

After Recording Return to
Langabeer & Traxler, PS
2701 Meridian Street
Bellingham, WA 98225

DEVELOPMENT AGREEMENT

Grantors:	<u>BENJAMIN STUIT and LINDY STUIT</u>
Grantee:	<u>CITY OF LYNDEN</u>
Legal Description (Abbreviated):	<u>PTN NW¹/₄ NE¹/₄ §25 TWP 40 N R 2 E.W.M.</u> <u>(Full Legal on Exhibit A, Page ____)</u>
Assessor's Tax Parcel ID#:	<u>4002253884230000 / 125969</u>
Reference Number of Related Document(s):	<u>N/A</u>

THIS DEVELOPMENT AGREEMENT (Agreement) is entered into by and between the CITY OF LYNDEN, a Washington municipal corporation (City) and BENJAMIN AND LINDY STUIT, a married couple (Stuits or Developer) (collectively, the Parties). This Agreement is effective upon approval of this Agreement by the Parties (herein Effective Date).

RECITALS:

A. This Agreement is for the purposes of setting forth certain development standards and other provisions related to the Stuits' subdivision of land and the Parties' respective rights and obligations pertaining to the provision of City utility services and the required road improvements to serve the property, described herein, and pursuant to the authority provided in RCW 36.70B.170 et. seq.

B. The Stuits own land within the City of Lynden at 8036 Flynn Road that is identified and legally described on the attached Exhibit A (the Property).

C. In 2019, the City approved the Stuits' short plat application SP #18-03 (the Short Plat) to subdivide the Property into three lots. The Technical Review Committee indicated the Stuits had the ability to install an on-site septic system in lieu of connecting to City sewer. The remaining conditions requiring, among other things, improvement of Flynn Road up to City Development Standards, the extension of water, future extension of sewer to the furthest extent of all properties within the Short Plat, and post-construction maintenance bonding, were not

feasible for the Stuits scope of development which included only one new single-family home despite the capacity of the Property for additional density.

D. Subsequently, the Stuits formally requested that the City vacate the Findings of Fact and Determination on the Short Plat, which the City did via letter from Planning Director Heidi Gudde on November 5, 2019, so that the Parties could work together on alternative infrastructure installation and bonding requirements.

E. Since that time, the Parties have had ongoing discussions related to alternative infrastructure installation and other requirements for the development of the Property.

F. Additionally, the City's Public Works Department was advancing the design and development of sewer infrastructure to this area of the City. This advancement warranted coordination with the Stuits development plan to avoid the installation of a new onsite septic system which would then be abandoned with City sanitary sewer service.

G. On December 2, 2020 the Stuits submitted a revised short plat design, attached as Exhibit B, which depicts 3 lots: Lots A and B, and Reserve Tract C (collectively, the Lots). This development agreement is intended to set forth the Parties' respective rights, obligations, timing, and costs related to the development of the Lots.

H. Pursuant to RCW 36.70B.170(4), the Parties recognize and agree that the execution of a development agreement is a proper exercise of the City's police power and contract authority, that a development agreement may obligate a party to fund or provide services, infrastructure, or other facilities, and that a development agreement shall reserve to the City the authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

I. Pursuant to RCW 36.70B.200, on February 16, 2021, the City held a public hearing regarding the form and substance of this Development Agreement before the City Council, and the City Council has approved a resolution authorizing the Mayor to enter into this Development Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Authority for Development Agreement. The State legislature, through the enactment of RCW 36.70B.170 through .210, has granted the City the authority to enter into a development agreement with a person or entities having ownership or control of real property within its jurisdiction.

2. Conformance with Code. Short Plat approval and development of the Property shall conform to all terms and conditions of Short Plat approval. Development of the Property

shall also be consistent with all provisions of the Lynden Municipal Code and development standards, subject to the terms herein.

3. Latecomers' Agreement for City Sewer Extension. Public sewer will be extended by the City to serve the Lots. This sewer extension shall be completed in association with a City-created Assessment Reimbursement Area under the provisions of Section 13.28.180 of the Lynden Municipal Code, and as may be hereafter amended. Per those provisions, the Lots will be included within the Assessment Reimbursement Area. Each Lot shall be assessed an added facility charge per Equivalent Residential Unit (ERU) based on the cost of public sewer extension at the time of connection. The cost of sewer connection will include an ERU surcharge adopted by the City Council for the Assessment Reimbursement Area.

4. Conditions for Onsite Septic Systems. Septic systems will be allowed to serve single-family residential development on Lots A and B until such time as public sewer is extended and available for connection in the abutting right-of-way. Upon said extension of public sewer, the owners of Lots A and B shall, within sixty (60) days of such public sewer becoming available for connection, abandon any septic systems in place and connect to public sewer. The City intends to extend sewer service in advance of development of Lot B so that it may be connected to public sewer and avoid the cost of onsite septic system construction; provided that, public sewer connection will not be a condition of development of Lot B. In the event development of Lot B precedes said public sewer extension, the City shall not be liable under any circumstances for the costs of installation and removal of any septic system installed to serve Lot B. No septic system is allowed on Reserve Tract C.

5. No-Build Covenant for Reserve Tract C. The Stuits will execute and record a "no build" covenant (Covenant) (attached hereto as Exhibit D) concurrent with the execution and recording of this Agreement, which will bind Reserve Tract C so that it may not be further divided or built upon until such time as all road and utility improvements as specified herein are installed and accepted by the City. Following installation and acceptance of the road and all utilities, the Parties agree to extinguish the Covenant.

6. Future Obligations of Reserve Tract C.

6.1 It shall be the sole responsibility of the owner of Reserve Tract C (Owner) to construct and extend an 8-inch water line to serve Reserve Tract C as described herein, and make City-required improvements to Flynn Road. These road and utility improvements must be completed prior to the issuance of any building permit, lot line adjustment, future plat approval, or any other development approval for construction on Reserve Tract C. The Owner shall construct the road and upgrade the water line, all in accordance with City Development Standards, except as specified in Section 7, herein.

6.2 Any latecomer agreement pertaining to road and water line construction costs shall be determined per City code at that time.

6.3 The Owner shall install and dedicate to the City an 8" water line along the entire Property frontage abutting Flynn Road, including the entire frontage of Lots B and A, as a prerequisite condition of City issuance of a building permit, lot line adjustment, future plat approval, or any other development approval for Reserve Tract C, whichever comes first. Said 8" water line shall be conveyed to the City by instrument acceptable to the City, after City approval and acceptance thereof in accordance with city standards.

6.4 Road improvements to Flynn Road and water main shall be extended by the Owner at the time of development of Reserve Tract C. Road improvements shall be made over the top of the new water main extension and extend along the entire Property frontage, including Lots B and A. Said road improvements shall be dedicated to the City by instrument acceptable to the City, after City approval and acceptance thereof in accordance with city standards. The foregoing requirements are a prerequisite condition of City issuance of a building permit, lot line adjustment, future plat approval, or any other development approval for Reserve Tract C.

6.5 Notwithstanding the restrictions set forth in 6.3 and 6.4, Owner may obtain a fill and grade permit or official modification of the FEMA mapped floodplain for Reserve Tract C.

6.6 The Owner may enter into a separate Latecomer Agreement with the City for cost reimbursement, in accordance with state law and city ordinances, by other private properties on the west side of Flynn Road for the waterline extension described in Section 6.3 and any road improvement beyond the $\frac{3}{4}$ Street Improvements per the provisions of Lynden Municipal Code (LMC) 13.28. Improvements must be designed and constructed to City of Lynden Engineering Design and Development Standards unless granted a variance to those standards by the City Council.

6.7 Consistent with Section 3, herein, the Owner shall fund its proportional share of the City's construction of the sewer line extension.

6.8 Payment by Reserve Tract C of its assessment for its proportional share of the sewer line extension shall be held in trust in the City's construction fund designated for the purpose of paying sewer installation and connection costs for the sewer extension project. The foregoing requirement is a prerequisite condition of City issuance of a building permit.

6.9 Payment of its proportional share of the sewer extension cost and all connection fees due, including Seattle area Consumer Price Index (CPI) increases, shall be a condition of City issuance of a building permit or future plat approval for Reserve Tract C. The foregoing requirement is a prerequisite condition of City issuance of a building permit.

6.10 Completion of sewer extension shall be a prerequisite to City issuance of a building permit or future plat approval for Reserve Tract C.

6.11 Consistent with section 4, herein, no onsite septic system will be allowed to serve Reserve Tract C, which will be required to connect to City sewer and water service.

7. Right to Variance from City Road Standards. At any time prior to submitting a building permit application, the Owner shall have the right to apply for a variance from City road standards.

7.1 Construction of $\frac{3}{4}$ Street. Without a variance, the Owner's minimum road construction responsibility shall be for a $\frac{3}{4}$ street (sidewalk, curb, gutter, widened shoulder/bike lane, and both travel lanes on side of the right-of-way abutting the Property, but no responsibility for a sidewalk, curb or bike lane on the opposite side) to be accomplished prior to issuance of a building permit or plat approval on Reserve Tract C.

7.2 Timing of the Variance. Owner may apply for a variance from road standards at the time of building permit application for Reserve Tract C.

7.3 Application Process. Any variance application must be brought to City Council for approval. The Owner shall be responsible for associated application fees and the City Council retains final authority to issue a final determination approving or denying any variance request.

8. No Protest. Lots A and B shall not protest a Local Improvement District or Utility Local Improvement District for road and/or water line improvements.

9. Other Road and Utility-Related Requirements for the Lots.

9.1 Lots A, B, and Reserve Tract C shall grant the City a sewer easement at no cost as a condition of City approval of the current (Stuit) Short Plat; provided that, the value of said easement shall be credited against the respective sewer facility assessment for each lot, identified in Section 3. The value of the easement for purposes of said credit shall be equal to the County assessed fee value of that portion of each Lot encumbered by the easement, multiplied by 0.5. Said sewer easement grant shall be made prior to recording the Short Plat or shall appear on the face of the Short Plat, at discretion of the City.

9.2 Lots A, B, and Reserve Tract C will dedicate to the City any necessary additional right-of way (30 feet from centerline) for the new road as a condition of City approval of the Stuit Short Plat. Said dedications shall be made prior to recording the Short Plat or shall appear on the face of the Short Plat, at discretion of the City. The water main improvements will be constructed within the City right of way concurrent with the road improvements.

10. Duration. This agreement shall expire upon the earliest of the following; (a) thirty (30) years from the effective date of this Agreement; (b) the date upon which the Property, including Reserve Tract C, has been fully developed as described herein and all Developer

obligations in connection therewith are satisfied as determined by the City; (c) the Short Plat does not receive final plat approval and expires; or (d) upon mutual agreement of the Parties.

11. Satisfaction of Preliminary Short Plat Condition. City Council approval of this Development Agreement shall be a condition precedent to City issuance of a Notice of Intent to Approve approving the Short Plat, for the purpose of obtaining Final Plat Approval.

12. Miscellaneous.

12.1 Time Is of the Essence. Time is of the essence in each and every covenant and condition of this Development Agreement.

12.2 Entire Agreement; Modifications. This Development Agreement consists of nine (9) pages exclusive of exhibits and represents the entire agreement of the Parties with respect to the subject matter thereof. There are no other agreements, oral or written, except as expressly set forth herein. This Development Agreement may not be altered, changed, modified, or amended except by an instrument in writing signed by all Parties hereto.

12.3 Benefit. The provisions in this Agreement shall inure to the benefit of and be binding upon the successors, assigns and personal representatives of the Parties hereto.

12.4 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.

12.5 Reservation of Authority. The City reserves the 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.

12.6 Notices. All notices or demands to be given by each party to the other under this agreement and all sums to be paid by each party shall be deposited in the United States mails, postage prepaid, by certified or registered mail, return receipt requested, and addressed as follows:

BENJAMIN and LINDY STUIT
8036 Flynn Road
Lynden, WA 98264

CITY OF LYNDEN
300 4th Street
Lynden, WA 98264

Notices and demands sent by mail shall be deemed to have been given and delivered when properly mailed, and the postmark affixed by the United States Post Office shall be conclusive evidence of the date of mailing.

12.7 Authority. The individuals executing this Development Agreement represent and warrant that they have the authority to execute this Agreement and bind their respective principals.

12.8 Execution of Documents. The Parties agree to expeditiously execute any documents which may be necessary, appropriate or convenient to carry out the intent of the transaction contemplated by this agreement.

12.9 Transfer of Ownership. A conveyance of all or any portion of the Property through any means shall not impair, extinguish or otherwise affect any right, obligation, duty, term or provision of this Development Agreement. Any purchaser and/or assignee of all or any portion of the Property shall have the same rights, obligations and/or duties under this Development Agreement as the Party, person or entity from which it purchased or otherwise obtained an interest in all or a portion of the Property and shall have the right to enforce this Development Agreement against the City.

12.10 Attorney's Fees. In the event either Party shall institute suit to enforce any rights hereunder, the substantially prevailing party shall be entitled to court costs and reasonable attorney's fees against the losing party.

12.11 Covenant Running with the Land. It is the Parties' intent that this Development Agreement, so long as it is in force, be considered, interpreted and regarded as a covenant running with the Property.

12.12 Recording. Per RCW 36.70B.190, this Development Agreement shall be recorded with the Whatcom County Auditor.

12.13 Severability. If any provision of this agreement is deemed void or unenforceable by the action of a court of law, such provision shall be severable and not affect the balance of this agreement, which shall remain in full force and effect.

12.14 Construction. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Development Agreement or any amendments thereto, and the same shall be given a reasonable interpretation in accordance with the plain meaning of its terms and the intent of the Parties.

12.15 Applicable Law. This agreement shall be construed, interpreted and enforced pursuant to the laws of the State of Washington, and the Parties agree that the Superior

12.16 Effective Date of Agreement. This Agreement shall not be binding on either Party until such time as it is executed by both Parties.

Dated: _____

PRINTED 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 _____, 2021, before me personally appeared LINDY STUIT, to me known to be the person that executed the within and foregoing instrument to be her free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

PRINTED NAME: _____
Notary Public in and for the State of
Washington, residing at _____.
My Commission Expires _____.

CITY OF LYNDEN

By: _____

City of Lynden _____

Dated: _____

STATE OF WASHINGTON)
)ss.
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument, and acknowledged it as the _____ of the City of Lynden to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this ____ day of _____, 2021.

PRINTED NAME: _____
Notary Public in and for the State of
Washington, residing at _____.
My Commission Expires _____.

EXHIBIT A

Legal Description

All that portion of the Northwest Quarter of the Northeast Quarter of Section 25, Township 40 North, Range 2 East of W.M., lying South and East of the county road, except that portion described as follows: Beginning at the intersection of the South Line of Bay Lyn Drive and the East of the Northwest Quarter of the Northeast Quarter of said Section; Thence South 230 feet; thence West 138 feet; thence North 187 feet, more or less, to the South line of Flynn Road; thence Easterly along said boundary to the Point of beginning.