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**MAR 20 2014**

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

NO. 321916

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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NAUMES, INC., an Oregon corporation,

Petitioner,

v.

CITY OF CHELAN, a municipal corporation,

Respondent.

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**PETITIONER NAUMES, INC.'S APPEAL BRIEF**

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## I. INTRODUCTION

This dispute arises out of a ten-year-plus relationship between Naumes, Inc. (“Naumes”) and the City of Chelan (the “City”) involving development of certain real property owned by Naumes and located within the jurisdiction of the City. In 2002, Naumes and the City memorialized their relationship in a written Development Agreement, which is the “umbrella” agreement covering the multiple aspects of the development known as the Apple Blossom Center Development. The Development Agreement contains a broad arbitration provision which provides for arbitration of disputes between Naumes and the City as to “any matter set out” in the Development Agreement. The subject dispute pertaining to street infrastructure within the development should have been referred to arbitration pursuant to the Development Agreement.

For the Court’s reference, attached hereto as *Appendix 1* is a copy of the Clerk’s Papers at 379 (last page of Exhibit B to the Declaration of Robert Boggess). This document is an illustrative map depicting: (a) the pre-development location of Isenhart Road, (b) the original proposed relocation of Isenhart Road as set forth in the approved General Binding Site Plan, which the parties refer to as “Extended Isenhart Road,” and (c) the actual constructed relocation of Isenhart Road agreed upon by the parties, which is referred to as “Relocated Isenhart Road.” CP 379. At the

expense of Naumes, the Relocated Isenhart Road was constructed in 2005, including the connection to SR 97A per the City's ordinance vacating Extended Isenhart Road and per the agreement between the City and Naumes.

The current dispute between Naumes and the City is about:

- (a) whether Naumes must construct Extended Isenhart Road as shown on the General Binding Site Plan approved in 2002, in addition to the construction of Relocated Isenhart Road in 2005;
- (b) if Naumes is not going to construct Extended Isenhart Road, whether any further "process" beyond the street vacation process is required; and
- (c) if further "process" is required, whether that process is an application for a Specific Binding Site Plan or an application to amend the General Binding Site Plan.

The current dispute arose when Naumes filed an application for a Specific Binding Site Plan which did not provide for Extended Isenhart Road as shown on the approved General Binding Site Plan. The City refused to process the application.

Naumes and the City negotiated for several months, but they were ultimately unable to reach a resolution regarding the street infrastructure at the development. The City opined that it had never agreed to the street infrastructure modification and that there was no process by which Naumes could eliminate Extended Isenhart Road as shown on the approved General Binding Site Plan. Naumes argued that the City had agreed to the modification, that the City had accepted payment by Naumes of more than \$100,000.00 for the modification, and that the City should proceed to process the application for specific binding site without Extended Isenhart Road.

As the parties were not able to reach a resolution, Naumes requested that the parties proceed to arbitration of the dispute under the terms of the Development Agreement. The City refused to arbitrate the dispute. Naumes filed suit under Chelan County Superior Court Cause No. 13-2-00619-1, requesting that the trial court transfer the case to arbitration. The trial court denied Naumes' request for arbitration at that time, finding that Naumes' claims were not yet ripe for arbitration and that the administrative appeal first needed to be resolved by the Hearing Examiner pursuant to the City's Code.

After the Hearing Examiner issued a decision in the administrative appeal on the requested street infrastructure modification, Naumes again requested that the parties proceed to arbitrate the claims. As the City refused to participate in arbitration, Naumes filed its claims in Chelan County Superior Court (this time under Cause No. 13-2-00793-7). Naumes moved to transfer the entire dispute to arbitration pursuant to the Development Agreement as all claims pertain to matters set out in the Development Agreement. The trial court denied Naumes' request to transfer the case to arbitration. The trial court's order denying Naumes' motion to compel arbitration is the subject of this appeal.

## **II. NAUMES' STATEMENT OF THE CASE**

The following timeline of events relates to the Apple Blossom Center Development and the subject dispute between the parties:

- October 2002 – The Development Agreement is negotiated and signed by the City and Naumes for the Apple Blossom Center Development (CP 32, 276-310);
- March 2003 – The Development Agreement is recorded (CP 276-310);
- March 2003 – The City approves the preliminary design of all Apple Blossom Center Development roads and utilities;

- April 2003 – The City Council adopts the Apple Blossom Center General Binding Site Plan (the “General Binding Site Plan”) by ordinance, which includes within the street infrastructure a portion of Isenhart Road lying west of the section line connecting to Apple Blossom Drive within the General BSP (the “Extended Isenhart Road”) (CP 33);
- Fall 2003 – The Washington State Department of Transportation (“WSDOT”) indicates it will be constructing a safety and widening improvement project along SR97A from along the frontage of the Apple Blossom Center Development to SR150;
- Spring 2004 – WSDOT approaches Naumes regarding property acquisition along both sides of the frontage of the Apple Blossom Center Development. One issue is the level of improvements that the WSDOT needs to construct to improve the original Isenhart Road intersection to SR97A;
- Summer 2004 – The City and Naumes coordinate with WSDOT on utility crossings necessary for Apple Blossom Center Development and a future intersection at Apple Blossom Drive. WSDOT also identifies the requirement for an additional 30 feet of easement for fill across Lots 15 & 16 within the Apple Blossom Center Development. Engineers hired by Naumes (“RH2 Engineering”) coordinate with both City and WSDOT for SR97A/Apple Blossom Drive intersection improvements, the new Isenhart Road relocation alternative (“Relocated Isenhart Road”), and utility crossings;
- August 2004 – Naumes submits a petition to the City to vacate the portions of Isenhart Road west of the section line (“Extended Isenhart Road”) (CP 33, 349);
- October 2004 – RH2 Engineering sends a follow up letter to the City providing supporting documentation as to the

public benefits of vacating Extended Isenhart Road which are: WSDOT does not need to reconstruct original intersection at SR 97A, the City obtains domestic water for recycling station, the County obtains domestic water and fire hydrant for transfer station and County shops, and the road relocation costs exceed value of land (CP 358-60);

- January 2005 – The City agrees to the proposed Relocated Isenhart Road and approves vacation of Extended Isenhart Road (CP 33-35, 343-48, 349-57, 361);
- February 2005 – WSDOT bids on the safety and widening improvements (the “Safety Improvement Project”);
- Spring 2005 – The work on the Safety Improvement Project begins;
- May 2005 – The City approves project plans and specifications for the construction of the Relocated Isenhart Road connection to SR 97A;
- Summer 2005 – The Relocated Isenhart Road connection is constructed to SR97A and Naumes pays the costs of such relocation pursuant to the parties’ agreement, which costs exceed of \$100,000.00 (CP 33);
- Fall 2005 – The WSDOT Safety Improvement Project and Relocated Isenhart Road project are completed.

CP 313-14.

As described above, the Development Agreement is the umbrella agreement covering the multiple aspects of the Apple Blossom Center Development. Naumes and the City agreed to use arbitration as the

dispute resolution process for disputes pertaining to the Apple Blossom Center Development and all matters set out in the Development Agreement. CP 295-96. The parties agreed upon the following arbitration provision set forth in the signed Development Agreement:

16. Review Procedures and Standards for Implementing Decisions. Review and resolution of disputes by the Parties, their successors and assigns, shall be resolved by arbitration as follows: In the event the Parties cannot agree **on any matter set out in this Agreement**, they shall promptly consult together and attempt to resolve the dispute. In the event they cannot agree upon a resolution of the dispute, the same shall be settled by arbitration pursuant to Chapter 7.04 RCW...

CP 295-96 (emphasis added) (the “Arbitration Provision”).

Among the “matters set out” in the Development Agreement are the following:

D. Naumes has proposed that the City permit the Property to be developed consistent with the provisions of this Development Agreement...

...  
4. Binding Site Plan. Development of the Property shall be consistent with a Binding Site Plan which has been considered by the City in conjunction with this Agreement and a Binding Site Plan Map in the form attached hereto as Exhibit “B”, which shall confirm lot size and configuration, street infrastructure, open space and common areas.

5. Zoning and Permitted Uses. ... In addition, the City shall be entitled, at the time of review of building permits, to impose additional development conditions and mitigation pursuant to the then existing city, state, and federal laws and regulations...

...  
9. Infrastructure. The Parties acknowledge that street infrastructure will be necessary to connect the Property to other City streets. Naumes agrees that such streets/roads shall be completed, at Naumes' sole expense, to applicable City standards...

CP 279, 281-82, 285.

In the fall of 2012, Naumes began discussions with the City with respect to a Specific Binding Site Plan for Lot 16 because Naumes had entered into a purchase and sale agreement for the sale of Lot 16. CP 272. Consistent with the prior discussions and arrangements between the parties and their representatives in 2004 and 2005, including Naumes' payment of more than \$100,000.00 for the construction of the Relocated Isenhart Road connection to SR 97A in exchange for the vacation of Extended Isenhart Road, Naumes submitted a proposed Specific Binding Site Plan for Lot 16. CP 33-35, 272. The proposed Specific Binding Site Plan did not provide for the existence of Extended Isenhart Road as shown on the General Binding Site Plan because of the revision to the original plans that resulted in the vacation of Extended Isenhart Road and the

construction of Relocated Isenhart Road and a new intersection of Isenhart Road and SR 97A. CP 33-35, 272, 325.

On December 5, 2012, the City initially opined that it could not approve the proposed Specific Binding Site Plan at the staff level and that Naumes needed to file an application to amend the General Binding Site Plan pursuant to the City of Chelan Municipal Code (the "City Code") Section 16.24.080 because the deletion of Extended Isenhart Road was a street reconfiguration and/or a modification of an access location. CP 272-73, 325-28. The City further opined that the Development Agreement precludes changes to the General Binding Site Plan and that the "Development Agreement does not provide any additional process for amendment of the Development Agreement or the General Binding Site Plan, except for an agreement in section 16 to negotiate over differences and referral to arbitration if negotiation is not successful." CP 273, 326-27. The City invited Naumes to counter with differing legal analysis that supported Naumes' request for the Specific Binding Site Plan. CP 273, 328.

On March 4, 2013, Naumes responded that Extended Isenhart Road had already been vacated and that the City had informed Naumes at

the time of the vacation petition that no further process was required to deal with the Extended Isenhart Road (i.e. no amendment to the General Binding Site Plan was necessary). CP 314, 329-364. Naumes provided evidence that Naumes relied upon the City's prior representations that the changes for Relocated Isenhart Road would not trigger further review and approval processes and that the changes to Isenhart Road had already been completely addressed in the application to vacate. CP 33-35, 314-15, 329-364. If the City had not made those representations to Naumes in 2004 and 2005, Naumes would have simultaneously filed an application to amend the approved General Binding Site Plan, together with the application to vacate, and Naumes would have had those applications processed together, with a single public hearing. CP 33-35, 315, 333. In addition, Naumes argued that if Naumes is required to construct Extended Isenhart Road after already constructing the new alignment accessing SR97, it will have received no "benefit of its bargain" with the City (i.e. no benefit for the payment of \$100,000.00 for Relocated Isenhart Road that Naumes was not otherwise required to pay). CP 33, 273, 315, 333-34.

Counsel for the parties continued to negotiate and correspond back and forth regarding their respective interpretations. CP 273, 365-374.

Both parties cited the Development Agreement throughout the correspondence on the issue. CP 273, 326, 327, 329, 332, 366, 367, 368, 369.

On April 16, 2013, the City provided Naumes with its final analysis that the vacation of Extended Isenhart Road was not effective to remove Extended Isenhart Road as shown on the General Binding Site Plan, and that under the terms of the City Code, the General Binding Site Plan cannot be altered to remove or vacate Extended Isenhart Road as shown on the General Binding Site Plan by any of the following processes: the Specific Binding Site Plan process; the General Binding Site Plan alteration/modification process (under the City Code Chapter 16.24 or its predecessor code versions under 16.10); nor the street vacation process under RCW 35.79 *et seq.* CP 375-76. Essentially, the City took the final position that there was no process Naumes could follow to remove Extended Isenhart Road. CP 375-76.

On the same day, as the parties' negotiations came to an impasse and the City had indicated its position was final, Naumes requested that the parties proceed to arbitration under the Arbitration Provision in the Development Agreement. CP 274. Counsel for the parties began

discussions as to referral of the matter to arbitration pursuant to the terms of the Development Agreement and as to selection of an arbitrator. CP 274.

However, the next day, counsel for the City opined that the dispute was not subject to arbitration under the Development Agreement, but rather, that the April 16, 2013 letter from the City's attorney constituted an administrative interpretation under the City Code, appealable pursuant to the City Code Section 19.18.010 and Chapter 19.34. CP 377.

On April 26, 2013, Naumes filed with the Hearing Examiner a Notice of Appeal of the Administrative Interpretations pursuant to the City Code Chapter 19.34 in order to preserve its appeal rights, and Naumes requested that the Hearing Examiner refer the matter to arbitration. CP 311-379.

The City refused to participate in arbitration and took the position that the Hearing Examiner could not consider the issue of whether the matter should be referred to arbitration. CP 275.

While the appeal was pending before the Hearing Examiner and prior to a decision being rendered by the Hearing Examiner in the appeal, Naumes filed an action for declaratory judgment under Chelan County

Superior Court Cause No. 13-2-00619-1, requesting that the trial court remove the matter from the Hearing Examiner and refer the matter to arbitration because the dispute pertained to matters set out in the Development Agreement. CP 248-256.

The trial court entered an order denying Naumes' motion to compel arbitration, and the trial court noted in its oral ruling that the appeal of the administrative interpretation first needed to be resolved by the Hearing Examiner pursuant to the City Code. CP 11, 388-89.

The Hearing Examiner considered the appeal on July 9, 2013 in a closed record public hearing, and issued its decision on July 23, 2013 (the "Land Use Decision"). CP 31-37. The Hearing Examiner declined to consider Naumes' contract and estoppel claims at the hearing. CP 36.

After the Hearing Examiner issued a decision in the administrative appeal on the requested street infrastructure modification, Naumes again requested that the parties proceed to arbitration, but the City refused to participate in arbitration. As such, Naumes filed the following claims in Chelan County Superior Court (this time under Chelan County Superior Court Cause No. 13-2-00793-7):

- Declaratory Judgment (with respect to the arbitration provision);

- Petition for Review of Land Use Decision;
- Breach of Contract;
- Promissory Estoppel; and
- Breach of Oral Covenant.

CP 1-26.

All of the Naumes' claims pertain to matters set out in the Development Agreement in that all of the claims relate to street infrastructure requirements within the development and the binding site plan which are incorporated and described within the Development Agreement. CP 12-18, 276-310. The Declaratory Judgment claim requests a declaratory judgment that the parties' dispute pertaining to street infrastructure and the General Binding Site Plan is subject to the arbitration provision of the Development Agreement. CP 12-13. The Petition for Review of Land Use Decision claim requests a reversal of the Hearing Examiner's decision with respect to street infrastructure requirements and interpretation of the General Binding Site Plan pertaining to the development. CP 13-14. The Breach of Contract claim alleges that the City breached the terms of the Development Agreement by requiring Naumes to construct Extended Isenhart Road. CP 14-15. The Promissory Estoppel and Breach of Oral Covenant claims allege that the

City breached its prior written and verbal promises, representations, and agreements with Naumes with respect to the street infrastructure requirements within the development and that Naumes has been deprived the benefit of its payment of \$100,000 in costs for construction of Relocated Isenhart Road. CP 15-18.

Naumes requested that the trial court transfer all of the foregoing claims to arbitration pursuant to the Arbitration Provision and consistent with the terms of the Development Agreement. CP 27-28. The trial court denied Naumes' request to transfer the claims to arbitration. CP 444-46. The trial court's order denying Naumes' motion to compel arbitration is the subject of this appeal.

### **III. LEGAL ARGUMENT**

#### **i. The applicable standard of review is de novo.**

The appellate courts review trial court decisions on motions to compel arbitration de novo. *Scott v. Cingular Wireless*, 160 Wn.2d 843, 851, 161 P.3d 1000 (2007) (citing *Zucker v. Airtouch Comm'n Inc.*, 153 Wn.2d 293, 302, 103 P.2d 753 (2004)). Thus, the applicable standard of review for this Court in its review of the trial court's decision denying arbitration is de novo review.

**ii. The trial court erred when it denied Naumes' request to compel arbitration pursuant to the terms of the parties' Development Agreement.**

There is a strong public policy in Washington favoring arbitration of disputes. *Mendez v. Palm Harbor Homes, Inc.*, 111 Wn.App. 446, 454, 45 P.3d 594 (2002). The purpose of arbitration is to avoid the formalities, the expense, and the delays of the court system. *Id.*; see also *Perez v. Mid-Century Ins. Co.*, 85 Wn.App. 760, 765-66, 934 P.2d 731 (1997); *Barnett v. Hicks*, 119 Wn.2d 151, 160, 829 P.2d 1087 (1992). Washington courts enforce arbitration agreements, if possible, because:

[a]mong other things, arbitration eases court congestion, provides an expeditious method of resolving disputes and is generally less expensive than litigation.

*Munsey v. Walla Walla College*, 80 Wn.App. 92, 94-95, 906 P.2d 988 (1995) (construing the agreement to enforce arbitration, if possible); see also *Clearwater v. Skyline Constr. Co.*, 67 Wn.App. 305, 314, 835 P.2d 257 (1992) (settlements of controversies by arbitration is a highly favored method of dispute resolution), *review denied*, 121 Wn.2d 1005, 848 P.2d 1263 (1993).

RCW 7.04A.060 provides that an “agreement contained in a record to submit to arbitration any existing or subsequent controversy arising

between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of contract.” The trial court is to decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate. RCW 7.04A.060. If the trial court finds “that no substantial issue exists as to the existence or validity of the agreement to arbitrate or the failure to comply therewith,” the trial court should order the parties to arbitrate. *Mendez*, 111 Wn.App. at 455. In determining whether the parties agreed to arbitrate a particular dispute, the trial court should consider four guiding principles:

1. the duty to arbitrate arises from the contract;
2. a question of arbitrability is a judicial question unless the parties clearly provide otherwise;
3. a court should not reach the underlying merits of the controversy when determining arbitrability; and
4. as a matter of policy, courts favor arbitration of disputes.

*Id.* at 455-56 (quoting *Stein v. Geonerco, Inc.*, 105 Wn.App. 41, 45-46, 17 P.3d 1266 (2001)).

The scope of an arbitrator’s authority depends on the agreement to arbitrate, but:

If any doubts or questions arise with respect to the scope of the arbitration agreement, the agreement is construed in favor of

arbitration unless the reviewing court is satisfied the agreement cannot be interpreted to cover a particular dispute.

*Mendez*, 111 Wn.App. at 456.

In interpreting an arbitration clause, the intentions of the parties as expressed in the agreement control, but “those intentions are generously construed as to issues of arbitrability.” *Tacoma Narrows Constructors v. Nippon Steel-Kawada Bridge, Inc.*, 138 Wn.App. 203, 216, 156 P.3d 293 (2007) (internal quotations omitted). To rule that a particular dispute is not arbitrable under an arbitration agreement, the trial court must be able to say “with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.” *Id.* (internal quotations omitted); *see also Klickitat County v. Beck*, 104 Wn.App. 453, 462, 16 P.3d 692 (2001) (order to arbitrate should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute; doubt should be resolved in favor of coverage).

In this case, Naumes and the City agreed to use arbitration as the dispute resolution process for disputes pertaining to the Apple Blossom Center Development and agreed upon the following broad Arbitration

Provision set forth in the signed Development Agreement:

16. Review Procedures and Standards for Implementing Decisions. Review and resolution of disputes by the Parties, their successors and assigns, shall be resolved by arbitration as follows: In the event the Parties cannot agree **on any matter set out in this Agreement**, they shall promptly consult together and attempt to resolve the dispute. In the event they cannot agree upon a resolution of the dispute, the same shall be settled by arbitration pursuant to Chapter 7.04 RCW...

CP 295-96 (emphasis added).

The binding Arbitration Provision of the Development Agreement is clear and broad. The Development Agreement states that if the parties are unable to agree “on any matter set out in this Agreement”, the matter shall be submitted to an arbitrator. CP 295. The broad term, “any matter set out in this Agreement,” encompasses the claims involved in this dispute.

Some of the “matters set out” in the Development Agreement include the following:

4. Binding Site Plan. Development of the Property shall be consistent with a Binding Site Plan which has been considered by the City in conjunction with this Agreement and a Binding Site Plan Map in the form attached hereto as Exhibit “B”, which shall

confirm lot size and configuration, street infrastructure, open space and common areas.

5. Zoning and Permitted Uses. ... In addition, the City shall be entitled, at the time of review of building permits, to impose additional development conditions and mitigation pursuant to the then existing city, state, and federal laws and regulations...

9. Infrastructure. The Parties acknowledge that street infrastructure will be necessary to connect the Property to other City streets. Naumes agrees that such streets/roads shall be completed, at Naumes' sole expense, to applicable City standards...

CP 281-82, 285.

The claims in this matter involve a dispute between the City and Naumes as to the development of the Apple Blossom Center, the General Binding Site Plan, and certain lots and street infrastructure located within the development. The Development Agreement governs the development of the Apple Blossom Center Development and therefore, this dispute is a "matter set out" in the Development Agreement. The Development Agreement incorporates the General Binding Site Plan and provides requirements that development of the Apple Blossom Center shall be consistent with the General Binding Site Plan, including the lots and street infrastructure. This dispute involves claims by Naumes that it was entitled

to use the prior street vacation process to eliminate Extended Isenhart Road and that the City should process Naumes' Specific Binding Site Plan application for a certain lot within the development.

The trial court erred in denying Naumes' motion to compel arbitration of the claims. Even if the trial court had found that there was a question of fact or law as to whether or not the Arbitration Provision clearly covers the dispute in this action, *Mendez* and the other above case law dictate that the trial court must construe this Arbitration Provision to enforce arbitration because the provision can be reasonably interpreted to cover the disputes in this action. Again, if the reviewing court or decision maker "can fairly say that the parties' arbitration agreement covers the dispute, the inquiry ends because Washington strongly favors arbitration." *Davis v. Gen. Dynamics Land Sys.*, 152 Wn.App. 715, 718, 217 P.3d 1191 (2009); *Mendez v. Palm Harbor Homes, Inc.*, 111 Wn.App. 446, 454, 45 P.3d 594 (2002). Any doubts regarding the applicability of an arbitration agreement "should be resolved in favor of coverage." *Heights at Issaquah Ridge Owners Ass'n v. Burton Landscape Grp., Inc.*, 148 Wn.App. 400, 405, 200 P.3d 254 (2009) (citing *Peninsula Sch. Distr. No. 401 v. Pub. Sch. Emps. of Peninsula*, 130 Wn.2d 401, 413-14, 924 P.2d 13 (1996)).

The parties clearly set forth their intent and agreement to submit claims involving the Apple Blossom Center Development to binding arbitration under the Development Agreement. Both parties cited the Development Agreement throughout the correspondence on the dispute. Given the clarity of the Arbitration Provision with respect to arbitration of disputes and the strong public policy in favor of arbitration, the Arbitration Provision should have been enforced by the trial court and the claims should have been submitted to arbitration for resolution.

Disputes over a binding site plan are particularly well-suited to be handled by arbitration. The progression from a general binding site plan to specific binding site plan for the individual lots involves more unknown variables than the progression from a preliminary subdivision approval to a final subdivision approval. The reason for this is because the developer of a subdivision knows the target market and the lots within the subdivision will have similar uses. Lot sizes and layouts are often determined before any specific purchasers enter the picture.

In contrast, a binding site plan is a method of dividing land that the legislature has generally limited to industrial land. The needs of the potential users of industrial land vary greatly. Often, as in this case, the

developer does not proceed to a specific binding site plan until it has a pending sale with a specific purchaser. The application for a specific binding site plan is thus driven by the needs of a purchaser with definite needs and a fairly short timeline to meet those needs.

Arbitration is uniquely suited to address the short time frames and specific development issues when disputes arise between the city (or county) and a developer. It is the right dispute resolution tool for the job and the parties in this case specifically contracted for that dispute resolution process in their Development Agreement.

The Court should ask the following question: if the Arbitration Provision in the Development Agreement was not intended to apply to the dispute in this matter, to what type of dispute would it apply?

When interpreting a document, the preferred interpretation gives meaning to all provisions and does not render some superfluous or meaningless. *Bogomolov v. Lake Villas Condo. Ass'n of Apartment Owners*, 131 Wn. App. 353, 361-62, 127 P.3d 762 (2006) (citing *P.U.D. No. 1 v. Wash. Pub. Power Supply Sys.*, 104 Wn.2d 353, 373, 705 P.2d 1195, *modified*, 713 P.2d 1109 (1986)). An interpretation which gives a reasonable, fair, just and effective meaning to all manifestations of

intention is preferred to an interpretation which leaves a part of such manifestations unreasonable, imprudent or meaningless. *Pub. Util. Dist. No. 1 of Lewis Cnty. v. Washington Pub. Power Supply Sys.*, 104 Wn.2d 353, 373, 705 P.2d 1195, *modified*, 713 P.2d 1109 (1986) (internal citations omitted). If the Court finds the Arbitration Provision does not apply to this dispute, it would essentially be rendering the Arbitration Provision meaningless because there could be no other conceivable dispute to which the provision would apply.

Here, the dispute between Naumes and the City involves the street infrastructure in the Apple Blossom Center Development and the General Binding Site Plan for the development, which are matters set out in the Development Agreement. Accordingly, this Court should properly find that the dispute in this matter is subject to the Arbitration Provision in the Development Agreement. Naumes respectfully requests that the Court reverse the trial court's order.

#### **IV. CONCLUSION**

The claims in this action fall squarely within the terms of the Development Agreement. The trial court erred when it found the claims were not subject to arbitration. Naumes requests that the Court reverse the

trial court's decision and order that the claims in this action be referred to arbitration for resolution.

Dated this 19<sup>th</sup> day of March, 2014.

JEFFERS, DANIELSON, SONN & AYLWARD, P.S.

By



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# **APPENDIX 1**

