

LOT LINE ADJUSTMENT AND RIGHT OF WAY DEDICATION AGREEMENT

This LOT LINE ADJUSTMENT AND RIGHT OF WAY DEDICATION AGREEMENT (“Agreement”) is made this _____ day of _____, 2023, by and between MOUNTAIN SUMMIT VENTURES LLC., a Washington limited liability corporation (“Owner”) and the CITY OF LYNDEN, a Washington Municipal Corporation (“City”). The City and Owners may be referred to individually as “Party” or collectively, “Parties” in this Agreement.

RECITALS

WHEREAS, the City owns the following-described parcel of real property, both situated in Whatcom County, Washington, Tax Assessor Parcel No. 400318 461331 0000, legally described in **Exhibit A**, herein referred to together as the “City Property;” and

WHEREAS, the Owner owns one parcel of real property, situated in Whatcom County, Washington, Tax Parcel No. 400318 477250 0000, legally described in **Exhibit B**, herein referred to as the “Owner Property”; and

WHEREAS, the Owner Property is south of and directly abuts the City Property; and

WHEREAS, the Parties intend that as a condition of development, and at no cost to the City, the Owner will grant an exclusive right-of-way easement, eighty (80) feet in width, curving through and bisecting part of the Owner Property and occupying approximately 1.21 acres of the Owner Property, for the future construction of a new street called Pepin Parkway including city utilities and franchise utilities; and

WHEREAS, the specific design and associated square footage need for the Pepin Parkway right-of-way has been determined by the City Engineer consistent with the long-range transportation plan for this area; and

WHEREAS, the Owner Property, being approximately 332 feet wide from north to south, is significantly impacted by the right-of-way grant due to its width and location within the Owner Property; and

WHEREAS, to maintain the development opportunities of the Owner Property while facilitating access and the expansion of the City’s transportation network, the City will exchange, in return for said right-of-way grant, an approximately equal-sized portion of the City Property; and

WHEREAS, the Owner shall complete a Lot Line Adjustment (“LLA”) in which the north boundary of the Owner Property (also the south boundary of the City Property) will be shifted north approximately 48feet such that approximately 1.21 acres of land will be added to the Owner Property as a fair and equitable equal exchange of land; and

WHEREAS, the LLA must depict the dedication of right-of-way; and

WHEREAS, City staff shall file an application for a site-specific rezone of the portion of City Property that is added to the Owner property, shifting it from a Public Use (PU) designation to a Residential Multi-family 3 (RM-3) designation to match that of the Owner Property, within six (6) months of the recordation of the LLA; and

WHEREAS, all of the foregoing provisions are a material part of this Agreement.

AGREEMENT

NOW THEREFORE, for good and valuable consideration arising from the mutual commitments herein, the Parties hereby agree as follows:

1. Lot Line Adjustment (LLA)

The Owner desires to adjust the northern property line of the Owner Property so that an approximately equal exchange of property occurs.

- a.** The Lot Line Adjustment shall be in substantially the same form as the attached Exhibit C.
- b.** Not later than twelve (12) months after execution of this Agreement, the Owner will have completed the LLA process.
- c.** The completed LLA will depict the right-of-way grant intended for the construction of Pepin Parkway as determined by the City Engineer and described in Exhibit D.
- d.** Concurrent with or immediately following approval of the LLA, the City shall convey the approximately 48 feet of the City Property described herein by quit claim deed to Owner and the Owner shall accept same, subject to the terms and reservations set forth in Section 2.

2. Right-of-Way Grant and No Subdivision of Property

- a.** The area depicted on the LLA for the right-of-way grant must be determined by the City Engineer as shown in Exhibit D. The right-of-way grant shall be executed and recorded concurrent with the recording of the LLA.
- b.** The right-of-way grant will be recorded across the Owner Property as an exclusive easement for street and utility purposes including utilities under franchise to the City. The grant will not subdivide the Owner Property, nor will it cause a subdivision of the Owner Property to be required.

3. Rezone

a. Not later than six (6) months after returning a recorded copy of the LLA to the City of Lynden Planning Staff, the City will apply for a site-specific rezone for that portion of the City Property that is quitclaimed to the Owner.

b. The rezone application will propose a shift the exchanged property from a zoning category of Public Use (PU) to Residential Multi-family-3 (RM-3) to be consistent with the existing zoning category of the Owner Property.

c. City staff will diligently follow the site-specific rezone process described in Ch. 17.19 LMC to ensure expeditious processing of the rezone.

d. The Owner acknowledges that site-specific rezones are ultimately approved by ordinance after significant public review, and that the success of the site-specific rezone application cannot be guaranteed. While City staff will apply for the site-specific rezone, the City planning commission may recommend denial and the City Council may choose not to approve the site-specific rezone. The entry of this Agreement in no way obligates the planning commission or City Council to approve the re-zone. The Owner willingly enters into to this Agreement fully aware of this risk.

e. Failure of Rezone. In the event that the rezone as described herein is not approved by the City Council within 180 days, or in the event that such re-zone is determined to be invalid by a court of competent jurisdiction, the LLA described in Paragraph 1 and the right-of-way dedication described in Paragraph 2 shall be reversed. This shall be accomplished by subsequent lot line adjustment and quitclaim deeds restoring the property lines and ownership as they existed at the time this Agreement was executed. The Parties shall fully cooperate in all such efforts. Each Party shall bear its own costs. The Parties also acknowledge that in such an event, any pending plats or other approvals sought by the Owner contingent on the rezone may be denied.

f. The City and the Owner agree that no public roadway construction will be initiated within the area of right-of-way dedication until after a successful rezone of the exchanged property so as to provide for a reversal of the dedication in the event of an unsuccessful rezone. Similarly, the City and the Owner agree that no actions shall be taken while the rezone application is under review to modify the area of right-of-way dedication so as to complicate, impede, or add expense to the future construction of a public roadway within this area.

4. Future Development

a. This Agreement does not limit the City's ability to require additional developer agreements, dedications, impact fees, development standards, specific project elements, mitigation, or any other development requirements or development procedures as conditions of future development of the Owner Property, except that

once the right of way grant described in Paragraph 2 and the rezone described in Paragraph 3 are completed, no further right of way dedications shall be required.

b. This Agreement creates no vesting right and does not vest the Owner to any particular version of the City’s development code or state or federal laws or regulations.

5. General Provisions

a. Notice. If any notice is required related to this Agreement, all required notices under this Agreement shall be delivered as follows:

Owner:	City:	
Dean Francis Mountain Summit Ventures, LLC <hr/> <hr/>	Parks Dept Director City of Lynden Parks Dept 300 4 th Street Lynden, WA 98264	Public Works Director City of Lynden Public Works 300 4 th Street Lynden, WA 98264

Notice may be made by US First Class Mail and shall be considered effective the business day following the date the notice was mailed. Alternatively, notice may be made by email, read receipt requested, and shall be considered effective the date of sending.

b. Severance. If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, that provision shall be deemed to be severed and deleted, and neither that provision nor its severance shall affect the validity of the remaining provisions.

c. Amendment. This Agreement may not be altered, amended, modified or otherwise changed in any respect or particular whatsoever except in writing executed by all Parties or their representatives.

d. Governing Law and Venue. This Agreement shall be construed under the laws of the State of Washington. The venue of any legal action brought under the terms of this Agreement shall be in the Superior Court for Whatcom County, State of Washington.

e. Expenses and Attorneys’ Fees. The prevailing Party in any action brought to enforce any terms and conditions of this Agreement shall be entitled to the recovery of their reasonable attorney’s fees, costs and expenses.

f. No Third-Party Beneficiaries. No right, privilege, or immunity of any Party hereto shall inure to the benefit of any third party, nor shall any third party be a beneficiary of any of the provisions of this Agreement, except as may be specifically provided herein.

g. Additional Development Requirements. Owner understands and acknowledges that this Agreement is not intended to define or limit in any way requirements that will be applicable to the Owner Property or the City Property after acquisition by Developer, in the course of development of Owner's Property or any other property.

h. Indemnification. To the extent permissible by law, all Parties indemnify, defend and hold the other Parties, their employees, officers, guests, invitees, partners, or licensees harmless for any injuries, damage to, or claims against the Parties or their employees, officers, guests, invitees, partners, or licensees or the properties referenced herein or structures thereon, arising in relation to a Party's negligent acts or omissions relating to the exercise of its rights under this Agreement, including but not limited to, claims made by any third party or any Party herein, and their employees, officers, and agents. It is further specifically and expressly understood that the indemnification provided herein constitutes each Party's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties. The provisions of this section shall survive the expiration or termination of this Agreement.

i. Nonwaiver of Breach. Failure of any Parties at any time to require performance of any provision of this Agreement shall not limit such Party's right enforce such provision. Waiver of any breach of any provision of this Agreement does not constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.

j. Counterparts. This Agreement may be executed in counterparts and as so executed shall constitute one Agreement and shall be binding upon all Parties hereto notwithstanding that all signatory Parties do not appear on the same page.

k. Entire Agreement. This Agreement constitutes the entire agreement between the Parties as to the matters contained herein. No oral or written statements made by the Parties prior to or following entry of this Agreement shall be considered a part of this Agreement unless expressly incorporated herein in writing.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

Owner:

City:

By: Dean Francis, Owner
Mountain Summit Ventures LLC

By: Scott Korthuis
Its: Mayor

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.

Print Name: _____
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 **MOUNTAIN SUMMIT VENTURES, LLC**, a Washington limited liability 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.

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

EXHIBIT A
City Property Description

Insert legal description of City Property (Parcel 400 318 461 331 0000)

EXHIBIT B
Owner Property Description

Insert legal description of Owner Property (parcel 400 318 477 250 0000)

EXHIBIT C
Lot Line Adjustment Map

Insert lot line adjustment including property to be deeded to Owner as described and depicted
by surveyor for the Property Owner

EXHIBIT D
Legal Description and Depiction of Right-of-Way Grant

Insert legal description and depiction of ROW grant as determined by the City Engineer