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Clark County, WA 01/16/2008 12:05

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Please print neatly or type information:

Document Title(s)

**Pre-Annexation / Development Agreement**

Reference Number(s) of Related Documents:

Additional Reference #'s on Page \_\_\_\_

Grantor(s)

**Carl D. & Gail D. English; Jennifer J. English; and  
Kenneth & Kelly Emerson**

Additional Grantors on Page \_\_\_\_

Trustee(s)

Grantee(s)

**City of Vancouver, a Washington municipal corporation**

Additional Grantees on Page \_\_\_\_

Legal Description: (abbreviated form: i.e. lot, block, plat or section  
township, range, quarter/quarter)

**SW 1/4 Section 30, T2N, R3E WM**

Additional Legal on Page \_\_\_\_

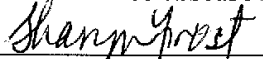
Assessor's Property Tax Parcel/Account Number

**176382-000; 176415-000; 176418-000; and 176419-000**

Additional Parcel #'s on Page \_\_\_\_

The Auditor/Recorder will rely on the information provided on this form.  
The staff will not read the document to verify the accuracy or completeness  
of the indexing information provided herein.

**I am requesting an emergency nonstandard recording for an additional fee as provided  
in RCW 36.18.010. I understand that the recording processing requirements may cover  
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Signature of Requesting Party

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**RETURN ADDRESS**

City of Vancouver  
City Clerk's Office  
PO Box 1995  
Vancouver, WA 98668-1995

**Grantor** : Carl D. and Gail D. English; Jennifer J. English; and, Kenneth and Kelly Emerson  
**Grantee** : City of Vancouver, a Washington municipal corporation  
**Abbreviated Legal** : SW ¼ Section 30 T2N R3E WM  
**Assessor's Tax Parcel Nos.** : 176382-000, 176415-000, 176418-000, and 176419-000  
**Prior Excise Tax No.** : NA  
**Other Reference No(s).** : NA

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**PRE-ANNEXATION/ DEVELOPMENT AGREEMENT**

1. **Parties:** Carl D. and Gail D. English, Jennifer J. English, and Kenneth and Kelly Emerson ("English Family"); and  
The City of Vancouver, Washington, a Washington Municipal Corporation ("City").

2. **Recitals:**

2.1 The English Family owns four parcels, legally described in Exhibit "A" attached. The parcels described in Exhibit "A" (hereafter "Properties") are located in the Section 30 Annexation Area (hereafter "Section 30"), as depicted in Exhibit "B" attached.

2.2 In an agreement dated December 30, 1996, the City and several of the Section 30 property owners, entered into a Pre-Annexation Agreement (hereafter "1996 Agreement"). In the 1996 Agreement, the City agreed not to initiate, promote or further annex Section 30 until surface mining operations have ceased and these properties are made available for other development, or requested by the property owner(s).

Carl English Family  
Pre-Annexation Development Agreement – Page 1

A7120602/SW:MW

2.3 On December 18, 2006, at the request of several property owners, the City Council unanimously voted to support annexation of Section 30 and apply comprehensive plan and zoning designations that correspond to those designations currently in effect in Clark County in accordance with VMC 20.230.030 (M-3593).

2.4 The City is authorized under RCW 35.13 *et. Seq*, RCW 36.70B.170 *et seq.* and VMC 20.250.010(B) to enter into agreements for real property outside its boundaries as part of a proposed annexation or service agreement in order to minimize any existing or potential dispute regarding the continued use and future development of the properties. These provisions may govern and vest the use, development or redevelopment, and mitigation of development impacts of the real property for the length of time specified in the agreement.

2.5 The parties desire to enter into this Pre-Annexation / Development Agreement (hereafter "Agreement") to clarify the parties' vested rights related to the current winery uses, and to govern the Properties' future development potential, as the City proceeds with the annexation of the Properties.

IN CONSIDERATION of the terms and conditions in this Agreement, the English Family and the City agree as follows:

3. Uses on the Properties. The following is a list of permitted or legal nonconforming residential and winery-related ("Uses") currently associated with the Properties. The Uses listed below shall not be subject to any land use laws, regulations, or ordinances enacted after said Uses became vested. Any one or all of such Uses listed in this section 6 shall be allowed on the Properties until the English Family abandons current or planned Uses on the Properties, or portion thereof:

3.1 There are two residences located on the property.

3.1.1 The first residence was built in 1917; located on parcel 176382-000.

3.1.2 The second residence was built in the 1930s; located on parcel 176418-000.

3.2 The English Winery uses are located across all four parcels.

3.2.1 Vineyards

3.2.2 Retail / wholesale

3.2.3 Wine processing

3.2.4 Office and administrative uses

3.2.5 Events

3.2.6 The Properties contain several agricultural buildings such as the barn, sales shop, and other ancillary structures.

3.3 On December 18, 2006, the City adopted a resolution (M-3593) determining the comprehensive plan and zoning designations to be applied to the Properties upon the annexation.

3.4 Some of English Family's existing uses were allowed prior to Clark County's requirement of permits for said uses. For instance, the vineyards were initially planted in 1980 and 1983 when the property was zoned Agriculture.

4. Legally Established Non-Conforming Use. The City hereby agrees to recognize the English Family's existing uses as legal nonconforming uses, so long as the uses are not legally abandoned pursuant to the Vancouver and Clark County municipal codes or common law. Any differences between Clark County's and the City's respective ordinances and common law shall be resolved in favor of the English Family.

5. Future Uses of the Properties. The City and the English Family in this Agreement hereby agree that the English Family can: continue expanding the vineyards on the Properties; continue using the two residential dwellings as residences; convert the residential dwellings to other uses related to the winery, such as but not limited to, restaurant, tasting room, gift shop, bed-and-breakfast; and, construct new buildings, or modify current buildings. The English Family shall complete all applicable land use reviews and obtain any required building permits as related to any changes in use of existing buildings, and new construction.

6. Section 30 Subarea Plan. In 2003/04, Clark County and the City of Vancouver, in cooperation with area property owners and residents, developed the "Section 30 Subarea Master Plan". In 2007/08, the City of Vancouver will once again work with area property owners and residents to further refine the plan in anticipation of the Section 30 annexation in order to prepare for the redevelopment anticipated for much of the annexation area. The English Family participated in the original 2003/04 effort, and will be asked to participate in the 2007/08 effort as well. The elements of this development agreement will be taken into consideration as the refinement efforts are undertaken.

Once the refined Section 30 plan is completed, new comprehensive plan and zoning designations may be applied to the Properties in order to implement the plan. The new designations will be applied after the annexation is complete and the plan is adopted, whichever happens last. Changes to the designations as a result of the refined plan will not negate the provisions outlined in this agreement.

7. Vested Rights. Consistent with the Vested Rights Doctrine recognized in Washington, any inconsistent or more restrictive land use policies, ordinances or regulations adopted by the City after the date that any of the uses above were legally established on the Properties, whether

as a permitted use or nonconforming use, shall not apply to the Properties; provided, however the English Family may, at any time during the term of this Development Agreement, elect to site land uses allowed by the VMC existing on the date of the filing of the pre-application for this development in accordance with VMC 20.010.080 or as the VMC may be amended during the duration of this Development Agreement, as provided for in VMC 20.210.010C. In the event the English Family makes the election to apply a subsequently amended zoning provision, the development regulations subsequently amended or enacted shall also apply.

8. Relationship of the Parties. No party is an agent, employee, partner, or joint venturer of the other party and no party is granted any right or authority, express or implied, to assume or create any obligation or responsibility on behalf of or in the name of the other parties or to bind the other parties in any matter. No party shall be entitled to share in the profits and losses of the other parties.

9. Binding on Successors. This Agreement shall be recorded and is binding upon the parties, their respective heirs, legatees, devisees, executors, administrators, guardians, conservators, successors, purchasers, tenants, encumbrancers, donees, grantees, mortgagees, lienors, and assigns.

10. Nonwaiver Clause. Failure by any party at any time to require performance by the other party of any of the provisions hereof shall in no way affect the parties' rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any such succeeding breach or waiver of this nonwaiver clause.

11. Governing Law. This Agreement shall be construed with and governed by the laws pertaining to contracts of the State of Washington. The parties agree to venue in Clark County, State of Washington.

12. Severability. If any portion of this Agreement, other than the performance provisions described herein, shall be invalid or unenforceable to any extent, the validity of the remaining provisions shall not be effected thereby.

13. Amendment and Modification. This Agreement in its entirety shall supercede any prior agreements except as otherwise provided. Subsequent revisions to this Agreement may only be amended by mutual agreement of the parties.

14. Reserved Authority of City. Anything in this Agreement to the contrary notwithstanding, the City of Vancouver, shall have the authority to impose new or different regulations to the extent required by a serious threat to public health and safety as required by RCW 36.70B.170(4), provided, however, that such action shall only be taken by legislative act of the City Council after appropriate public process.

15. Term. The term of this Development Agreement shall be twenty (20) years.

16. Public Hearing. The City Council has approved execution of this Agreement by resolution after a public hearing.

**ENGLISH FAMILY**

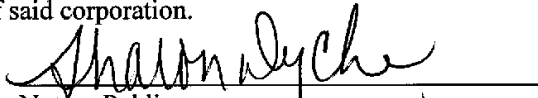


Carl D. English  
Dated 12/26/07

State of Washington )  
County of Clark )ss

On this 26 day of December, 2007, before me personally appeared Carl D. English, property owner, to me known to be the free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

SHARON DYCHE  
NOTARY PUBLIC  
STATE OF WASHINGTON  
COMMISSION EXPIRES  
JUNE 29, 2011

  
Notary Public  
Residing at Vancouver  
My appointment expires: 6/29/11




Gail D. English  
Dated 12/29/07

State of Washington )  
County of Clark )ss

On this 29 day of December, 2007, before me personally appeared Gail D. English, property owner, to me known to be the free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

SHARON DYCHE  
NOTARY PUBLIC  
STATE OF WASHINGTON  
COMMISSION EXPIRES  
JUNE 29, 2011

  
Notary Public  
Residing at Vancouver  
My appointment expires: 6/29/11



K.E. (Em) K.E. Em

Kenneth Emerson  
Dated 12-28-07

State of Washington  
County of Clark )ss

On this 28 day of December, 2007, before me personally appeared Kenneth Emerson, property owner, to me known to be the free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

SHARON DYCHE  
NOTARY PUBLIC  
STATE OF WASHINGTON  
COMMISSION EXPIRES  
JUNE 29, 2011

Sharon Dyche  
Notary Public  
Residing at Vancouver  
My appointment expires: 6/29/11

**CITY OF VANCOUVER**

Pat McDonnell  
Pat McDonnell, City Manager  
Dated 12-18-07

State of Washington )  
County of Clark )ss

On this 18<sup>th</sup> day of December, 2007, before me personally appeared Pat McDonnell, to me known to be the City Manager of the City of Vancouver who executed the within and foregoing instrument on behalf of said party and acknowledged said instrument to be the free and voluntary act and deed of the City of Vancouver, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.



Judith K. Hoggatt  
Notary Public  
Residing at Battle Ground  
My appointment expires: 2-17-08



EXHIBIT A

The following is a list of the four parcels and the related legal descriptions:

**176382-000:** #19 Section 30 T2N R3E of the Willamette Meridian; 1 Acre  
BEG 4 RDS W OF SE COR OF W 1/2 OF E 1/2 OF SW 1/4 SEC 30 TI NR3EWM & RNG  
TH N 10 RDS TH W 16 RDS TH S 10 RDS TH E 16 RDS TPOB

**176415-000:** #55 Section 30 T2N R3E of the Willamette Meridian; 7.98 Acres  
SE1/4 OF SE1/4 OF SW1/4 SEC 30-2-3 EXC THEREFROM THE S 296.5 FT OF THE  
WEST 296.5 FT

**176418-000:** #58 Section 30 T2N R3E of the Willamette Meridian; 2.02 Acres  
S 296.5 FT OF W 296.5 FT OF SE1/4 OF SE1/4 OF SW1/4 OF SEC 30-2-3EWM

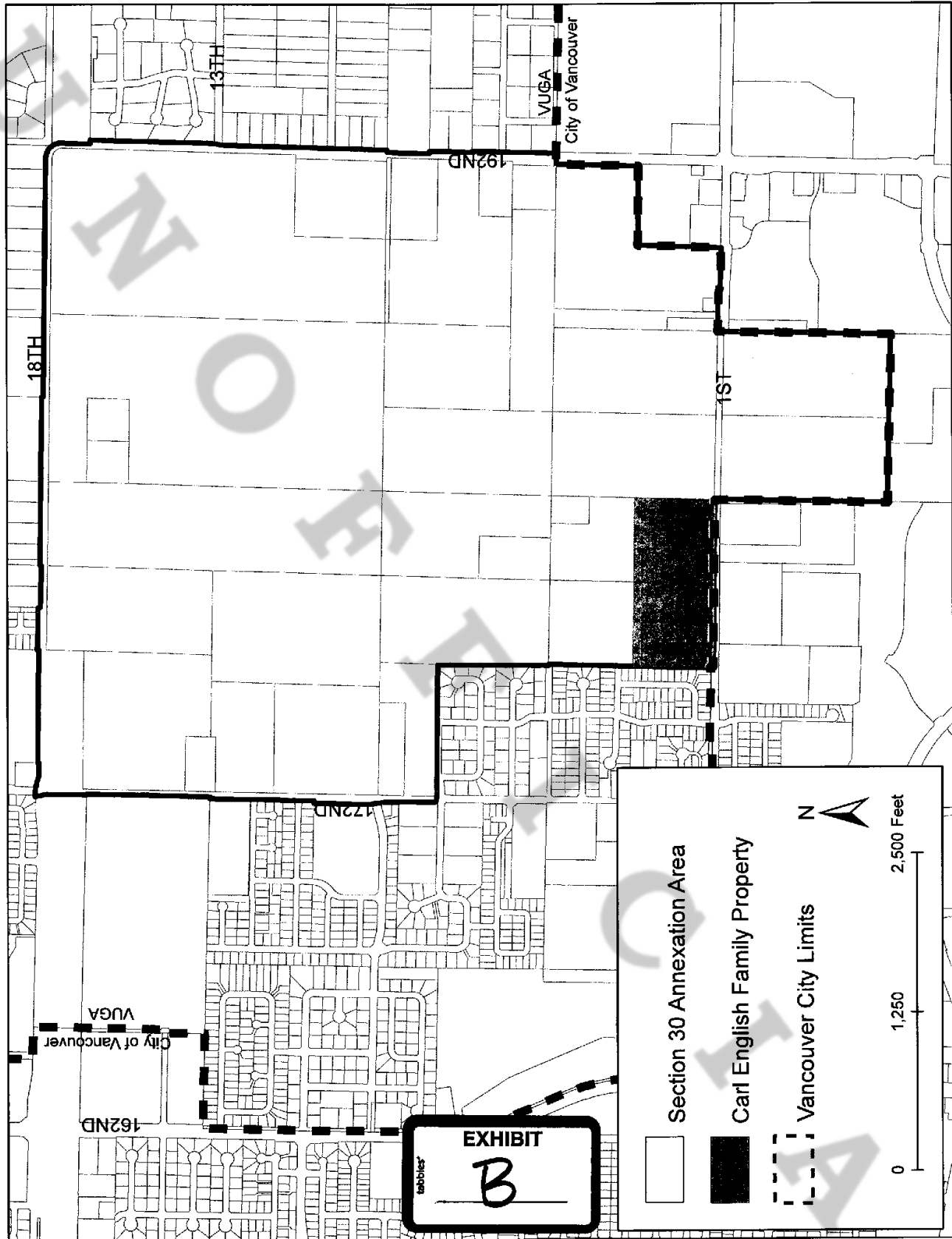
**176419-000:** #59 Section 30 T2N R3E of the Willamette Meridian; 9 Acres  
10A OF SW1/4 OF SE1/4 OF SW1/4 SEC 30 EXC 1A M/L BG S 165 FT OF E 330 FT  
EXC S 165 OF E 66 FT OF SW1/4 OF SE1/4 OF SW1/4 SEC 30

**EXHIBIT B**

Map of Section 30 Annexation Area, highlighting English Family parcels.

**Carl English Family  
Pre-Annexation Development Agreement – Page 9**

**A7120602/SW:MW**



12-17-07

RESOLUTION NO. M-3645

A RESOLUTION relating to approval of a development agreement pursuant to RCW Chapter 36.70B; relating to vesting of development standards and entering into a pre-annexation agreement with the Carl English Family (Owners) for property located within Section 30 of Township 2 North, Range 3 East of the Willamette Meridian and authorizing the City Manager or his designee to execute a development agreement.

WHEREAS, the Owner owns real property located in the City of Vancouver; and,

WHEREAS, the City and County completed a sub-area plan in 2004 for all of Section 30 defining general development strategies and uses; and,

WHEREAS, the City is a Washington Municipal Corporation with land use planning and permitting authority over all land within its corporate limits; and,

WHEREAS, the Owner desires to ensure vested winery-related uses can continue on the property following annexation; and,

WHEREAS, the City has the authority to enter into Development and Pre-Annexation Agreements pursuant to RCW 36.70B.170; and

WHEREAS, the City is further authorized to enter into Development Agreements pursuant to Vancouver Municipal Code ("VMC") 20.250; and

WHEREAS, the City and the owner wish to provide increased predictability to both parties on these issues; and

WHEREAS, as described in Staff Report 237-07, it is in the mutual interest of the City and the Owner of certain property described in the Development Agreement (Exhibit "A") to enter into an agreement respecting the development of the property; and

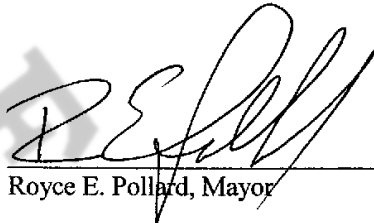
WHEREAS, a public hearing was duly noticed and held by City Council on Monday, December 17, 2007, regarding approval of the Development Agreement attached hereto.

NOW, THEREFORE,

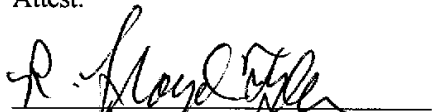
BE IT RESOLVED BY THE CITY OF VANCOUVER:

Section 1. City Council, in accordance with RCW 36.70B.200 hereby authorizes the City Manager or his designee to execute on behalf of the City a Development Agreement in the form attached hereto.


ADOPTED at regular session of the Council of the City of Vancouver, this 17<sup>th</sup> day of December, 2007.

  
\_\_\_\_\_  
Royce E. Pollard, Mayor

Attest:

  
\_\_\_\_\_  
R. Lloyd Tyler, City Clerk  
~~By: Carrie Lewellen, Deputy City Clerk~~

Approved as to form:

  
\_\_\_\_\_  
Ted H. Gathe, City Attorney