

**AGREEMENT BETWEEN BERRY FARM I CONDOMINIUM ASSOCIATION
AND THE CITY OF MARYSVILLE FOR SPEEDING ENFORCEMENT**

THIS AGREEMENT between Berry Farm I Condominium Association and the City of Marysville for Speeding Enforcement is made this ____ day of _____, 2013 by the Berry Farm I Condominium Association, a Washington nonprofit corporation (hereinafter “Berry Farm”) and its president, _____ and the City of Marysville, a Washington municipal corporation (hereinafter “City”) and its Chief of Police, Richard Smith.

RECITALS

WHEREAS, Berry Farm I Condominium Association (the “Association”) is a properly formed and registered nonprofit corporation of the State of Washington, in good standing;

WHEREAS, the City of Marysville is a Washington municipal corporation, and the Berry Farm I Condominium is located within the city limits of the City;

WHEREAS, _____ is the president of Berry Farm;

WHEREAS, Richard Smith is the Chief of Police of the City;

WHEREAS, a Declaration and Covenants, Conditions, Restrictions and Reservations for Berry Farm I Condominium was recorded on January 10, 2002 (the “Declaration”) under Snohomish County Auditor’s File No. 200201100672;

WHEREAS, the Declaration authorized and directed the formation of the Association;

WHEREAS, a majority of the Association’s Board of Directors (the “Board”) at a properly called meeting authorized the issuance of speeding infractions on its private roads in accordance with authority conferred by the Declaration;

WHEREAS, the Board established a maximum speed limit on the private streets over which the Association has authority of _____ miles per hour, which is not lower than twenty (20) miles per hour;

WHEREAS, the Association has provided written notice of all of the homeowners describing the new authority to issue speeding infractions;

WHEREAS, the Association has, at a minimum, caused signs to be posted at all vehicle entrances to the community declaring the speed limit; and

WHEREAS, municipal enforcement of speed limits on private roads within a community organized under Chapters 64.38, 64.32 or 64.38 RCW is authorized by RCW 46.61.419 as recently amended by Senate Bill 5113 effective July 28, 2013;

WHEREAS, speeding enforcement on privately owned streets has not previously been done in the City so by entering into this Agreement the parties hereto intend this agreement to be a one year pilot project, subject to termination or continuation at the City's discretion;

NOW, THEREFORE, the Association, through its president, and the City, through its Chief of Police agree as follows:

1. Representations by Association. Association agrees that all facts stated in the Recitals are true and accurate as of the date of this Agreement and will remain so during the term of this Agreement.

2. Certification by Attorney for Association. An attorney duly retained by the Association and representing the Association shall provide the City an opinion letter attesting to the truth of each factual statement in the Recitals pertaining to the Association. This certification shall be in a form acceptable to City. City may, not more often than one time every twelve months, request an update and recertification from the Association and the attorney retained by and representing the Association as to the continuing truth of the factual statement in the Recitals pertaining to the Association.

3. Commencement and Termination of Agreement. Unless terminated earlier, this Agreement shall be considered a pilot project and unless extended by written amendment shall have a term of one year. This Agreement shall commence twenty (20) days after: (1) City's receipt of the Certification required by paragraph 2, (2) receipt of evidence of insurance as required by paragraph 4 of this Agreement, and (3) receipt of an indemnity bond as required by paragraph 5 of this Agreement. The City may, in its sole discretion terminate this Agreement at any time upon five (5) days notice from City to the Association in writing.

4. Insurance. Association shall procure, and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the speeding enforcement under this Agreement. Failure by the Association to maintain the insurance as required shall constitute a material breach of contract upon which the City may terminate this Agreement or at its discretion suspend speeding enforcement until insurance as required below is procured.

a. Minimum Scope of Insurance.

The Association shall obtain insurance of the type described below:

Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises,

operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured- Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.

b. Minimum Amounts of Insurance.

The Association shall maintain the following insurance limits: Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

c. Other Insurance Provisions.

The insurance policy is to contain, or be endorsed to contain, the following provisions for Commercial General Liability insurance.

The Association's insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Association's insurance and shall not contribute with it.

• Acceptability of Insurers.

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

• Verification of Coverage.

The Association shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the Commercial General Liability insurance of the Association. Throughout the term of this Agreement, the Association shall provide the City with proof of insurance upon request by the City.

- Notice of Cancellation of Insurance.

In the event that the Association receives notice (written, electronic or otherwise) that any of the above required insurance coverage is being cancelled and/or terminated, the Association shall immediately (within forty-eight (48) hours) provide written notification of such cancellation/termination to the City.

5. Indemnity by Association. Association agrees to save, indemnify, defend and hold City harmless for or on account of any claim or demand arising from the untruthfulness of any fact set out in the Recitals concerning Association at any time, and for any action by any member, director or officer of the Association whereby the same involved himself/herself in speeding enforcement under this Agreement. This indemnity includes all legal costs and reasonable attorneys' fees incurred by the City in defense of any claim. City shall be entitled to select the counsel of its choice to defend any claim within the scope of this indemnity.

6. Indemnity by City. City agrees to save, indemnify, defend and hold Association harmless for the actions of its police in enforcing speeding on the private roads of the Association. This indemnity includes all legal costs and reasonable attorneys' fees incurred by Association in defense of any claim.

7. Indemnity Bond. From a surety acceptable to City, on a form acceptable to City, Association shall provide to City an Indemnity Bond in the amount of \$500,000 to secure the indemnity required under paragraph 5 of this Agreement.

8. Speed Sign Maintenance. Association shall at all times maintain the Speed signs at the entrances to the Community and at such other locations where they are posted.

9. Notice to New Members. Association shall, at the time a new member moves into the community, notify the new member of City speed enforcement on the private roads of the Association. Association shall maintain adequate written evidence of notice to each new member.

10. No Gates. Should Association at any time place gates at the entrance to the community, City shall not be obligated to provide speed enforcement.

11. No Speed Bumps. If speed bumps exist, or are added to the private roads of the Association, City shall not be obligated to provide speed enforcement.

12. Ownership of Streets and Related Infrastructure. Notwithstanding the City's agreement to provide speeding enforcement on the private roads of the Association, the roads of the Association and all related infrastructure (sewer, water, storm water, and other utilities) shall not be deemed public and the City shall have no

obligation to accept, repair, maintain, or otherwise provide for the private roads and infrastructure of the Association.

13. Public Duty. Association agrees that any speed enforcement by City under this Agreement shall be deemed discretionary enforcement by the City in accordance with the City’s general public duty for traffic enforcement and that this Agreement does not create any special relationship that speed enforcement will be done differently than on the public streets of the City of Marysville.

14. Consideration. Because the streets within the Community are privately owned, the City has no affirmative obligation to patrol and enforce speed limits. In addition to the other consideration stated within this agreement the Association agrees to conduct an annual community clean up with the efforts of its membership, will coordinate with the Marysville Police Department to develop an enhanced block watch program and will actively participate in the National Night Out program.

15. Jurisdiction. The parties agree that any action to enforce the terms of this Agreement shall be in the Snohomish County Superior Court. In any action to enforce the terms of this Agreement, the prevailing party shall be entitled to an award of all legal costs and expenses and reasonable attorneys’ fees as determined by the court.

16. Complete Agreement. This is a complete agreement between the parties and there are no other agreements between the parties concerning the subject matter of this Agreement.

DATED this ____ day of _____, 2013

BERRY FARM I CONDOMINIUM ASSOCIATION

By: _____
President

DATED this ____ day of _____, 2013

CITY OF MARYSVILLE

By: _____
Richard Smith, Chief of Police

DRAFT 9/6/13

DATED this ____ day of _____, 2013

CITY OF MARYSVILLE

By: _____
Jon Nehring, Mayor

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she is authorized to execute the instrument and acknowledged it as the President of Berry Farm I Condominium Association to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this ____ day of _____, 2013.

(Legibly print name of notary)
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that Richard Smith is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as the Chief of Police of the City of Marysville to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this ____ day of _____, 2013.

(Legibly print name of notary)
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____

DRAFT 9/6/13

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that Jon Nehring is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as the Mayor of the City of Marysville to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this ____ day of _____, 2013.

(Legibly print name of notary)
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____