

AFTER RECORDING RETURN DOCUMENT TO:

City of Bellingham - Planning and Community Development
210 Lottie Street
Bellingham, WA 98225

↑ Reserved for Recording Purposes Only ↑

DOCUMENT TITLE: *Development Agreement*

REFERENCE NUMBER OF RELATED DOCUMENTS: ZON _____, *Comp Plan Amendment _____ and PUD Amendment _____*

GRANTOR(S): *Cordata Investments, L.L.C., a Washington limited liability company*

GRANTEE(S): *City of Bellingham*

ABBREVIATED LEGAL DESCRIPTION:

ASSESSOR'S TAX/PARCEL NUMBER(S):

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF BELLINGHAM APPROVING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF BELLINGHAM (HEREINAFTER "CITY") AND Cordata Investments, L.L.C., a Washington limited liability company (HEREINAFTER "DEVELOPER") IN CONJUNCTION WITH DEVELOPER'S REQUEST FOR A REZONE, COMPREHENSIVE PLAN AMENDMENT AND CORDATA PUD AMENDMENT ASSOCIATED WITH DEVELOPMENT LOCATED IN THE NORTHEAST QUADRANT OF CORDATA PARKWAY AND STUART ROAD COMMONLY KNOWN AS THE CORDATA "D" PARCELS.

WITNESSETH:

WHEREAS, Developer is the owner of real property legally described as set forth in attached Exhibit "A" (the "Property"). The Property is part of the Cordata PUD, which was approved by Whatcom County Council under PUD file numbers 1-84 and 1-84-A ("PUD's"); and

WHEREAS, the City annexed the Property subject to the rights by property owners and under the PUD's; and

WHEREAS, the PUD designated the Property as industrial, and such designation is also contained in the City Comprehensive Plan and Zoning Ordinance; and

WHEREAS, the Developer has requested that the use designation for the Property be changed to allow multi-family, commercial and industrial uses within the Property; and

WHEREAS, in order to establish certain development conditions upon which both of the parties can rely to insure that the development of the Property is consistent with City policies and plans, the City and Developer have agreed to enter into a Development Agreement; and

WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction (RCW 36.70B.170(1)); and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement (RCW 36.70B.170(1)); and

WHEREAS, for the purposes of this development agreement, "development standards" includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3); and

(Note, I need to read RCW 36.70B.170(3))

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by a local government planning under chapter 36.70A RCW (RCW 36.70B.170(1)); and

WHEREAS, a Determination of Non Significance (DNS) was issued as a non-project DNS by the presiding SEPA official on the _____ day of _____, _____.

(Note: I need to find out what the status is on that, if the checklist has been filed and are we expecting a DNS before entry of the document and is it non-project? .

WHEREAS, the Planning Commission has issued a recommendation in favor of approval of the rezone and comprehensive plan amendments requested by the Developer, subject to the terms stated in this Agreement and those certain terms and conditions set forth in the Rezone Ordinance; and

WHEREAS, by Ordinance No. _____, a copy of which is attached as Exhibit _____, the City amended the City Zoning Ordinance and Comprehensive Plan to provide for multi-residential, commercial and industrial uses on the Property, subject to various conditions; and

WHEREAS, after a public hearing, the City Council adopted Resolution No. _____, a copy of which is attached as Exhibit _____, authorizing the Mayor to execute this Development Agreement with the Developer; and

WHEREAS, the Cordata DRC has approved amendments to the Master Plan and the Development Guidelines by resolution dated the _____ day of _____, _____, to allow multi-residential, commercial and industrial uses on the Property.

(Note: I want to put a recital in here that will state that this is a non-project proposal because until the wetland delineation and mitigation plan has been reviewed, any development format is speculative).

Now, therefore, the parties hereto agree as follows:

General Provisions

Section 1. *The Proposal.* The Proposal is for the purpose of amending the zoning ordinance and comprehensive plan to allow a mixed use development including single and multi-residential, commercial and industrial uses on the usable portion of the Property.

No specific project at this time is proposed, and will not be proposed until issues relating to critical areas have been further analyzed. No applications will be accepted for any development on the Property until an application for site plan review has been submitted to the City. The site plan review process will be used to insure that the project on the site conforms with the requirements of this Agreement, the Cordata Master Plan and the Cordata Development and Design Guidelines. This restriction shall not prevent the Developer from processing subdivision permits simultaneously with the site plan review.

Section 2. *Term of Agreement.* This Agreement shall commence upon the effective date of the City Resolution approving this Agreement, and shall continue in force for a period of ten (10) years unless extended or terminated as provided herein. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject however, to post-termination obligations of the Developer or Landowner.

Section 3. *Vested Rights of Developer.* During the term of this Agreement, unless sooner terminated in accordance with the terms hereof, the rights granted to Developer are fully vested and may not be changed or modified by the City, except as may be expressly permitted by, and in accordance with, the terms and conditions of this Agreement, including the Exhibits hereto, or as expressly consented thereto by the Developer.

Section 4. *Permitted Uses and Design and Development Standards.* All development on the Property shall be consistent with the Cordata Master Plan and the Cordata Development and Design Guidelines and the requirements of this Agreement.

Section 5. *Stormwater.* The Developer has certain vested rights relating to existing stormwater improvements under the PUD's. The Developer hereby waives all stormwater vested rights as they apply to the Property on the following conditions:

- (a) The Developer shall comply with the 2005 Stormwater Manual;

- (b) The stormwater study for the Property shall be modeled based upon the Property as historically being pasture land; and
- (c) The Developer for the benefit of the Property shall have the right to utilize 6.1 acre feet of stormwater storage capacity in the stormwater facility located at _____.

Section 6. Traffic. The Developer shall pay all traffic impact fees attributable to future development on the Property as such impact fees exist on the date of application for building permits for any particular use.

(Note: Special Requirements).

Section 7. Employment Base. In order to preserve the City's employment base and insure that any project on the Property has a mixed-use component, the Developer agrees as follows:

- (a) Upon construction and receipt of occupancy permits for _____ residential units, the Developer shall have _____ square feet of commercial or industrial.

Section 8. City Right-of-way. All work to be performed in City right-of-ways as they exist, or may be dedicated in the future, and all City utilities, shall comply with public works standards.

Section 9. Parks. Any improvements made for the purpose of satisfying the requirements for parks (including trails), shall be constructed to City Parks Standards.

Section 10. Minor Modifications. The Director may approve minor modifications to the approved permits or the exhibits attached hereto when in accordance with the provisions of the City's codes and consistent with this Agreement. Such minor modifications shall not require an amendment to this Agreement.

Section 11. Termination. This Agreement shall terminate upon the expiration of the term identified in Section 3 or when the Subject Property has been fully developed, which ever first occurs, and all of the Developer's obligations in connection therewith are satisfied as determined by the City. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City Attorney that the Agreement has been terminated.

Section 12. Effect upon Termination on Developer Obligations. Termination of this Agreement as to the Developer of the Subject Property or any portion thereof shall not affect any of the Developer's obligations to comply with the City Comprehensive Plan and the terms and conditions or any applicable zoning code(s) or subdivision map or other land use entitlements approved with respect to the Subject Property, any other conditions of any other development specified in the Agreement to continue after the termination of this Agreement or obligations to pay assessments, liens, fees or taxes. When the Project has been fully developed, the standards and provision in Sections 5 through 8 shall be a continued obligation.

Section 13. *Effects upon Termination on City.* Upon any termination of this Agreement as to the Developer of the Property, or any portion thereof, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the property affected by such termination (provided that vesting of such entitlements, conditions or fees may then be established for such property pursuant to then existing planning and zoning laws).

Section 14. *Assignment and Assumption.* The Developer shall have the right to sell, assign or transfer this Agreement with all their rights, title and interests therein to any person, firm or corporation at any time during the term of this Agreement. Developer shall provide the City with written notice of any intent to sell, assign, or transfer all or a portion of the Subject Property, at least 30 days in advance of such action.

Section 15. *Covenants Running with the Land.* The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties. The Developer, Landowner and every purchaser, assignee or transferee of an interest in the Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of a Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned or transferred to it.

Section 16. *Amendment to Agreement; Effect of Agreement on Future Actions.* This Agreement may be amended by mutual consent of all of the parties, provided that any such amendment shall follow the process established by law for the adoption of a development agreement (see, RCW 36.70B.200). However, nothing in this Agreement shall prevent the City Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations affecting the Subject Property during the next 10 years, as the City Council may deem necessary to the extent required by a serious threat to public health and safety. Nothing in this Development Agreement shall prevent the City Council from making any amendments of any type to the Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations relating to the Property 10 years from the anniversary date of the Effective Date of this Agreement.

Section 17. *Releases.* Developer, and any subsequent Landowner, may free itself from further obligations relating to the sold, assigned, or transferred property, provided that the buyer, assignee or transferee expressly assumes the obligations under this Agreement as provided herein.

Section 18. *Notices.* Notices, demands, correspondence to the City and Developer shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated as follows:

City of Bellingham
210 Lottie Street
Bellingham, WA 98225

Cordata Investments, L.L.C.
c/o Tin Rock Development, Inc.
103 E. Holly Street, Suite 417
Bellingham, WA 98225

Notice to the City shall be to the attention of both the City Administrator and the City Attorney. Notices to subsequent Landowners shall be required to be given by the City only for those Landowners who have given the City written notice of their address for such notice. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

Section 19. *Applicable Law and Attorneys' Fees.* This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. If litigation is initiated to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. Venue for any action shall lie in Whatcom County Superior Court.

Section 20. *Third Party Legal Challenge.* In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner to challenge this Agreement or any provision herein, the City may elect to tender the defense of such lawsuit or individual claims in the lawsuit to Developer and/or Landowner(s). In such event, Developer and/or such Landowners shall indemnify the City, hold the City harmless from and defend the City from all costs and expenses incurred in the defense of such lawsuit or individual claims in the lawsuit, including but not limited to, attorneys' fees and expenses of litigation, and damages awarded to the prevailing party or parties in such litigation. The Developer and/or Landowner shall not settle any lawsuit without the consent of the City. The City shall act in good faith and shall not unreasonably withhold consent to settle.

Section 21. *Specific Performance.* The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Development Agreement by any party in default hereof.

Section 22. *Severability.* If any phrase, provision or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the effective date of the resolution adopting this Development Agreement, and either party in good faith determines that such provision or provisions are material to its entering into this Agreement, that party may elect to terminate this Agreement as to all of its obligations remaining unperformed.

(Seal or stamp)

SIGNATURE OF NOTARY PUBLIC

PRINTED NAME

TITLE

DATE APPOINTMENT EXPIRES

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