

**ANNEXATION
AND DEVELOPMENT AGREEMENT – FIRST AMENDMENT**

This Agreement is made and entered into between the Town of Woodway (“the Town”), a non-charter, optional municipal city in Snohomish County, Washington, and Point Wells LLC (“Developer”), a Washington Limited Liability Company, for the purpose of amending that certain Annexation and Development Agreement (“the Development Agreement”) entered into between the parties under the provisions of RCW 36.70B.170 et. seq. and dated August 10, 2015.

~~Whereas, the Town of Woodway (the “Town”) is a non-charter, optional municipal code city in Snohomish County, Washington; and~~

Whereas, ~~Point Wells LLC (“Developer”)~~ owns certain property located in unincorporated Snohomish County (the “Property”) that is bordered to the north, east and south by the Town, the legal description of which is set forth on Exhibit A, attached hereto and incorporated herein by this reference as if set forth in full; and

Whereas, subsequent to execution of the Development Agreement, the Property was annexed to the Town on July 11, 2016; and

Whereas, the Town, subsequent to the execution of the Development Agreement, also amended the zoning for the property as was agreed to be considered for pre-annexation zoning under Section A.1 of the Development Agreement; and

Whereas, the Developer has yet to complete the environmental impact statement (“EIS”) required for the proposed development of the Property and has yet to submit a complete subdivision application consistent with the provisions in Section B. of the Development Agreement; and

Whereas, the Developer now desires to sell the property to a third party who desires to immediately proceed with development of a single-family home on Parcel A of the Property and to limit the proposed subdivision development to Parcel B of the Property; and

Whereas, the Town Council after consideration and public hearing believes the sale to the third party is in the public interest and beneficial to the Town; and

Whereas, the Town and Developer (the “Parties”) desire to amend the Development Agreement, as reflected in this amendment (this “Agreement”).

~~Whereas, Developer wishes to subdivide and develop the Property in a manner preliminarily reflected on the site plan attached as Exhibit B (“Site Plan”), subject to the restrictive conditions identified on the Site Plan, and annex the Property into the Town (the “Annexation”), provided certain conditions are met; and~~

Whereas, the Town is willing to process a preliminary plat application (“Preliminary Plat”) and effectuate the Annexation under certain conditions; and

Whereas, RCW 36.70B.170 authorizes the Town to enter into development agreements for property outside of Town’s corporate boundaries as part of an annexation agreement (this “Agreement”).

Now, therefore, in consideration of mutual benefits of the terms and conditions herein, Developer and the Town (the “Parties”) agree that the Development Agreement is amended to read as follows:

A. THE TOWN AGREES TO THE FOLLOWING:

~~1. The Town agrees to consider, pursuant to RCW 35A.14.330, pre-annexation zoning and changes to the Town’s development regulations applicable to the Property to provide for the following:~~

~~1.1. The Property would be zoned for detached, single family residential development pursuant to Town’s UR Urban Restricted Zone (“UR Zone”), as contained in the Town’s Municipal Code (“WMC”) Chapter 14.36.~~

~~1.2. The UR Zone applicable to the Property would provide for no more than thirty six (36) detached, single family residences, with a minimum lot size of 7,000 square feet, each configured so that a fifty foot diameter circle shall fit within boundaries of each lot. The actual number of residential lots, up to the thirty-six (36) lot maximum, will be determined through the Town’s subdivision and environmental review process.~~

~~1.3. WMC Chapter 14.36 would be amended to provide, within the UR Zone, up to a fifteen percent (15%) reduction of the standard buffer width if the buffer and associated aquatic critical area are located in a separate tract that is dedicated to the Home Owners Association; and up to a fifteen percent (15%) reduction of the standard buffer width if the buffer and associated aquatic critical area are enclosed in fencing approved by the Town; but in no case shall the total reduction provided by this amendment exceed twenty-five percent (25%).~~

~~1.4. WMC Chapter 14.36 would be amended to provide, within the UR Zone, for a maximum building height of twenty five (25) feet, as measured by one of the following:~~

~~1.4.1. As provided in WMC 14.08.020; or~~

~~1.4.2. The vertical distance measured from the mid point of the top of the curb fronting individual building lots to the highest elevation point of the roof or parapet wall; or~~

~~1.4.3. The vertical distance from the average final grade to the highest point of a flat roof, or to the deck line of a mansard roof, or to the average height of the highest gable of a pitch or hip roof. Calculation of the average final grade shall be made by drawing the smallest rectangle possible that encompasses the entire building footprint and averaging the elevations at the midpoint of each side of the rectangle. Fill shall not be~~

~~used to raise the average final grade more than five feet above the original grade for any dwelling located within fifty (50) feet of residential properties that are outside of the UR Zone.~~

~~2.1.~~ The Town agrees that review and approval of the Preliminary Plat shall be in accordance with the wetland and stream classifications shown on the Site Plan and the following prescriptive standards:

~~2.1.1.1.~~ Permanent impacts to wetlands and streams and their buffers shall be allowed and mitigated as shown on the Site Plan.

~~2.2.1.2.~~ Temporary impacts to wetland and stream buffers shall be allowed provided that the impacted area is restored to its pre-existing condition.

~~2.~~ The Town agrees that Developer shall be allowed to make “Minor Adjustments” to lot boundaries, open space area boundaries and right-of-way locations as shown on the Site Plan during the Preliminary Plat review period, provided, 1) that the adjustments are in accordance with this Agreement and the WMC, 2) changes or shifts to property lines do not exceed ten feet without the Town’s prior written consent, and 3) there are no modifications to the points of ingress and egress to the Property without the Town’s prior written consent.

~~3.~~ The Town agrees that Developer shall have the option, pursuant to this Agreement, to develop Parcel #27033500303100 (“Parcel A”) as one single-family residential lot (“Single-family Option”), without subdivision of Parcel A, and without the submittal and processing of the Preliminary Plat for Parcel #27033500302900 (“Parcel B”). In the event Developer exercises the Single-family Option, Developer shall grant a public infrastructure and right-of-way easement to the Town for future development of public infrastructure (including, but not limited to, water, sewer, stormwater and Road A). The Town may require Developer to construct, at Developer’s expense, such public infrastructure at the time of final plat or development of Parcel B, or thereafter. The construction of Road B, the Overlook Park and the Park, and the application of the provisions of Section B.3 of this Agreement to Parcel A, will not be required if Developer exercises the Single-family Option.

~~4.~~ The Town agrees that Developer’s obligations pursuant to this Agreement shall satisfy all required traffic, stormwater, park and open space mitigation fees or charges imposed by the Town. No additional improvements, mitigation fees or charges for the traffic, park and open space obligations shall be assessed at final plat approval or building permit approval unless authorized by law.

B. DEVELOPER AGREES TO THE FOLLOWING:

~~1.—Except as provided in Section A.4 of this Agreement, Upon execution of this Agreement, Developer agrees to provide all required executed documents pertaining to any and all annexation petitions related to the Property pursuant to this Agreement, provided that such documents do not hinder or in anyway impair Developer’s ability to continue processing a proposed subdivision of the Property through Snohomish County prior to the completion of the Annexation.~~

~~2.1.~~ Developer shall submit to the Town no later than sixty (60) days after the Town Council approves the changes identified in Section A.1 of this Agreement, agrees to submit to the Town by December 31, 2023, a Preliminary Plat application for subdivision and development of the Property consistent with this Agreement and the Site Plan, or an amended site plan if the Single-family Option is exercised. An amended site plan for a subdivision on Parcel B shall be consistent with this Development Agreement. The Preliminary Plat application shall include a preliminary plat map, geotechnical report, traffic analysis, wetland report, wetland mitigation plan, drainage report, preliminary utility layouts, and preliminary road plans.

~~3.2.~~ Developer agrees to use its best efforts to achieve approval of the Preliminary Plat by December 31, 2025 ~~November 30, 2016~~, exclusive of any appeals.

~~4.3.~~ Developer agrees to create a ~~Home Owners~~Homeowners' Association (“HOA”) for the approved subdivision, the CC&Rs for which shall be approved by the Town as part of the preliminary plat process.

~~4.1.3.1.~~ Except as provided in Section A.4 of this Agreement, Aall open space tracts shall be deeded to the HOA upon final approval of the plat.

~~4.2.3.2.~~ The HOA shall be responsible for vegetation maintenance, planting and removal within the open space tracts in accordance with standards established by the Town.

~~4.3.3.3.~~ The HOA shall have the right to trim and top trees located within the open space tracts, provided that such activities are conducted in coordination with the Town and approved in advance by the Town in accordance with the recommendation of an arborist and a geotechnical engineering approved by the Town and licensed in the State of Washington. The HOA also shall have the right to remove hazard trees pursuant to the WMC.

~~5.4.~~ Developer grants to the Town an exclusive option to purchase for \$1.00 all open space tracts, or any portion thereof, at any time following the Town’s final approval of the final plat for the Property. In the event of such a purchase, the rights of the HOA contained in Section ~~B4B.3.3~~ of this Agreement shall remain in effect, but the obligations of Section ~~B4B.3.2~~ shall be borne by the Town.

6. Developer agrees to the roadway standard attached as Exhibit C.

~~7.6.~~ Prior to final plat approval, Developer agrees to improve, to the standards established by the Town but not to exceed the standards contained in Exhibit C, 238th Street SW from the Property's eastern boundary to the intersection of Woodway Park Road, provided that all improvements are located within the Town's right-of-way.

~~8.7.~~ Stormwater

~~8.1.7.1.~~ Developer shall be responsible for all costs related to the installation of stormwater infrastructure located on the Property.

~~8.2.7.2.~~ Developer agrees to provide to the Town, prior to final plat approval, stormwater conveyance capacity improvements from the southwest corner of the Property to Puget Sound to discharge stormwater from i) the ~~Annexation area~~Property, ii) the intersection of 238th Street SW and Woodway Park Road, iii) the western end of Woodhaven Place, and iv) the Town's existing stormwater outfall located adjacent to the southwest corner of the Property ("Additional Stormwater Improvements"). Developer shall be responsible for all costs associated with the construction of the Additional Stormwater Improvements, including, replacement, upsizing, extension or other modifications to the Town's existing stormwater facilities, provided that the Additional Stormwater Improvements are located no more than 700 feet north and 400 feet south of the King-Snohomish boundary and the improvements are limited to gravity flow pipelines terminating in a single outfall location. In the event Developer exercises the Single-family Option provided in Section A.4 of this Agreement, Developer agrees to provide to the Town, prior to occupancy of any structure on Parcel A, stormwater conveyance capacity improvements, as approved by the Town, to Puget Sound to discharge stormwater from i) the intersection of 238th Street SW and Woodway Park Road, and ii) the western end of Woodhaven Place.

~~8.3.7.3.~~ The Town shall be solely responsible for the acquisition of all properties or easements necessary to complete the Additional Stormwater Improvements (the "Stormwater Property") if the Developer is not able to secure and dedicate to the Town the Stormwater Property by December 31, ~~2015~~2025. Developer shall reimburse the Town for seventy percent (70%) of the costs incurred by the Town to secure the Stormwater Property, not to exceed Developer's proportional share as calculated based on the Town's non-reimbursable expenses limit of two hundred and fifty thousand dollars (\$250,000.00) (the amount in excess of Developer and Town total share limits, the "Additional Costs"). If the Town elects not to pay the Additional Costs, then Developer shall have the right, in its sole discretion, to pay the Additional Costs or withdraw its Preliminary Plat application and terminate the Agreement. ~~Upon termination of this Agreement pursuant to this Section 8.3, the Town shall terminate the Annexation.~~ Developer shall not be obligated to make any payments under this Section ~~8.3~~ until the Town has secured use and possession of the Stormwater Property and Developer's payments thereafter shall be due within fourteen (14) days of invoicing. The Town shall have secured

rights to utilize the Stormwater Property for construction of the Additional Stormwater Improvements ~~upon~~ within 90 days of approval of the Preliminary Plat, exclusive of any delay resulting from litigation or appeals.

~~8.4.7.4.~~ 8.4.7.4. If this Agreement is terminated prior to approval of the Preliminary Plat, then the Town shall grant to Developer the non-exclusive right to utilize any Stormwater Property acquired by the Town pursuant to Section 87.3 above for stormwater infrastructure improvements necessary to serve the Property, and Developer shall grant to the Town a non-exclusive fifteen (15) foot wide easement for stormwater improvements over the Property, in a route to be mutually agreed by the Parties. The Town shall have the option for a period of ninety (90) days following such termination to refund any payments made by Developer to the Town under Section 87.3 and terminate the rights provided the Parties under this Section 87.4.

9.8. Prior to final plat approval, Developer agrees to construct a pedestrian trail with a foot-bridge over Stream E, as shown on the Site Plan, to provide pedestrian circulation and connectivity. Upon completion of the trail, it shall be dedicated to the Town.

~~10.9.~~ 10.9. Developer agrees to dedicate and/or transfer to the Town, upon final approval of the plat, all property or easements owned by Developer related to utility, pedestrian and vehicular access for/to the Property, excluding the potential emergency access connection identified on the Site Plan (the "Potential Emergency Access"). The Potential Emergency Access shall be placed in a separate tract, dedicated to the Town at Final Plat Approval, and encumbered by an exclusive easement benefiting Developer. The easement shall be fully assignable to a third party, and it shall allow the easement holder to have full unrestricted use of the tract solely for emergency vehicles, non-motorized vehicles, and pedestrians. If Developer sells, transfers or otherwise receives financial consideration from a third party for rights related to the Potential Emergency Access, Developer agrees to pay the Town fifteen percent (15%) of such proceeds, not to exceed the amount the Town has paid in non-reimbursable expenses under Section 87.3 of this Agreement.

~~11.10.~~ 11.10. Developer agrees not to participate in any litigation or challenge to the ~~annexation of the Property by the Town or~~ approval by the Town of the Preliminary Plat, provided the Town is in compliance with this Agreement. ~~Further, Developer agrees not to sign an annexation petition or in any way participate in the annexation of the Property by another jurisdiction without the prior written consent of the Town.~~

C. GENERAL CONDITIONS:

1. The Parties agree that the Preliminary Plat will be reviewed pursuant to the Town's development regulations in the Town's Municipal Code ("WMC"), as applicable to the Property on July 11, 2016 amended pursuant to this Agreement, including the Town's Environmentally Critical Areas ordinance. All ~~Annexation and~~ Preliminary Plat application and review fees assessed by the Town

shall be in accordance with the WMC and applicable law, and such assessment shall not exceed ~~seventy five~~seventy-five thousand dollars (\$75,000.00). The maximum assessment is based on a mitigated determination of non-significance and does not include costs associated with the scoping or review of an Environmental Impact Statement (EIS). The Town has determined that an EIS is required for the subdivision of the Property. However, pursuant to a Letter Agreement, dated March 13, 2020, Developer has elected to suspend the processing of the EIS. Developer has not restarted the EIS within the timeframe provided in the Letter Agreement. As a result, the Town has the right to terminate this Agreement.~~If the Town makes a determination that an EIS is required, then the Developer shall have the right, in its sole discretion, within seven (7) days following such determination, to withdraw its Preliminary Plat application and terminate this Agreement or proceed with the EIS and be responsible for all associated review fees assessed by the Town. Upon termination of this Agreement pursuant to this Section C.1, the Town shall terminate the annexation process provided under this Agreement.~~

2. Developer shall have the right, in its sole discretion and within fourteen (14) days of such event, to withdraw its Preliminary Plat application and terminate this Agreement if i) ~~the Town Council fails to approve the changes identified in Section A.1 of this Agreement by September 1, 2015, or ii) the Preliminary Plat as recommended for approval by the Town's Staff (the "Staff Report") contains less than 34 lots or less than 5 lots located along Road B~~ if both Parcel A and Parcel B are included in the subdivision application, or less than 29 lots if the Single-family Option for Parcel A is exercised and on Parcel B is subdivided, or iii) ~~the Staff Report contains a Potential Emergency Access that is not substantially equivalent to the Site Plan, or~~ the Staff Report is not finalized by November 30, 2016, or v) the Town Council fails to approve the Preliminary Plat in accordance with Section C.34 by December 31, 2016 (the December 31, 2016 deadline shall be extended by six months if an appeal of the Annexation is filed). ~~Upon termination of the Agreement pursuant to this Section C.2, the Town shall terminate the annexation process provided under this Agreement.~~
3. ~~Following the execution of this Agreement, the Town may begin the Annexation process, provided, however, that the effective date of the Annexation shall be i) a minimum of fourteen (14) days after the Staff Report is finalized and ii) concurrent with the Town Council's approval of the Preliminary Plat which shall occur in accordance with Section C.4.~~
4. ~~3.~~ Any change to the Preliminary Plat as contained in the Staff Report that would i) reduce the number of lots, the building area or the allowable building height, or ii) substantially alter the Potential Emergency Access (i and ii together, the "Plat Changes") must be approved by the Town Council at least seven (7) days prior to ~~the effective date of the Annexation and~~ final Council approval of the Preliminary Plat. Developer shall have the right to review and concur with any Plat Changes. Developer's review period shall not exceed five (5) days following Council approval of such Plat Changes, and Developer's concurrence shall not be unreasonably withheld.
5. ~~4.~~ This Agreement, including but not limited to the rights and obligations contained herein, and the option identified in Sections B.54, B.8-7 and B.10-9 above shall constitute covenants running with

the Property and shall be binding on the Parties, and their successors and assigns. This Agreement shall be recorded with the Snohomish County Auditor's Office.

~~6.5.~~ This Agreement is for the benefit of the Parties hereto and shall not confer rights on any third party.

~~7.6.~~ Venue for any lawsuit challenging the provisions of this Agreement shall be in Snohomish County, Washington.

~~8.7.~~ The Parties jointly participated in the preparation of this Agreement. As a result, the Parties agree that ambiguities should not be attributed to either party.

~~9.8.~~ All time limits set forth herein are of the essence. The Parties agree to perform all obligations under this Agreement in good faith and with due diligence.

~~10.9.~~ In addition to any other remedy provided by law or this Agreement, the terms of this Agreement may be specifically enforced by a court of competent jurisdiction.

~~11.10.~~ In any suit or action seeking to enforce any provision of this Agreement, each party shall be responsible for its own attorney's fees and costs.

~~12. The Town shall be entitled to complete the Annexation without conditions in the event Developer fails to comply with Sections B.2 or B.11.~~

~~13.11.~~ Nothing in this Agreement shall be construed to restrict the Town's authority pursuant to RCW 36.70B.170(4).

~~12.~~ If the Town is not able to meet the requirements of Section C.2.i or C.2.iii due to environmental constraints, the Town shall be granted ninety (90) days ~~(but no later than by November 30, 2016)~~ to meet the requirements of Section C.2.i or C.2.iii, including, but not limited to, by changing the requirements of Section A.1.2 of the Agreement to accommodate a Site Plan revision, provided that the minimum lot size shall not be less than 5,000 square feet, each configured so that a forty-foot diameter circle shall fit within boundaries of each lot.

~~14.13.~~ This Agreement shall terminate on July 31, 2032, at which point any and all rights held by the Parties hereunder, shall terminate, except that Developer shall grant to the Town a non-exclusive fifteen (15) foot wide easement for construction and maintenance of stormwater improvements over the Property, in a route to be mutually agreed by the Parties.

Signed this _____ day of July ~~2015~~2022

Developer

Town of Woodway

Mayor ~~Carla Nichols~~Michael S. Quinn

Attest:

City Clerk

Form Approved:

Town Attorney

Exhibits:

- A. Legal Description
- B. Site Plan
- C. Roadway Standards