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Skagit County Auditor

FILED FOR RECORD AT THE
REQUEST OF/RETURN TO:
Hodgin Corner, LLC
103 N. Township
Sedro-Woolley, WA 98284

DEVELOPMENT AGREEMENT – PAYMENT OF GENERAL FACILITIES CHARGE

Grantor (s): HODGIN CORNER, LLC, a Washington limited liability company
Grantee (s): CITY OF SEDRO-WOOLLEY, a Washington municipal corporation
Abbreviated Legal: Parcel "G", Amended Gateway Binding Site Plan
Ptn SW, SE, S23, T35N, R4E, W.M.
Additional Legal on page(s): Exhibit A
Assessor's Tax Parcel Nos.: P135489; 8103-000-003-0000

THIS Development Agreement ("Agreement") is entered into by and between CITY OF SEDRO-WOOLLEY, a Washington municipal corporation ("the City") and HODGIN CORNER, LLC, a Washington limited liability company ("the Developer").

RECITALS

- A. The Washington State Legislature has authorized the execution of development agreements between local government agencies and a person having ownership or control of real property within its jurisdiction (RCW 36.70B.170(1)).
- B. A development agreement must set for the development standards and other provisions that will apply to, govern and vest the development, use and mitigation of the development of real property for the duration specified in the agreement.
- C. For purposes of this development agreement, "development standards" includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3).
- D. 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)).

E. The Developer owns an approximately 2.17 acre, undeveloped parcel in the Southwest ¼ of the Southeast ¼ of Section 23, Township 35 North, Range 4 East, W.M. (the "Property") which is legally described in Exhibit A attached hereto. The Developer plans to construct a multi-story development on the Property consisting of commercial units and a maximum of eight (8) residential units on the ground floor and sixty-eight (68) residential units on the upper floors.

F. The Developer has submitted a building permit for the multi-story development (the "Project"), setting forth the concept, build out and required development improvements.

G. Providing that all other permitting requirements are met, the City will approve the Building Permit application submitted by the Developer simultaneous with the execution of this Agreement (the "Approval").

H. Additional parking stalls will be necessary on an adjacent parcel unless other agreements, such as a shared parking agreement pursuant to Sedro-Woolley Municipal Code Section 17.21.080, are put in place. The additional parking will be built prior to building occupancy per agreement with the City, pending construction details if/when needed. The additional parking issue identified in this Section "H", is not subject to or affected by this agreement.

I. A general facilities charge will be charged by the City for connection of the Project to the City's sanitary sewer system in the amount of \$655,886.00 (the "Connection Fee").

J. City and Developer have agreed that the Connection Fee shall be payable in conjunction with occupancy of the Project, as provided in this Agreement.

K. It is the intent of the parties that this Agreement shall be binding upon the parties and their successors and assigns, including any successor and/or assign of Developer that takes fee simple title or beneficial possession of the whole of the Project.

NOW THEREFORE, in consideration of the mutual promises set forth here, the City and Developer enter into this Agreement.

AGREEMENT

1. DEFINITIONS

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

A. "City" means the City of Sedro-Woolley, a Washington municipal corporation.

B. "Developer" means Hodgin Corner, LLC, or its successors and assigns but not including any Lot Owner.

C. "Development" means the improvement of the Property for the purposes of completing the structures, improvements and facilities comprising the Project, including, but not limited to: grading, the construction of infrastructure and any public facilities or improvements related to the Project whether located within or outside the Property, and the installation of landscaping.

D. "Exhibits" means the following documents, which are attached to and incorporated herein by this reference:

Exhibit A- Legal Description of Property

E. "Approval" means the City's approval of the building permit.

F. "Project" means a multi-story building consisting of commercial spaces and eight (8) residential units on the ground floor, and sixty-eight (68) residential units on the upper floors. A total of 76 residential units will be constructed as part of the Project.

G. "Connection Fee" means the amount of \$655,886.00, representing the general facilities charge for the project as provided in Sedro-Woolley Municipal Code Section 13.16.035.

H. "Property" means the approximately 2.17 acre, undeveloped parcel in the Southwest ¼ of the Southeast ¼ of Section 23, Township 35 North, Range 4 East, W.M. (the "Property") which is legally described in Exhibit A attached hereto.

II. PAYMENT OF CONNECTION FEE

2.1 Calculation of Fee. The Connection Fee has been calculated as \$8,495.00 multiplied by 76 residential units, plus a charge for the commercial ground floor of \$10,266, for a total Connection Fee of \$655,886.00.

2.2 Timing of Payment. Developer shall make payment of a portion of the Connection Fee, as follows:

- (a) 5% of the Connection Fee, in the amount of \$32,794.30 to be paid at the time a Temporary Certificate of Occupancy or permanent Certificate of Occupancy is issued for the building, or any part thereof, whichever occurs first;
- (b) 45% of the Connection Fee, in the amount of \$295,148.70 to be paid within ninety (90) days of such date as a minimum of sixty-eight residential units (90% of the 76 residential units) are occupied, or within one year of the first anniversary of Section 2.2(a) above, whichever occurs first;
- (c) The remaining 50% of the Connection Fee, in the amount of \$327,943.00 to be paid on or before the first anniversary of the date of Section 2.2(b) above.

Developer shall promptly notify City, in writing, when occupancy of the Project reaches 68 occupied residential units as described in Section 2.2(b). Failure to promptly notify the City as required in this Agreement shall result in interest accruing at twelve percent (12%) per annum on outstanding balances owed and not timely remitted.

2.3 Administrative Fee. The Parties acknowledge that the City will incur additional costs tracking and monitoring the payments envisioned under this Agreement. In order to address said costs, Developer shall pay a one-time Administrative Fee of 1% of the total Connection Fee at the time payment is remitted pursuant to Section 2.2(a).

III. MISCELLANEOUS

3.1 Covenants Run with the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law.

3.2 Relationship of Parties. It is understood and agreed by the parties hereto that the contractual relationship created between the parties hereunder is that Developer is an independent party and not an agent of the City. Nothing contained herein or in any document executed in connection herewith shall be construed as making City and Developer joint-venturers or partners.

3.3 Notices. All notices under this Agreement shall be in writing and shall be effective when personally delivered or 48 hours after deposit in the United States mail first-class, as registered or certified mail, postage prepaid, return receipt requested, to the following representatives of the parties at the addresses indicated below:

To Developer: Hodgin Corner, LLC
 103 N. Township Street
 Sedro-Woolley, WA 98284

To City: City of Sedro-Woolley
 Attn: Planning Department
 325 Metcalf Street
 Sedro-Woolley, WA 98284

Either party may change its address by giving notice in writing to the other party.

3.4 Entire Agreement. This Agreement is complete and sets forth and contains the

entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

3.5 Amendments. This Agreement may only be amended in writing signed by the City and the Developer.

3.6 Recordation of Agreement. This Agreement and any amendment or termination to it shall be recorded with the Skagit County Auditor.

3.7 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable by a court of competent jurisdiction the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement and the rights and obligations of the parties that have been materially altered or abridged.

3.8 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of Washington without regard to the choice of law provisions of the laws of the State of Washington.

3.9 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

3.10 Singular and Plural. As used herein, the singular or any word includes the plural.

3.11 Assignment. The parties acknowledge that Development of the Project may involve sale, conveyance, or assignment of all or portions of the Property to third parties who will own, develop and/or occupy portions of the Property and buildings thereon. Developer shall have the right from time to time to assign or transfer all or any portion of its respective interests, rights, or obligations under this Agreement or in the Property to other parties acquiring an interest or estate in all or any portion of the Property, including a transfer of all interests through foreclosure (judicial or nonjudicial) or by deed in lieu of foreclosure. Consent by the City shall not be required for any assignment or transfer of rights pursuant to this Agreement.

In any such transfer or assignment, if the transferee or assignee agrees in writing to assume the obligations herein pertaining to the Property transferred or assigned, then the transferee or assignee shall be entitled to all interests and rights and be subject to all obligations under this Agreement, and Developer who has so transferred or assigned its rights, shall be thereupon be deemed released of liability under this Agreement for the property transferred or assigned, whether or not such release is expressly stated in such transfer or assignment.

3.12 No Third-Party Beneficiary. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have

any right of action based upon any provision of this Agreement.

3.13 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

3.14 Drafting of Agreement. None of the parties hereto shall be considered to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

3.15 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and shall constitute one and the same instrument. All Exhibits hereto are hereby incorporated by specific reference into this Agreement, and their terms are made a part of this Agreement as though fully recited herein.

3.16 Review and Consultation. The Parties acknowledge that they have been afforded an opportunity to consider this Agreement and the terms and conditions set forth herein, and that they have read and understood the terms of the Agreement and have been given an opportunity to consult with their respective legal counsel prior to executing this Agreement.

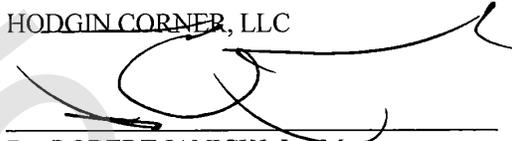
3.17 Voluntary Agreement. The Parties hereby represent and acknowledge that this Agreement is given and executed voluntarily and is not based upon any representation by any of the Parties to another Party as to the merits, legal liability, or value of any claims of the Parties or any matters related thereto.

3.18 Non-Enforcement not Waiver. Failure by any one of the parties to enforce this entire Agreement or any provision of it with regard to any provision contained herein shall not be construed as a waiver by that party of any right to do so.

3.19 Authority. The undersigned covenant and represent that they are fully authorized to enter into and to execute this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this 27th day of May, 2021.

HODGIN CORNER, LLC



By: ROBERT JANICKI, Its: Manager

APPROVED:

CITY OF SEDRO-WOOLLEY



JULIA JOHNSON, Mayor

Attest:



DOUG MERRIMAN, Director of Finance

Approved as to Form:



By: NIKKI THOMPSON, City Attorney

STATE OF WASHINGTON }
COUNTY OF SKAGIT } ss.

I certify that I know or have satisfactory evidence that ROBERT JANICKI is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the MANAGER of HODGIN CORNER, LLC, a Washington limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



Dated: 5/20/2021

Chelsea Jepson
(Signature)

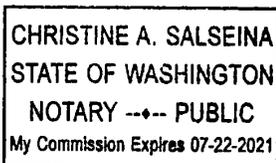
NOTARY PUBLIC

CHELSEA JEPSON
Print Name of Notary

My appointment expires: 3/20/23

STATE OF WASHINGTON }
COUNTY OF SKAGIT } ss.

I certify that I know or have satisfactory evidence that JULIA JOHNSON is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the MAYOR of the CITY OF SEDRO-WOOLLEY a Washington municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



Dated: 5/27/2021

Christine A. Salseina
(Signature)

NOTARY PUBLIC

Christine A. Salseina
Print Name of Notary

My appointment expires: 07-22-2021

Exhibit "A"
Legal Description

Parcel "G" of the Amended Gateway Binding Site Plan, approved January 28, 2021 and recorded March 9, 2021 under Skagit County Auditor's File Number 202103090001.

Being a portion of the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$, Section 23, Township 35 North, Range 4 East, W.M.

Situate in Skagit County, Washington