

RETURN TO:

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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

LEGAL DESCRIPTION:

LOT A OF THE SKYVIEW LOT LINE ADJUSTMENT RECORDED IN THE AUDITOR'S
OFFICE OF WHATCOM COUNTY, WASHINGTON

SITUATE IN WHATCOM COUNTY, WASHINGTON

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, LLC, a Washington limited liability company & HALO HOLDINGS, LLC, a Washington limited liability company (hereinafter collectively "GRANTORS").

WHEREAS, Grantors are the owners of Lot A of the Skyview Lot Line Adjustment as recorded under Auditor File number 2021-0703457, more particularly depicted in the attached Exhibit A (hereafter the "Property"); and

WHEREAS, Grantors also own Lot B of the Skyview Lot Line Adjustment ("Lot B"); and

WHEREAS, the Property is zoned Commercial Services - Local (CSL), and Lot B is zoned Residential Multi-Family 3 (RM-3); and

WHEREAS, Grantors intend to develop both the Property and Lot B with the Skyview Townhomes, a multi-family residential and commercial development, the proposed site plan for which is attached as Exhibit B, and which will be referred to herein as "Skyview Townhomes"; and

WHEREAS, Lynden Municipal Code (LMC) 19.23.020(5) 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 Skyview Townhomes (DRB Application #21-01); and

WHEREAS, as a condition of approval of residential development within the CSL zone, the Lynden Municipal Code Title 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 of the portion of Skyview Townhomes on the Property; 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 enter into this Agreement and for in consideration of the mutual covenants, duties and obligations herein set forth, and agree as follows:

ARTICLE I
LAND USE AND SETBACK REQUIREMENTS

- 1.1 Per Ch. 19.23 LMC, multi-family residential use is permitted on the Property as long as a minimum of sixty percent of the ground floor area of the entire mixed-use development is devoted to permitted commercial use. This calculation is based on the aggregate ground floor area of all buildings on the Property.
- 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 zone shall be permitted uses on the Property.
- 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 zoning on the Property shall remain unchanged for the duration of this Agreement.
- 1.6 As shown on Design Review Board application #21-01, the proposed gross floor area of first floor residential uses on the Property totals approximately 13,000 square feet. The 13,000 square feet may equal at most forty percent of the total gross floor area developed on the Property. As such, if the Property is developed with 13,000 square feet of gross floor area for residential uses, the commercial component must contain a minimum of 19,500 square feet of gross floor area on the first floor in order to fulfill the terms of this agreement.
- 1.7 The residential component may be developed before the commercial component. The commercial component may be incrementally developed to ultimately meet or exceed the required gross floor area.
- 1.8 The Property has existing structures along the Badger Road frontage which are primarily agricultural in nature. These may be remodeled for commercial use, subject to meeting all applicable City standards, including Design Review Board approval.

ARTICLE II
ACCESS AND TRANSPORTATION

- 2.1 The commercial development on the Property shall be accessed from East Badger Road, and not accessed through Lot B via Currant Street. 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. The residential development on the Property shall be accessed via Currant Street through Lot B.

- 2.2 Both the commercial and residential developments on 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 developments on the Property is limited to emergency apparatus, utility maintenance vehicles and/or heavy equipment needed to maintain and repair facilities in the easements.
- 2.4 Buildings constructed on the Property which have no first floor commercial component must meet the height, area, setback and bulk requirements assigned to RM3 development as described in LMC 19.17.060.

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 any owner, such owner shall be released from 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 as allowed by law; provided, the conditions of this Agreement shall remain in effect on the subdivided parcels. 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 Property, totaling up to 13,000 square feet of first floor area, may be constructed prior to the development and/or 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 Property.
- 4.3 All final walkways and trails must be constructed, per City specifications, on the Property prior to the final occupancy of last building on the Property. Temporary facilities, approved by the City, shall be provided prior to any form of occupancy for the first residential building on the Property.
- 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 first residential building on the Property.

ARTICLE V MISCELLANEOUS

- 5.1 This Agreement shall be effective for twenty (20) years from the date first above written.
- 5.2 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.
- 5.3 In the event the Grantors 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 Grantors.
- 5.4 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.
- 5.5 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.

- 5.6 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.
- 5.7 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 4th Street
 Lynden WA 98264

TMI Holdings, LLC PO Box 467
Halo Holdings, LLC 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.

- 5.8 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.
- 5.9 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.
- 5.10 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 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: _____