

RETURN TO:

STARKENBURG-KROONTJE
ATTORNEY AT LAW, P.S.
P.O. BOX 231
LYNDEN, WA 98264

DOCUMENT TITLE:

DEVELOPMENT AGREEMENT

REFERENCE NUMBER OF RELATED DOCUMENT:

N/A

GRANTORS:

TMI HOLDINGS, LLC, a Washington Limited Liability Company
HALO HOLDINGS, LLC, a Washington Limited Liability Company

GRANTEE:

CITY OF LYNDEN, a Washington municipal corporation

ABBREVIATED LEGAL DESCRIPTION:

PTN NE ¼ NW ¼ NE ¼, S15, T40N, R03E

Full legal description at page _____ hereto

ASSESSOR'S TAX PARCEL NUMBER(S):

400315 361493 0000

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 20__, by and between the CITY OF LYNDEN, a Washington municipal corporation (hereinafter “CITY”) and TMI HOLDINGS, a Washington limited liability company & HALO HOLDINGS, LLC, a Washington limited liability company, who are the owners of the property developed under the name “Skyview Townhomes”. This property is more particularly described in the attached Exhibit A (hereafter “Skyview Townhomes”). The Property is currently made up of two parcels. One is zoned Residential Multi-Family 3 (RM-3) and one is zoned Commercial Services - Local (CSL). This agreement is specific to the commercially zoned portion of the Property more particularly described as Lot A of the Skyview Lot Line Adjustment as recorded under Auditor File number xxxxxxxxx and shown in Exhibit A (hereafter referred to as the “Property”).

WHEREAS, the proposed site plan for Skyview Townhomes is attached as Exhibit B and illustrates residential and commercial areas on the CSL portion of the development; and

WHEREAS, Lynden Municipal Code (LMC) 19.23.020 permits multi-family residences within the CSL zone under specific conditions; and

WHEREAS, the City’s Design Review Board has granted design approval for a feasible layout and architecture of the residential portion of development for the Property (DRB Application #21-01); and

WHEREAS, as a condition of approval of residential development within the CSL zone, the Lynden Municipal Code Chapter 19 requires a minimum amount of commercial component to be constructed; and

WHEREAS, this Agreement is recorded to memorialize the conditions of the development approval; and

WHEREAS, the above recitals are a material part of this Agreement; and

WHEREAS, the City of Lynden, TMI Holdings, LLC and Halo Holdings, LLC do enter into this Agreement and for in consideration of the mutual covenants, duties and obligations herein set forth, do agree as follows:

ARTICLE I
LAND USE AND SETBACK REQUIREMENTS

- 1.1 Skyview Townhomes is located in the RM-3 zone and CSL zone. As a mixed-use development, in accordance with LMC19.23, the portion of property within the CSL Site (Lot A of the Skyview Lot Line Adjustment) is required to have a minimum of sixty percent of the ground floor area as a permitted commercial use. This calculation is based on the ground floor area of all of buildings on the Property located within the CSL zone.
- 1.2 All commercial buildings will have common architectural themes and will be subject to approval by the Design Review Board. Future buildings must meet the guidelines in effect at the time of building permit application.
- 1.3 All commercial uses permitted outright within the CSL zone or its successor shall be a permitted uses within this mixed use development.
- 1.4 A covenant shall be placed on the deeds for all residential units and commercial units on the Property notifying them of the mixed zone and of the commercial use requirement for a portion of the Property.
- 1.5 The Property shall not be eligible to apply for a rezone to modify the commercial zoning designation to a residential zoning.
- 1.6 The proposed gross floor area of first floor residential buildings within the CSL zoned portion of the property totals approximately 13,000 square feet as shown on the Design Review Board application #21-01. As such, the commercial component must equal a minimum of 19,500 square feet of gross floor area or be incrementally developed in such a way as to ultimately accommodate this gross floor area.
- 1.7 The property has some existing structures along the Badger Road frontage which are primarily agricultural in nature. These may be remodeled to be suitable for commercial use if building code standards, development standards, and Design Review Board approval of these structures can be met and demonstrated to City staff.

ARTICLE II
ACCESS AND TRANSPORTATION

- 2.1 The East Badger Road is a Washington State highway. As a result, any access connection will require approval from the Washington State Department of Transportation and the City of Lynden. This access is only allowed for the CSL property. There shall be no connection from the CSL through the RM3 zoned property to Currant Street.
- 2.2 Both the commercial (CSL) and residential (RM3) portions of the property are required to provide public easements and maintain public pedestrian walkways through the property. These walkways must ensure access to the current and any future public sidewalk and trail systems at all times. Routine care of these

access ways including, but not limited to, brush clearing, weed removal, pressure washing, and resurfacing so as to maintain code compliant ADA access is the responsibility of the owner of the Property.

- 2.3 Vehicular access between the residential and commercial portions of the CSL zoned parcels is limited to emergency apparatus ,utility maintenance vehicles and/or heavy equipment needed to maintain and repair facilities in the easements.

ARTICLE III ASSIGNMENT AND TRANSFER

- 3.1 After its execution, the Agreement shall be recorded in the office of the Whatcom County Auditor. Each commitment and restriction on the development subject to this Agreement, shall be a burden on the Property, shall be appurtenant to and for the benefit of the Property, and shall run with the land. This Agreement shall be binding on the City and owners of the Property, and their respective heirs, administrators, executors, agents, legal representatives, successors and assigns. Upon any sale or conveyance of the property by an owners, such owner shall be released from the obligation of this Agreement and the obligations stated herein shall be enforceable solely against the successor owner of the Property.
- 3.2 Future subdivision of the Property is permitted however the conditions of this agreement remain in effect. No subdivision may be made which would prevent the owner of the Property from fulfilling the conditions detailed herein.

ARTICLE IV TIMING

- 4.1 This agreement confirms that the residential uses on the CSL zoned portion of the property, totaling up to 13,000 square feet of first floor area, may be constructed prior to the development / redevelopment of an active commercial use on the remaining portion of the property subject to the conditions listed below:
- 4.2 All pedestrian walkways and trails needed to maintain contiguous access from the Badger Trail or other pedestrian easements to public sidewalks within the North Prairie Phase 7 Long Plat and Badger South SP must be dedicated as public access easements before the City will issue a building permit for the first residential building on the CSL zoned portion of the property.
- 4.3 All final walkways and trails must be constructed, per City specifications, on the CSL zoned portion of the property prior to the final occupancy of last building on the CSL zoned portion of the property. Temporary facilities, approved by the City, shall be provided prior to any form of occupancy for the first building in the CSL zone.

4.4 A Type II landscape buffer, ten feet in width, is required between the proposed residential use and the future commercial use. A Type II landscape buffer is described in LMC 19.61.070. This buffer must be installed, and maintenance bond secured, prior to issuance of the final occupancy for the final residential building on the CSL zoned property.

ARTICLE V
MISCELLANEOUS

5.1 This writing including the exhibits hereto constitute the full and only agreement between the parties, there being no promises, agreement or understandings, written or oral, except a herein set forth, or as hereinafter may be amended in an acknowledged writing and in accordance with the LMC.

5.2 In the event the owners of Skyview Townhomes fail to comply with the commitments set forth herein, within one hundred twenty (120) days of written notice of such failure from the City, in addition to any other remedies which the City may have available to it, the City shall have the right, without prejudice to any other rights or remedies, to cure such default or enjoin such violation and otherwise enforce the requirements contained in this Agreement, and to collect the direct costs, associated with such action, including reasonable attorney's fees and costs, from the owners of Skyview Townhomes.

5.3 In the event that a judicial dispute arises regarding the enforcement or breach of this Agreement, then the prevailing party in such dispute shall be entitled to recover its attorney's fees and costs reasonably incurred, including fees and costs incurred on appeal.

5.4 This Agreement, and the rights of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Washington and the parties agree that in any such action venue shall lie exclusively in Whatcom County, Washington.

5.5 Nonwaiver of Breach. Failure of either party to require performance of any provision of this Agreement shall not limit such party's right to enforce such provisions, nor shall a waiver of any breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or waiver of such provision itself.

5.6 Any notice which a party may desire to give to another party must be in writing and may be given by personal delivery, by mailing the same by registered or certified mail, return receipt requested postage prepaid, or by Federal Express or other reputable overnight delivery service, to the party to whom the notice is directed at the address of such party set forth below:

City of Lynden:	Planning Director 300 4 th Street Lynden WA 98264
-----------------	--------------------------------------------------------------------

TMI Holdings, LLC Halo Holdings, LLC	PO Box 467 Lynden WA 98264
-----------------------------------------	-------------------------------

Or such other addresses and to such other persons as the parties may hereafter designate in writing to the other parties. Any such notice shall be deemed given upon delivery if by personal delivery, upon deposit in the United States mail, if sent by mail pursuant to the foregoing.

5.7 No Impairment of City Regulatory Discretion. Nothing in this Agreement shall limit the City's exercise of its lawful regulatory discretion in approving pending or new applications in accordance with applicable ordinances, so long as such discretion is exercised consistent with the terms of this Agreement.

5.8 Reservation of Authority. The City reserves authority to impose new or different regulations on the Property to the extent required by a serious threat to public health and safety. This reservation is intended to comply with RCW 36.70B.170 (4). If such authority is exercised, the remaining provisions of this Agreement shall remain in full force and effect to the extent the new regulations are not inconsistent therewith and do not undermine achievement of the fundamental purposes of this Agreement.

5.9 Severability. If any section, subsection, sentence, clause, or phrase in this Agreement is for any reason held to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby. Each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the Parties hereunto caused this Agreement to be executed, and shall be effective on the date of its recording with the Whatcom County Auditor.

TMI HOLDINGS, LLC

By:
Its:

HALO HOLDINGS, LLC

By:
Its:

CITY OF LYNDEN

By:
Its:

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this ____ day of _____, 20__, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, the _____ of **TMI HOLDINGS, LLC**, a Washington limited liability company, who acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and stated on oath that he/she was authorized to execute this instrument on behalf of said corporation.

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

Notary Public in and for the State of Washington
Residing at: _____
My commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this ____ day of _____, 20__, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, the _____ of **HALO HOLDINGS, LLC**, a Washington limited liability company, who acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and stated on oath that he/she was authorized to execute this instrument on behalf of said corporation.

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

Notary Public in and for the State of Washington
Residing at: _____

My commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this ____ day of _____, 20__, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, the _____ of the **CITY OF LYNDEN**, a Washington municipal corporation, who acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and stated on oath that he/she was authorized to execute this instrument on behalf of said corporation.

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

Notary Public in and for the State of Washington
Residing at: _____
My commission expires: _____

DRAFT

Exhibit A

Skyview Lot Line Adjustment

DRAFT

Exhibit B

Skyview Townhomes Site Plan

DRAFT