvements Map**”), and includes the “**Transportation Improvements Table**,” which details the Transportation Improvements and specifies the timing of when said Improvements must be constructed. A conceptual transportation network plan of the Transportation Improvements is included on **Exhibit G-1**, and conceptual cross sections and plans for some of the Transportation Improvements are included in **Exhibit G-2, Exhibit G-3, and Exhibit G-4.**

9.1. Aerts Rd/OR 6 Intersection Improvement (Roundabout).

9.1.1. City Responsibilities: The City hereby agrees to, at its sole cost and expense, perform all of the following:

9.1.1.1. Upon request by Holt, use reasonable efforts to cause Washington County or the Oregon Department of Transportation (“**ODOT**”) to exercise its eminent domain powers to acquire right-of-way and temporary construction easements for the Aerts Rd/OR 6 Intersection Improvement (Roundabout).

9.1.1.2. Coordinate and attend meetings with Washington County and ODOT regarding the Aerts Rd/OR 6 Intersection Improvement (Roundabout).

9.1.2. Holt Responsibilities: Holt hereby agrees to, at its sole cost and expense, perform all of the following:

9.1.2.1. Attempt to obtain right-of-way and temporary construction easements for the Aerts Rd/OR 6 Intersection Improvement (Roundabout).

9.1.2.2. Design, permit, and construct Aerts/Highway 6 Intersection Improvement (Roundabout).

9.2. Banks Rd/Aerts Rd Intersection Improvements.

9.2.1. City Responsibilities: The City hereby agrees to, at its sole cost and expense, perform all of the following:

9.2.1.1. Promptly review applications for permits for construction of the Banks Rd/Aerts Rd Intersection Improvements.

9.2.2. Holt Responsibilities: Holt hereby agrees to, at its sole cost and expense, perform all of the following:

9.2.2.1. Design, permit, and construct the Banks Rd/Aerts Rd Intersection Improvements.

9.3. Banks Road Upgrade and Aerts Road Upgrade Projects. Concept cross-sections for the Banks Road Upgrade and Aerts Road Upgrade Projects are detailed in **Exhibit G-3**.

9.3.1. City Responsibilities: The City hereby agrees to, at its sole cost and expense, perform all of the following:

9.3.1.1. Promptly review applications for permits for construction of the Banks Road Upgrade and Aerts Road Upgrade Projects.

9.3.2. Holt Responsibilities: Holt hereby agrees to, at its sole cost and expense, perform all of the following:

9.3.2.1. Design, permit, and construct the Banks Road Upgrade and Aerts Road Upgrade Projects.

9.4. Oak Way/Main St Intersection Improvements

9.4.1. City Responsibilities: None.

9.4.2. Holt Responsibilities: Holt hereby agrees to, at its sole cost and expense, perform all of the following:

9.4.2.1. Design, permit, and construct the Oak Way/Main St Intersection Improvements.

9.5. Bike/Ped Overcrossing of Railroad. A conceptual plan and profile of the Bike/Ped Overcrossing of Railroad is included in **Exhibit G-4**.

9.5.1. City Responsibilities: The City hereby agrees to, at its sole cost and expense, perform all of the following:

9.5.1.1. Support Holt's efforts to obtain permits and easements required for construction of the Bike/Ped Overcrossing of Railroad including, without limitation, from the Banks School District.

9.5.1.2. Upon request of Holt, coordinate and attend meetings with the railroad overcrossing stakeholders regarding the Bike/Ped Overcrossing of Railroad, including Banks School District, Portland & Western Railroad (PNWR), Port of Tillamook Bay Railroad (PTBR) and ODOT Rail regarding the Bike/Ped Overcrossing of Railroad.

9.5.1.3. Execute and deliver all railroad crossing permit applications and right of entry applications necessary to obtain the approval of the Bike/Ped Overcrossing from the railroad(s) with jurisdiction over same.

9.5.1.4. Promptly review applications for permits for construction of the Bike/Ped Overcrossing of Railroad.

9.5.2. Holt Responsibilities: Holt hereby agrees to, at its sole cost and expense, perform all of the following:

9.5.2.1. Prepare applications for any permits or approvals needed from the railroad required for construction of the Bike/Ped Overcrossing of Railroad.

9.5.2.2. Design and construct the Bike/Ped Overcrossing of Railroad.

9.6. On-Site East-West Collector and On-Site North-South Collector.

9.6.1. City Responsibilities: The City hereby agrees to, at its sole cost and expense, perform all of the following:

9.6.1.1. Promptly review applications for permits for construction of the On-Site East-West Collector and On-Site North-South Collector Improvements.

9.6.2. Holt Responsibilities: Holt hereby agrees to, at its sole cost and expense, perform all of the following:

9.6.2.1. Design, permit, and construct the On-Site East-West Collector and On-Site North-South Collector Improvements.

**Section 10. Park Improvements.** The park system improvements (collectively, the “**Park Improvements**”) are described and depicted on **Exhibit H** which includes a conceptual plan for the location of the Park Improvements (the “**Park Improvements Map**”), and includes the “**Park Improvements Table**,” which details the Park Improvements and specifies the timing of when said Improvements must be constructed.

10.1. Citywide Park. A conceptual plan of the Citywide Park is depicted on **Exhibit H-1.**

10.1.1. City Responsibilities. The City hereby agrees to, at its sole cost and expense, perform all of the following:

10.1.1.1. Promptly review applications for permits for construction of the Citywide Park.

10.1.1.2. Accept (i) dedication from Holt of the Citywide Park and (ii) ownership and maintenance of the Citywide Park improvements prior to any public use.

City may negotiate maintenance cost sharing agreements with third parties including, but not limited to, the Banks School District.

10.1.1.3. The City will maintain the Citywide Park and improvements therein as a first-class city park and in accordance with the operation and maintenance manuals provided by Holt (i.e., the “**Park Maintenance Standards**”).

10.1.1.4. If Holt determines that the maintenance of the Citywide Park does not meet the Park Maintenance Standards, Holt reserves the right, at its sole and absolute discretion, to provide supplemental maintenance of the Citywide Park itself in accordance with the Park Maintenance Standards and the City will reimburse Holt for the costs it incurs in connection with performance of such work within thirty (30) days following receipt of an invoice therefor.

10.1.2. Holt Responsibilities. Holt hereby agrees to, at its sole cost and expense, perform all of the following:

10.1.2.1. Design, permit, and construct the Citywide Park.

10.1.2.2. Design, permit, and construct streets and utilities necessary for access to, and operation of, the Citywide Park.

## 10.2. Eastside Trail

10.2.1. City Responsibilities. The City hereby agrees to, at its sole cost and expense, perform all of the following:

10.2.1.1. Promptly review applications for permits for construction of the Eastside Trail.

10.2.2. Holt Responsibilities. Holt hereby agrees to, at its sole cost and expense, perform all of the following:

10.2.2.1. Design, permit, and construct the Eastside Trail.

10.2.2.2. Dedicate a pedestrian access and maintenance easement to the City over the paved portion of the Eastside Trail.

### **Section 11. Permit Review**

For all permits required for the construction of the Improvements, the City will use reasonable efforts to ensure that (i) the construction documents are promptly reviewed by the City and (ii) permits are promptly made ready for pick up subject only to delays caused by Holt.

Time is of the essence with respect to the review timelines for City reviews of Improvements. Therefore, the City will strive to meet the following permit review timelines for all Improvements over which the City has jurisdiction: (i) initial (1<sup>st</sup>) review = 3 weeks (15 business days); and (ii) subsequent reviews = 1 week (5 business days)

**Section 12. Public Ownership and Maintenance of Improvements.**

12.1. City Responsibilities. Unless otherwise specified in this Agreement, for Improvements over which the City has jurisdiction, the City will accept (i) dedication from Holt the Improvements to the extent owned by Holt and (ii) ownership and maintenance of the Improvements.

12.2. Holt Responsibilities. Unless otherwise specified in this Agreement, Holt will dedicate the Improvements and underlying land, to the extent owned by Holt, to the public entity with jurisdiction over said Improvement.

**Section 13. SDCs and TDTs.**

13.1 Fixed SDC Rates and Other Development Fees. During the Term of this Agreement, the system development charges (“SDCs”) and other development fees applicable to development with the Property shall be fixed at the rates set forth in the **Exhibit I** (the “**Fixed Rate Schedule**”):

13.2 Waiver of SDCs. The City hereby agrees that, provided that Holt substantially completes all of the Improvements contemplated in this Agreement and subject to the limitations set forth below in this Section 13.2, the City will not impose or seek to collect, and hereby fully waives, any and all water, parks, or transportation SDCs otherwise applicable to the construction of single-family residential dwelling (attached or detached) and some industrial and commercial development on the Property as part of the Project, subject to the limits below. Any development on the Property in excess of the limits below is subject to SDCs at the Fixed SDC Rate. The scope of the Improvements detailed in the Exhibits is the basis for the agreed upon waiver of SDCs. If it is later determined that the scope, capacity, or quality of the Improvements must be materially changed, then the Parties agree that, following a request therefor from Holt, the Parties will negotiate in good faith an amendment to this Agreement that reflects the impact of the changed scope, capacity, or quality on the financial obligations of Holt hereunder.

13.2.1 Transportation SDC Waiver Limitations.

13.2.1.1 The waiver of transportation SDCs applies to a maximum of eight hundred five (805) single-family detached residential units and one hundred fifty (150) single-family attached residential (attached townhome) units, the HOA clubhouse amenity in support of the Project’s residents, the Citywide Park (including structures), 60,000 gross square feet of mini-warehouse use, and 65,340 gross square feet of shopping center use.

13.2.1.2 The amount of mini-warehouse use and shopping center use described in Section 13.2.1.1 is derived from the traffic impact analysis assumptions in support of the Project. If the uses that develop on the commercial or industrial zoned portions of the Property differ from the assumptions in Section 13.2.1, then the SDC obligation for that use shall be reduced by the amount of the waived SDC. By way of a hypothetical example, the amount of waived TSDC for a 60,000 SF mini-warehouse is \$127,980 (60.00 x \$2,133, which is the Fixed SDC Rate for transportation SDCs). If a 25,000 SF general light industrial use is developed instead, that use's TSDC obligation would have been \$209,700 (25.00 x \$8,388, the Fixed SDC Rate), but when offset by the waived TSDC, \$81,720 would be owed (\$209,700 - \$127,980).

13.2.2 Water SDC: The waiver of water SDCs applies to a maximum of nine hundred fifty-five (955) 3/4" water meters, one (1) 3" water meter, one (1) 2" meter, and two (2) 1" water meters.

13.2.3 Parks SDC: The waiver of parks SDCs is unlimited.

13.3 Waiver of TDTs. Within the City limits, the City implements the Washington County Transportation Development Tax ("TDT") on behalf of Washington County. The City hereby agrees that, provided that Holt substantially completes all of the Transportation Improvements (other than the Bike/Ped Overcrossing of Railroad and the Washington Avenue Closure at Aerts Road element of the Aerts Rd/OR 6 Intersection Improvement (Roundabout)), the City will not impose or seek to collect, and hereby fully waives the TDT otherwise applicable to the construction of single-family residential dwelling (attached and detached) constructed on the Property as a part of the Project, up to a maximum of eight hundred five (805) single-family detached residential units and one hundred fifty (150) single-family attached residential (attached townhome) units, the HOA clubhouse amenity in support of the Project's residents, the Citywide Park (including structures), 60,000 gross square feet of mini-warehouse use, and 65,340 gross square feet of shopping center use. Any development on the Property in excess of these limits is subject to the TDT.

13.3.1 The offset detailed in Section 13.2.1.2 shall also apply to the waived TDT so that TDT owed for uses developed on commercial or industrial zoned portions of the Property in excess of the amounts set forth above are offset by the waived TDT.

13.4 Financial Assurances. The Improvements will be completed over time, with most Improvements anticipated to be substantially completed during the first few phases of the Project. Prior to recording final plat for each phase, the Improvements within that phase must be bonded, which provides financial assurance that the Improvements will be substantially completed. The Parties anticipate that building permits for residential units within the Project will be issued prior to when all Improvements are substantially complete, but after bonds for Improvements within that phase are posted. Typically, SDCs and TDTs are collected at the time of building permit issuance, but the Parties agree that SDCs and TDTs will be waived at the time of building permit issuance as detailed in Sections 13.2 and 13.3.

**Section 14.** Development Permit Applications.

14.1 Accept and Process Development Permits. The City shall accept and process in the normal course all Development Permit applications submitted by Holt or its agent(s) in conformance with the requirements of this Agreement and applicable provisions of the BMC and City's Public Works Design Standards. Where there is any conflict between the BMC, City's Public Works Design Standards or Comprehensive Plan, on the one hand, and this Agreement on the other, the terms and requirements of this Agreement shall control.

14.2 Obligation to Construct. Notwithstanding anything to the contrary herein, Holt shall have no obligation to design or construct any or all of the Improvements unless and until final land use approval, including resolution of any and all appeals, approves the Development Permits for at least 930 residential dwelling units on the Property, consistent with **Exhibit C**. Holt may elect to terminate this Agreement in its entirety, at Holt's sole and absolute discretion, by written notice to the City given at any time. In no event shall Holt have any obligation to construct an Improvement hereunder except to the extent a final land use approval issued by the City requires construction of such Improvement as a condition on such approval.

14.3 Capacity. The water, transportation, and parks infrastructure capacity created by the Improvements is intended to be vested in, and reserved exclusively for, the development of the Project and the Property. Accordingly, upon completion of the Improvements provided for in Sections 8, 9 and 10 above, in no event will the City determine that insufficient capacity exists for the development of the Project or the Property. Moreover, the City will not approve other projects that use the capacity created by the Improvements except to the extent capacity in excess of that required for the Project and the Property is created as a result of the construction of the Improvements.

**Section 15.** Additional Easements. Holt and the City acknowledge that additional easements and improvements not expressly contemplated herein may be necessary in order to operate or construct the Improvements. Accordingly, the City agrees to work in good faith with Holt, consistent with the terms of this Agreement, to obtain such additional easements, and to allow Holt to construct such additional improvements. In addition, the City agrees to cooperate in good faith with all construction to be performed by Holt hereunder including, without limitation, by closing public rights-of-way as requested by Holt in connection therewith.

**Section 16.** Annexation of Additional Property. If Holt acquires, or enters into a contract or option to acquire, property that is located adjacent to the Property (such property, "**Additional Property**"), Holt shall be entitled to annex such Additional Property into the Property and Project for the purposes of all of the benefits of this Agreement including, without limitation, the vesting of certain code requirements as set forth herein, and vesting of capacity created by Improvements as set forth herein.

**Section 17.** Oregon Prevailing Wage Law. The City and Holt acknowledge and agree that construction of the Improvements is not intended to be considered “public works” subject to ORS 279C.800 to 279C.875 and the administrative rules adopted thereunder.

**Section 18.** Post Construction Obligations. The City agrees that Holt’s sole obligation with respect to the Improvements after completion of each component thereof will be to provide a customary 1-year warranty bond against defects in initial construction (12% of public Improvement costs). In no event will the City condition acceptance of any of the Improvements on Holt providing any other warranty or on Holt maintaining the Improvements (whether before or after the City’s acceptance of same).

**Section 19.** Dispute Resolution and Remedies. Should a disagreement arise between the City and Holt regarding interpretation and application of this Agreement, the Parties agree to attempt to resolve the disagreement by first meeting and conferring. If this does not result in resolution the Parties agree to employ a mutually agreeable mediator to resolve the disagreement. Both sides shall bear their own costs incurred in mediation and shall share the cost of the mediator. If mediation proves unsuccessful, the disagreement may be resolved by arbitration or judicial action filed in Circuit Court for Washington County, Oregon or federal District Court for the District of Oregon. This Agreement shall be construed in accordance with, and governed by, the laws of the State of Oregon. In the event a dispute arises under this Agreement and either Party files legal action to interpret or enforce its terms, the prevailing Party in any arbitration, legal action in state or federal court, and any appeals therefrom shall be entitled to recover its reasonable costs thus incurred, including expert witness and attorney fees, from the losing Party.

**Section 20.** No Waiver. Failure of any Party at any time to require performance by the other Party of any of the provisions or requirements of this Agreement shall in no way affect the Parties’ rights hereunder to enforce any and all rights and obligations set forth in this Agreement, nor shall any failure by a Party to declare a default or breach of this Agreement by another Party be deemed a waiver of any default or breach or a waiver of this non-waiver clause.

**Section 21.** No Third-Party Beneficiaries. This Agreement is strictly and solely between the Parties signed below, and it shall not create any obligation on the part of either Party to perform or pay anything to or on behalf of anyone not a Party to this Agreement. This Agreement does not create any rights in favor of or for any person or entity that is not a Party to this Agreement.

**Section 21.** Severability. If any portion of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the validity and enforceability of the remaining provisions shall not be affected thereby.

**Section 24.** Assignment. Holt may assign its rights and delegate its obligations under this Agreement, in whole or in part, to one or more persons, corporations, partnerships or other entities including, without limitation, those succeed to Holt’s interests in the Property or any portion thereof, who shall be bound by the applicable burdens, benefits, requirements and terms

of this Agreement. The City may not assign its interest in this Agreement and may not delegate its obligations hereunder. This Agreement does not run with the land.

**Section 25.** Incorporation of Recitals. Each of the recitals set forth above are intended to be, and are incorporated as, covenants between the Parties and shall be so construed.

**Section 26.** Entire Agreement. Each of Exhibits A, B, C, D, E, F, G, G-1 to G-4, H, H-1 and I attached to this Agreement are incorporated herein by this reference and are made a part of this Agreement. This Agreement, including without limitation Exhibits A, B, C, D, E, F, G, G-1 to G-4, H, H-1 and I referenced herein and the recitals, constitute the entire agreement between the Parties with regard to the matter addressed herein. No terms or representations not set forth in this Agreement or the referenced Exhibits shall be considered a part of, or enforceable under, this Agreement.

**Section 27.** Notices. Unless otherwise specified herein, all notices will be in writing and may be delivered by personal delivery, by overnight courier service, or by deposit in the United States Mail, postage prepaid, as certified mail, return receipt requested, and addressed as follows:

DRAFT

City:	The City of Banks Attn: Jolynn Becker, City Manager 13680 NW Main Street Banks, OR 97106 Email: _____
Holt:	The Holt Group, Inc. Attn: _____ 1300 Esther Street, Suite 200, Vancouver, WA, 98660-2875 Email: _____

Notices will be deemed received by the addressee upon the earlier of actual delivery or refusal of a Party to accept delivery thereof. The addresses to which notices are to be delivered may be changed by giving notice of such change in address in accordance with this notice provision.

*[signatures on following page]*

**IT IS SO AGREED**, as indicated by the below-signed authorized representatives of the Parties hereto.

THE HOLT GROUP, INC.,  
a Washington Corporation

By: Holt Group Holdings, LLC,  
A Delaware limited liability company  
Its: Sole Member

\_\_\_\_\_  
print name & title

Date: \_\_\_\_\_

DRAFT

**For The City of Banks:**

\_\_\_\_\_

\_\_\_\_\_

print name & title

Date: \_\_\_\_\_

DRAFT

**EXHIBIT A**

*Legal Description of Property*

DRAFT

**EXHIBIT B**

*Depiction of Property*

DRAFT

**EXHIBIT C**  
*Conceptual Plans*

DRAFT

## EXHIBIT D

### Definitions

**“Aerts Rd/OR 6 Intersection Improvement (Roundabout)”** means a single lane roundabout with a phased westbound right-turn lane improvement to the Aerts Rd/OR 6 intersection and Washington Avenue Closure at Aerts Road depicted on the Transportation Improvements Map (**Exhibit G**), Transportation Network Plan (**Exhibit G-1**), and described in the Transportation Improvement Table (**Exhibit G**).

**“Banks Rd/Aerts Rd Intersection Improvements”** mean the improvements to the Aerts Road/Banks Road intersection depicted on the Transportation Improvements Map (**Exhibit G**), Transportation Network Plan (**Exhibit G-1**), including the details in the footnotes to the Transportation Improvements Table (**Exhibit G**).

**“Banks Road Upgrade and Aerts Road Upgrade Projects”** means the improvements and widening to Banks Road and Aerts Road as depicted on the Transportation Improvements Map (**Exhibit G**), described in the Transportation Improvement Table (**Exhibit G**), and detailed on **Exhibits G-1 and G-3**, including but not limited to right-of-way dedication and construction of a multi-use path.

**“Bike/Ped Overcrossing of Railroad”** means a bicycle and pedestrian overcrossing over the railroad, which will connect the Citywide Park to certain property owned by the Banks School District located to the west of the railroad right-of-way as depicted on the Transportation Improvements Map (**Exhibit G**), described in the Transportation Improvement Table (**Exhibit G**), and detailed on **Exhibit G-4**.

**“Chlorination Facility”** means that certain chlorination facility (Sodium Hypochlorite Generation) being expanded at existing facility at Well #2 to accommodate additional water from Deep Well #3, as depicted on the Water Improvements Map (**Exhibit F**).

**“Citywide Park”** means the land and improvements of an approximately 20.0 acre citywide park and sports facility to be constructed on the Property located generally as depicted on the Parks Improvements Map (**Exhibit H**) and which is expected to include improvements as conceptually depicted on **Exhibit H-1** and described in the Parks Improvements Table (**Exhibit H**).

**“Deep Well #3”** means the groundwater well depicted and described on the Water Improvements Map (**Exhibit F**), including the land, associated water mains, and well specifications detailed in the Water Improvement Table (**Exhibit F**).

**“East Loop/Aerts Rd Water Main”** means that certain 12” water supply main that loops through the Project and connects to the Rose Avenue Railroad Water Main Crossing and water distribution mains within Banks Road as depicted on the Water Improvements Map (**Exhibit F**).

and including the water main bores under railroad tracts detailed in the Water Improvement Table (**Exhibit F**)

“*Eastside Trail*” means those certain trail improvements depicted on the Parks Improvements Map (**Exhibit H**) and detailed in the Parks Improvements Table (**Exhibit H**).

“*Improvements*” means, collectively, the Water Improvements, the Transportation Improvements, and the Park Improvements.

“*Non-Potable Water Main (Purple Pipe)*” means the water main for non-potable water from TVID depicted on **Exhibit F**.

“*Oak Way/Main St Intersection Improvements*” means the improvements and upgrades to the Oak Way/Main St intersection depicted on the Transportation Improvements Map (**Exhibit G**) and described in the Transportation Improvement Table (**Exhibit G**).

“*On-Site East-West Collector*” means collectors street segments that are internal to the Project as depicted on the Transportation Improvements Map (**Exhibit G**), described in the Transportation Improvement Table (**Exhibit G**), and detailed on **Exhibit G-2**, including but not limited to right-of-way dedication and construction of a multi-use path.

“*On-Site North-South Collector*” means collectors street segments that are internal to the Project as depicted on the Transportation Improvements Map (**Exhibit G**), described in the Transportation Improvement Table (**Exhibit G**), and detailed on **Exhibit G-2**, including but not limited to right-of-way dedication and construction of a multi-use path.

“*Railroad Water Main Crossings*” mean those certain water line crossings under the railroad right-of-way as depicted on the Water Improvements Map (**Exhibit F**).

“*Reservoir*” or “*1.0 MR Reservoir*” means an approximately one million (1,000,000) gallon reservoir depicted the Water Improvements Map (**Exhibit F**), including the land, associated water mains, and road restoration detailed in the Water Improvement Table (**Exhibit F**).

“*Spring Upgrades*” means all projects on the City’s Water Capital Improvement Plan that are related to maximizing the capture and treatment of the City’s East Springs (CIP #'s 13 through 17).

“*Transfer Application*” means a water right transfer application with the Oregon Department of Water Resources and Oregon Health Authority pursuant to which additional points of appropriation for new wells will be added to the City’s existing Water Right Certificate [#95849] for Well #2.

“*Well #2*” means the existing City well as defined in the City’s water masterplan.