

ORDINANCE NO. 2009-12-079

**AN ORDINANCE OF THE CITY OF BELLINGHAM RELATING TO LAND USE PLANNING AND ZONING FOR A 34.8 ACRE SITE IN AREA 17D OF THE GUIDE MERIDIAN/CORDATA NEIGHBORHOOD. THE AMENDMENTS CHANGE THE LAND USE CLASSIFICATION AND ZONING FROM INDUSTRIAL TO RESIDENTIAL/COMMERCIAL/INDUSTRIAL, PLANNED.**

**WHEREAS**, the City of Bellingham has adopted 24 neighborhood plans as a component of the Bellingham Comprehensive Plan, including the Guide Meridian/Cordata Neighborhood Plan; and

**WHEREAS**, the City has a process to amend the comprehensive plan and the neighborhood plans once per year in accordance with BMC 20.20.000, and BMC 21.10.150; and

**WHEREAS**, on November 26, 2008, Tin Rock Development, on behalf of the property owner Cordata Investments, LLC, submitted a request to amend the neighborhood plan land use classification and zoning designation for approximately 45 acres in Area 17D of the Guide Meridian/Cordata Neighborhood Plan; and

**WHEREAS**, in January 2009, the Planning Director docketed the proposal for review in 2009; and

**WHEREAS**, on June 16, 2009, the applicant held a neighborhood meeting to provide interested people with an opportunity to discuss the proposed amendments; and

**WHEREAS**, in July, 2009 the applicant removed the 10 acres (approximate) abutting Horton Road from the amendment proposal; and

**WHEREAS**, on September 21, 2009, the City of Bellingham as lead agency under the procedures of the State Environmental Policy Act (SEPA), issued a Determination of Nonsignificance for the requested amendments; and

**WHEREAS**, The Bellingham Planning Commission held a public hearing on October 8, 2009, and determined that the proposed amendments comply with and will implement the goals and policies of the Bellingham Comprehensive Plan; and

**WHEREAS**, the Bellingham Planning Commission recommended approval of the amendments and thereafter made Findings of Fact, Conclusions, and a Recommendation for adoption of the neighborhood plan and zoning amendments; and

**WHEREAS**, the Bellingham City Council held a public hearing on November 9, 2009 to consider the proposed amendments and a development agreement; and

**WHEREAS**, Cordata Investments, LLC, owner, has signed a Development Agreement with the City, whereby the property owner and the City agree to specific development standards to insure that necessary mitigation resulting from the development and identified park and open space amenities are provided; and

**WHEREAS**, the City Council agrees with and hereby adopts the Findings of Fact, Conclusions and Recommendations of the Planning Commission; and

**WHEREAS**, following the November 9, 2009 hearing, the Bellingham City Council directed staff to prepare an ordinance approving the request as part of the annual Comprehensive Plan amendments.

**NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:**

**Section 1.** A new Area 17F is added to the Guide Meridian/Cordata Neighborhood Plan as shown in Attachment 1.

**Section 2.** A new Area 17F is added to Bellingham Municipal Code 20.00.080 - Guide Meridian/Cordata Neighborhood Table of Zoning Regulations as shown in Attachment 2.

**Section 3.** The City of Bellingham zoning map for the Guide Meridian/Cordata Neighborhood is amended as shown in Attachment 3.

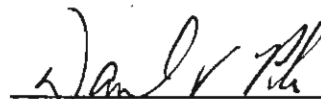
**Section 4.** The Guide Meridian/Cordata Neighborhood Comprehensive Plan Land Use Map is amended as shown in Attachment 4.

**Section 5.** A Development Agreement has been executed between the Cordata Investments, LLC, and the City of Bellingham to establish specific development standards to insure that necessary mitigation resulting from the development and identified park and open space amenities are provided as shown in Attachment 5.

**PASSED** by the Council this 14th day of December, 2009.

  
\_\_\_\_\_  
Council President

**APPROVED** by me this 14th day of December, 2009.

  
\_\_\_\_\_  
Mayor

ATTEST

  
\_\_\_\_\_  
Finance Director

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Office of the City Attorney

Published:

December 18, 2009  
\_\_\_\_\_

Neighborhood Plan Land Use Designation

---

AREA 17F LAND USE DESIGNATION: RESIDENTIAL/COMMERCIAL/INDUSTRIAL

---

Area 17F

This area is approximately 35 acres in size and located east of Cordata Parkway, lying north and south of Stuart Road. There are approximately 30 acres lying north and 5 acres lying south of Stuart Road.

The site is predominately pasture and contains approximately 9 acres of wetlands. The tributary to Baker Creek in the northern portion of this area should be protected. Any proposed impact to an on-site critical area should ensure that downstream impacts are minimized.

Cordata Parkway and Stuart Road provide the primary access to the site. Cordata Parkway is the spine road within the Cordata Business Park that provides efficient access to the site for both vehicle and pedestrians. Stuart Road abutting this subarea will require improvements to provide both pedestrian and vehicular circulation into Area 17F. This road section should be improved to a standard to accommodate the anticipated level of development in this subarea. Development within this area may necessitate the upgrade of the Horton Road sewer pump station.

Because of its central location within the Cordata Business Park, Area 17F is appropriate for high density residential and mixed use development. Live/work and work/live units would complement the site as a transition between the established adjacent uses and residential areas. Neighborhood commercial centers can provide convenience shopping opportunities within easy walking, biking, or transit distance of surrounding residential populations and may reduce the number of vehicle trips generated. These centers should have a variety of development features such as ground floor office/retail, upper floor residential at densities that support transit, increased building height limits to create a neighborhood focal point, underground parking where feasible, pedestrian plazas and other gathering places, including regional pedestrian connections.

**Zoning: Guide Meridian/Cordata Neighborhood**

Area	Zoning	Use Qualifier	Density	Special Conditions	Prerequisite Considerations	Special Regulations
17F	Residential, Commercial, Industrial	Planned, mixed, Cordata Business Park, PUD (See Exhibit B)	Density as specified in the Cordata Development and Design Guidelines and the PUD conditions in Exhibit B.	None.	None	<p>Cordata PUD, including the Master Plan, PUD conditions and the Development and Design Guidelines, all as amended by Exhibit B.</p> <p>The binding site plan process (BMC 18.24) may be used for division of residential condominium projects consistent with state law.</p> <p>All development shall comply with the Development Agreement approved by Ordinance No. _____ and recorded under Whatcom County AF# _____.</p>

## EXHIBIT B

### CORDATA VILLAGE REZONE – AREA 17F

The documents and conditions included in the zoning regulations for Area 17F, Guide Meridian/Cordata Neighborhood, Cordata Business Park Master Plan, associated Environmental Impact Statement, and the Cordata Business Park Development and Design Guidelines shall function as the Planned Unit Development for Area 17F of the Guide Meridian/Cordata Neighborhood.

The following represents conditions of approval in addition to the Cordata PUD conditions of approval as adopted by Whatcom County in 1986 (PUD 1-84) that applicable to Area 17F.

All development within this subarea shall be consistent with the City of Bellingham Comprehensive Plan and comply with the Bellingham Municipal Code.

Trillium Corp., as developer, or its successors and assigns in interest to Cordata and all persons owning or developing property within Cordata shall comply with the provisions of the approved PUD as referenced above and the following conditions:

#### Final Site Plan Approval

A revised site plan for Area 17F shall be submitted for Planning Director approval prior to any land disturbance within Area 17F. The revised plan shall be generally consistent with the conceptual Area 17F Master Plan and shall include modifications necessary to bring the site plan into compliance with issued critical area permits from the City, State, and Federal agencies; PUD conditions and any other applicable provisions of the BMC. The revised site plan shall be processed through the Type II, Planned Permit, process and at a minimum identify access locations to public streets, public and private open space and trail(s), road layout, building types, surface parking areas, and stormwater facilities consistent the PUD approval.

#### General Provisions

C (Note 1) Approval of the 2009 Comprehensive Plan Amendment and Rezone does not nullify the original conditions of PUD1-84.

C (1) All development shall comply with a Director approved site plan.

C(2) A system of signs for identifying the location of each residential unit and other uses on the site shall be established, based on considerations of crime prevention and the needs of emergency vehicles.

#### Cordata Design Review and Governing Documents

C(3) All future or amended Design Review Committee Guidelines must be consistent with the PUD permit and existing laws and regulations at the time of the creation or modification of the Design Review Committee Guidelines.

#### Permitted Uses

C (4) Permitted uses within Area 17F shall conform to those listed in the Master Plan and Development and Design Guidelines. A list of the uses allowed is attached as Appendix "A".

#### Density

C(5) The maximum number of dwelling units in the entire 626.7 acre Cordata Business Park site shall be limited to 2,651. No more than 1,779 of the total 2,651 residential units are allowed in the 239 acre Amendment #2 area, generally north of Horton Road.

Residential uses associated with mixed use buildings shall not count toward the density allocations.  
(NOTE: A mixed use building is defined as having ground floor commercial space with residential uses above.

#### Streets and Access

- C(6) The City of Bellingham street standards shall be met for all construction, as necessary to comply with engineering and emergency access requirements.
- C(7) Prior to or concurrent with the Final Site Plan approval, the property owner shall identify the cumulative impacts the proposed development would have beyond the level of development provided for in the PUD.
- C(8) Cordata Parkway shall have left turn bays at major intersections, for both public and private streets.
- C(9) Private roads with an average daily traffic of 1,000 vehicles or more shall have vertical curbs and gutters to provide an added measure of safety for pedestrians.
- C(10) All signing and striping shall be installed per MUTCD standards at the applicant's expense.

#### Stormwater Management and Wetlands

- C(11) All development shall comply with the provisions of BMC 16.55 (Critical Areas Ordinance) and BMC 15.42 (storm water management). Provisions for maintenance of the stormwater system shall be submitted to and approved by the City of Bellingham.
- C(12) Fill and Grade Permits, Clearing Permits, and Revocable Encroachment Permits shall be obtained when required. Clearing and grading activities shall comply with the provisions of BMC 16.60 (clearing), BMC 16.70 (grading).

#### Binding Site Plans and Subdivisions

- C(13) Road name proposals for unnamed new roads must be submitted for approval.
- C(14) The developer shall consult with the post office for the location of mail boxes.
- C(15) Addressing shall be coordinated with the City Building Services Division.
- C(16) The school mitigation/impact fee requirement shall be disclosed on the face of each Final Plat, General Binding Site Plan, and Specific Binding Site Plan.
- C(17) Development shall take place consistent with the "Cordata Business Park Development and Design Guidelines". Additionally, in order to provide flexibility from underlying zoning requirements, the developer shall propose minimum setbacks, maximum height limits, and minimum lot sizes when each Final Plat and/or Specific Binding site plan is submitted for approval. The City shall review and approve setbacks, height limits, and lot sizes for conformance with city codes. The approved setbacks, height limits and lot sizes shall be disclosed on the face of the Final Plat or Specific Binding Site Plan, as appropriate.
- C(18) Binding site plans developed with condominiums shall contain thereon the following statement:  
  
All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the City, town or county having jurisdiction over the development of such land, and in accordance with such other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' association have a membership or other legal or beneficial interest. This binding site plan shall be binding upon all now or hereafter having any interest in the land described herein.

- C(19) The general binding site plan has been approved by Whatcom County. The last specific binding site plan shall be filed no later than 15 years after recordation of the general binding site plan with the possibility of a one-year extension if requested in writing within 30 days of the date the binding site plan is scheduled to expire. The one-year extension may be granted upon a finding by the administrator that the applicants have been diligent in their attempt to finish by the expiration date and that the extension would not be detrimental to the public interest.

Fire Department Requirements

- C (20) All development shall comply with Bellingham Municipal Code Title 17.20.
- C(21) Fire suppression water (fire flow) and hydrant placement shall be provided in accordance with the City of Bellingham Public Works and Fire Department standards.

Utilities

- C(22) Public water and sewer shall be provided to all sites in accordance with plans approved by the City of Bellingham. On-site septic systems shall not be permitted. The sewer mains serving the site are sized and designed in accordance with City of Bellingham Development Guidelines and Improvement Standards. Any off-site improvements needed to provide adequate capacity for conveyance of sanitary sewer purposes shall be made by the developer and become part of the basic requirement for service.
- C(23) All utilities shall be underground.

Impact Fees

- C(24) School impact fees, in an amount established by ordinance, shall be paid to the City of Bellingham at building permit issuance.
- C(25) Traffic impact fees, in an amount established by ordinance, shall be paid to the City of Bellingham at building permit issuance.
- C (26) Park impact fees shall be provided in accordance with Bellingham Municipal Code Chapter 19.04.

Landscaping, Open Space, Parks and Buffers

- C(27) Perimeter buffering shall be provided as required in the Cordata Business Park Development and Design Guidelines.
- C(28) A minimum of 103 acres of open space shall be designated on binding site plans and/or plats (both long and short) in the overall 626.7 acre Cordata Business Park PUD. A minimum of 42 acres of open space shall be designated on binding site plans and/or plats in the northern 239 acre PUD Amendment #2 site, including a six-acre park. Open space designated under the terms of this condition shall remain open space in perpetuity and be maintained as such.
- C(29) Open spaces shall be provided in a manner consistent with the City of Bellingham Comprehensive Plan, Open Space Chapter and shall be shown on the Final Site Plan.

Guide Meridian/Cordata Zoning Map

**GUIDE MERIDIAN/CORDATA NEIGHBORHOOD ZONING**

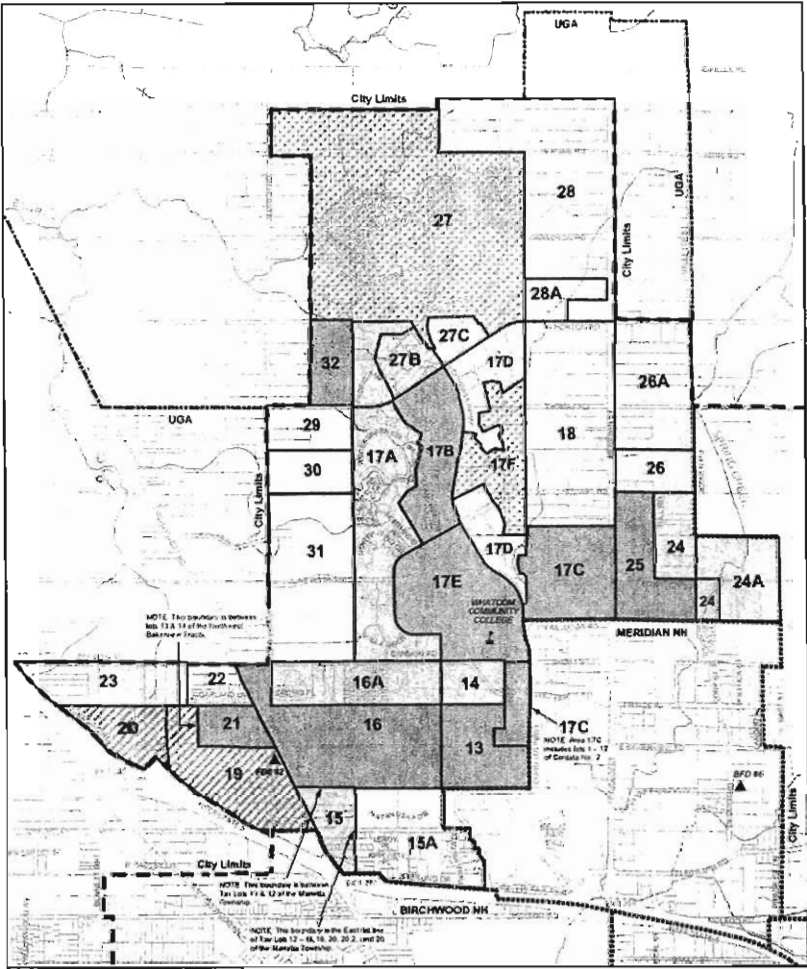
Legend:

AREA	ZONING DESIGNATION*
13	Planned Commercial
14	Planned Res. Multi
15	Planned Res. Multi
15A	Planned Res. Single
16	Planned Commercial
16A	Planned Res. Multi
17A	Planned Institutional
17B	Planned Commercial
17C	Planned Commercial
17D	Institutional
17E	Planned Commercial/Industrial/Res.
17F	Planned Industrial
18	Planned Commercial/Industrial
19	Planned Commercial
20	Planned Commercial
21	Planned Res. Single
22	Planned Res. Single
23	Planned Industrial
24	Planned Res. Multi
24A	Planned Commercial
25	Planned Commercial
26	Planned Commercial/Industrial/Res.
26A	Planned Res. Multi
27	Planned Commercial/Industrial/Res.
27A	Planned Res. Multi
27B	Planned Institutional/Res. Multi
27C	Planned Industrial
28	Planned Industrial
28A	Planned Industrial
29	Residential Single
30	Residential Single
31	Public
32	Public

\* SEE BELLINGHAM MUNICIPAL CODE TITLE 20 FOR THE LIST OF PERMITTED USES AND OTHER SPECIAL PROVISIONS FOR EACH NUMBERED AREA

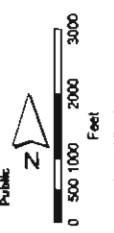
0 500 1000 2000 3000 Feet

City of Bellingham Planning Department 2009

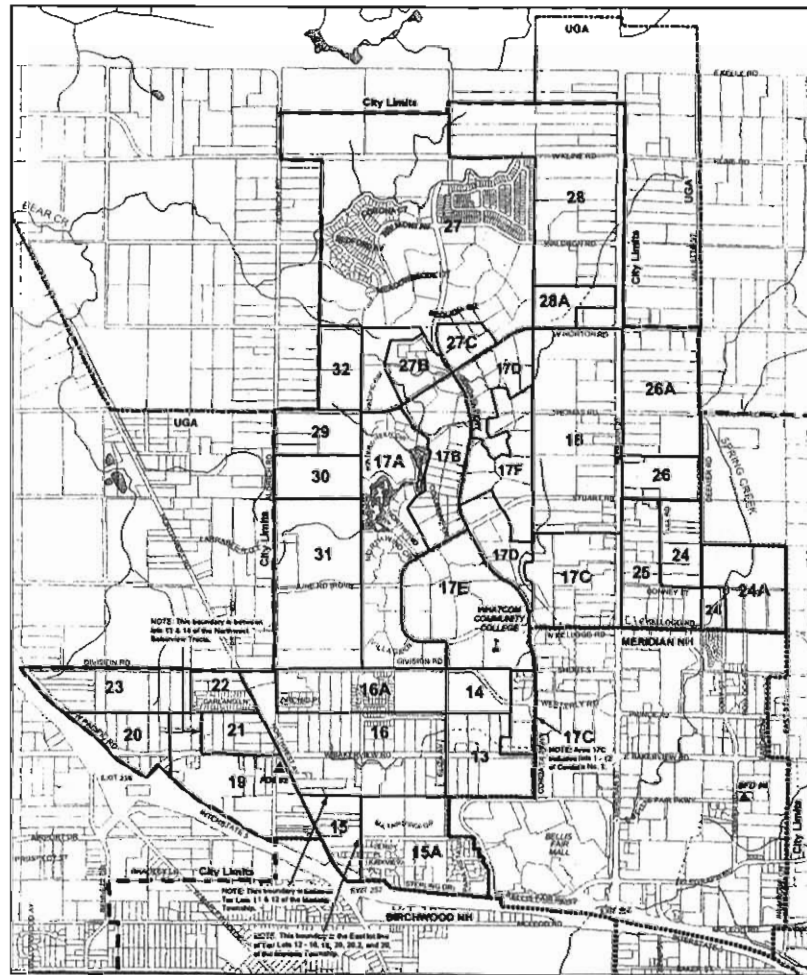


Guide Meridian/Cordata Land Use Map

GUIDE MERIDIAN/CORDATA NEIGHBORHOOD LAND USE	
<b>Legend:</b>	
<b>AREA</b>	<b>COMPREHENSIVE PLAN LAND USE DESIGNATION</b>
13	Commercial Multi, High Density
14	Residential Multi, High Density
15	Residential Single, Medium Density
15A	Medium Density
16	Commercial
16A	Residential Multi, High Density
17A	Residential Multi, High Density
17B	Institutional
17C	Commercial
17D	Industrial
17E	Institutional
17F	Commercial/Industrial/Res. Multi
17G	Industrial
18	Commercial/Industrial
19,20	Commercial
21	Residential Single, Low to Medium Density
22	Commercial
23	Residential Multi, High Density
24	Residential Multi, High Density
24A	Commercial
25	Commercial
25A	Industrial
26, 26A	Commercial/Industrial/Res. Multi
27	Residential Multi
27A	Residential Multi
27B	Institutional/Res. Multi
27C	Industrial
28, 28A	Industrial
29	Residential Single, Medium Density
30	Residential Single, Medium Density
31	Residential Single, Medium Density
32	Public



City of Bellingham  
Planning Department  
2009



Development Agreement



Request of: BELCHER SWANSON

**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:** *Comp Plan Amendment/Rezone (ZON2009-00004)*

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

**GRANTEE(S):** *City of Bellingham*

**ABBREVIATED LEGAL DESCRIPTION:** *Lot 2, Specific Binding Site Plan No. 22, Cordata and Lots 10-17, Specific Binding Site Plan No. 17*

**ASSESSOR'S TAX/PARCEL NUMBER(S):** 380201 388020, 380201 430035, 380201 420015, 380201429002, 380212 400445, 380212 388423, 380212 352450, 380212 328424, 380212 355490, 380212 346520, 380212 410480, 380212 415515, 380212 410562, 380212 421547, 380212 398540, 380212 382550, 380212 386563, 380212 416397

**DEVELOPMENT AGREEMENT BETWEEN CORDATA INVESTMENTS, L.L.C. AND THE CITY OF BELLINGHAM**

This Development Agreement (“Agreement”) between Cordata Investments, L.L.C. (the “Developer”), a Washington limited liability company, and the City of Bellingham (the “City”), a municipal corporation, is entered as of the last date of signature below, and effective upon the date of execution by the City of Bellingham.

**Recitals**

**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”); and

**WHEREAS**, the City annexed the Property subject to the rights by property owners under the PUD; 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 residential, 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" are the requirements of the PUD and all current applicable City of Bellingham codes and regulations, except as modified by this Agreement;

**WHEREAS**, this development agreement is for the purpose of clarifying the specific rights of the Developer under the PUD; and

**WHEREAS**, Title 20 of the Bellingham Municipal Code incorporates the PUD as part of the zoning requirements for the Property; therefore, the agreements described in this development agreement are consistent with applicable development regulations as required by RCW 36.70B.170(1); and

**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 21st day of September, 2009.

**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. 2009-12-079, 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 authorized the Mayor to execute this development agreement with the Developer; and

**WHEREAS**, the Cordata Design Review Committee has approved amendments to the Master Plan and the Development Guidelines, in accordance with those procedures outline in the Protective Covenants recorded under Whatcom County Auditor's Number 1546328, on the 15th day of October, 2009;

Now, therefore, the parties agree as follows:

### **Agreement**

**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 portions of the Property.

**Section 2. Site Plan.** 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 a Final Site Plan review, pursuant to BMC 20.38("Site Plan") has been submitted to the City. The Final Site Plan review process will be used to ensure that the project conforms to the requirements of this Agreement, the Bellingham Comprehensive Plan, Bellingham Municipal Code Title 20, the Cordata Master Plan and the Cordata Development and Design Guidelines. This restriction shall not prevent the Developer from processing a critical areas and/or subdivision permits simultaneously with the Final Site Plan review.

**Section 3. Term of Agreement.** This Agreement shall commence upon the date of execution by the City of Bellingham 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 4. Vested Rights of Developer.** During the term of this Agreement, unless sooner terminated in accordance with the terms hereof, the rights granted to Developer by this Agreement may not be changed or modified by the City for a period of 10 years from the commencement date of this Agreement or as expressly consented thereto by the Developer. Development applications associated with the Proposal will become fully vested at such time a complete land use application is accepted in accordance with Bellingham Municipal Code 21.10.260. Nothing in this Agreement precludes the Developer from requesting the City to enter into a subsequent development agreement that specifically addresses development associated with the approved Final Site Plan.

**Section 5. 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, the requirements of this Agreement and the applicable ordinances, codes and regulations of the City.

**Section 6. Stormwater.** The Property is part of an existing stormwater system that was created based upon the requirements of the PUD, and pursuant to the Horton Road Drainage Study, prepared by Weden Engineering, Inc., dated October 3, 1989 ("Drainage Study"). The Developer hereby waives all claims of stormwater vested rights as they may have applied to the Property except

that the Developer and the City agree that stormwater volume in the Cordata regional pond allocated to the subject property can be used to supplement required detention volumes.

**Section 7. Traffic.** The Developer shall identify mitigation and provide a phasing plan for the mitigation for the impact of the Proposal exceeding the specified trip generation identified for the subject property by the “Cordata PUD Full Build-out 2022” transportation analysis. The City of Bellingham shall consider the Developer’s proposed mitigation and either accept or modify the mitigation and approve a phasing plan for implementing the mitigation concurrent with the approval of the Final Site Plan.

**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 and Trails.**

- a) Developer shall incorporate an area not less than 15,000 square feet of land to be developed as an urban park as part of the Final Site Plan approval process in a location consistent with the underlying zoning; and
- b) Developer shall dedicate to the City of Bellingham two public access easements through the Property for the purpose of providing public multi-use, non-motorized trail corridor and adequate setbacks from private property. The Parks and Recreation Director has the discretion to approve other variations from these trail corridor standards through the review and approval of the Final Site Plan. The two public trail corridor easements are generally described as:
  - An east/west trail corridor having a width of 50 feet connecting Cordata Parkway to the Thomas Road right of way abutting on the eastern boundary of the Property. The easement width may be reduced by the Parks and Recreation Director when abutting permanently designated open space.
  - A north/south non-motorized bike and pedestrian trail corridor connecting Stuart Road to Horton Road. This corridor may include widened sidewalks and public access easements over internal circulation paths; and
- c) Developer shall improve the urban park and construct the trails within these corridors to City standards as a condition of the first land use action resulting from the approved Final Site Plan, unless the Parks and Recreation Department Director requires otherwise.

Any improvements made for the purpose of satisfying the requirements for parks (including trails), shall be constructed to City Parks Standards; provided, parts of the north/south and east/west trail corridors may be on sidewalks or other hard surfaces constructed as part of the Developer’s project.

**Section 10. Impact Fees.** The performance requirements relating to Sections 7 and 9 (a) and (b) of this Agreement are considered system demand improvements and may not be used to reduce applicable impact fees established by City ordinance. Developer shall pay City impact fees in accordance with the City’s impact fee ordinances.

**Section 11. 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 12. Termination.** This Agreement shall terminate upon the expiration of the term identified in Section 3 or when the 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 13. 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 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.

**Section 14. 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 the existing planning and zoning laws).

**Section 15. 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.

**Section 16. 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 17. Amendment to Agreement.** 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).

**Section 18. 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 19. 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 20. 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 21. 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 22. 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 23. 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.



EXECUTED, this 14<sup>th</sup> day of December, 2009, for the CITY OF BELLINGHAM:

David R. ...  
Mayor

ATTEST: [Signature]  
Finance Director

APPROVED AS TO FORM:

[Signature]  
Office of the City Attorney

DEPARTMENTAL APPROVAL:

[Signature]  
Planning and Community Development

12-11-2009  
Date

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF WHATCOM\_ )

On this 14<sup>th</sup> day of December, 2009, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared DANIEL V. PIKE, known to me to be the Mayor of the **CITY OF BELLINGHAM**, the first class municipal corporation of the State of Washington that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said first class municipal corporation of the State of Washington, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.



Linda D. Anderson  
Signature

LINDA D. ANDERSON  
Print Name

NOTARY PUBLIC in and for the State of  
Washington, residing at Bellingham  
My commission expires 9/29/2010

# EXHIBIT A

Parcels 10, 11, 12, 13, 14, 15, 16 and 17 of Specific Binding Site Plan No. 17 of Cordata, as per the map thereof; recorded in Book 2 of Binding Site Plans, pages 23 through 28, inclusive, under Whatcom County Auditor's File No. 920529197. Also and together with Parcel 2 of Specific Binding Site Plan No. 22 of Cordata as per the map thereof recorded in Book 3 of Binding Site Plans pages 36 through 38, inclusive under Whatcom county Auditor's File No. 980604083.