

AFTER RECORDING, RETURN TO:

BAILEY, DUSKIN, PEIFFLE & CANFIELD, P.S.
P.O. BOX 188
ARLINGTON, WA 98223



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07/10/2009 9:52am \$46.00
SNOHOMISH COUNTY, WASHINGTON

DEVELOPMENT AGREEMENT

GRANTOR(S): **Smokey Point Investments, LLC**

GRANTEE(S): **City of Arlington**

LEGAL (Abbrev.): **Section 28, Township 31 North, Range 5 East, WM**

ASSESSOR'S TAX #: 31052800205500

The City of Arlington, a Washington municipal corporation ("City"), and Smokey Point Investments LLC, do enter into the following agreement to promote the development of certain real property located within the City, upon the following terms and conditions ("Agreement").

1.0 RECITALS

1.1 Location of Property. Applicant warrants that they control certain real property located at 3602 166th Place NE, Arlington (the Property).

1.2 Grantor has improved the storm drainage system of the Property as part of the development project.

2.0 STORM DRAINAGE SYSTEM

2.1 GUARANTEES.

This agreement serves as an acceptable method of guarantee in lieu of a maintenance bond for the construction of the stormwater drainage system. If the stormwater drainage system is negatively impacted by high groundwater levels during wet seasons, has excessive groundwater inflow, or fails to meet the flow control requirements in accordance with the Department of Ecology Stormwater Management Manual for Western Washington (1992 edition) within two (2) years after the agreement is recorded by the Snohomish County Auditor's Office, the Grantor shall redesign, modify and repair

the stormwater drainage system to the reasonable satisfaction of the City at the Grantor's sole expense. The stormwater drainage system may be modified by using low impact development practices, expansion of the detention basin, raising the embankment, or other alternatives approved and permitted by the City. In the event the Grantor believes that the City is unreasonably requesting changes to the system, Grantor shall have the right to submit that issue to binding arbitration with an engineer familiar with stormwater management issues. In the event that the parties are unable to agree to an engineer to act as arbitrator, the parties shall utilize _____ as arbitrator. The arbitrator's expenses shall be borne by the substantially prevailing party as determined by the arbitrator at arbitration.

In order to determine the seasonal high groundwater elevation the Grantor shall monitor the groundwater elevation each month during the wet season for a period of 2 years using acceptable methods outlined in the Department of Ecology Stormwater Management Manual for Western Washington (1992 edition). The highest groundwater elevation recorded during this 2-year period will be deemed the seasonal high groundwater elevation. The monitoring must take place within 20 feet of the detention facility but cannot be within the detention facility. The Grantor must provide the results of groundwater monitoring to the City by May 31 of each of the two years.

Once the City has determined that the stormwater drainage system is constructed in compliance with the Department of Ecology Stormwater Management Manual for Western Washington (1992 edition) and applicable City codes, the Grantor must submit As-built drawings to the City for approval.

2.2 Access. The Grantor hereby conveys to the City, its employees, agents, and contractors access to the Property for the purpose of monitoring and observing the performance of the stormwater drainage system.

2.3 Liability. The Grantor agrees to indemnify, defend and hold the City harmless from any and all claims against the City for any harm, loss or damage relating to the operation and monitoring of the stormwater drainage system except for claims arising from the City's sole negligence.

3.0 GENERAL PROVISIONS

3.1 Recording. This Agreement shall, when approved by the City Council and executed by the parties hereto, be filed as a matter of public record in the office of the Snohomish County Auditor and shall be in the nature of a covenant running with the property. It is the intent to have this Agreement, so long as it is in force, to be considered, interpreted, and regarded as a covenant running with the land as to Applicant's Property.

3.2 Applicable Law. This Agreement shall be governed by and be interpreted in accordance with the laws of the State of Washington.

3.3 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each party hereto. The parties acknowledge that Applicant shall have the right to assign or transfer all or any portion of the interests, rights and obligations under this Agreement to other parties acquiring an interest or estate in the property. Consent by the City shall not be required for any transfer or rights pursuant to this Agreement.

3.4 Severability. If any provision of this Agreement is determined to be unenforceable or invalid by a court of law, then this Agreement shall thereafter be modified to implement the intent of the parties to the maximum extent allowable under law.

3.5 Modification. This Agreement shall not be modified or amended except in writing signed by the City Administrator and Applicant or their respective successors in interest.

3.6 Merger. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof. There are no other agreements, oral or written, except as expressly set forth herein.

3.7 Duty of Good Faith. Each party hereto shall cooperate with the other in good faith to achieve the objectives of this Agreement. The parties shall not unreasonably withhold requests for information, approvals or consents provided for, or implicit, in this Agreement.

3.8 Disclosure Upon Transfer. Applicant agrees that in the event of a proposed sale, gift, transfer, segregation, assignment or devise of the Property, Applicant shall disclose the existence of this Agreement to the interested party.

3.9 No Presumption Against Drafter. This Agreement has been reviewed and revised by legal counsel for all parties and no presumption or rule that ambiguity shall be construed against the party drafting the document shall apply to the interpretation or enforcement of this agreement.

3.10 Notices. All communications, notices and demands of any kind which a party under this Agreement is required or desires to give to any other party may be either (1) delivered personally, (2) sent by facsimile transmission with an additional copy mailed first class, or (3) deposited in the U.S. mail, certified mail postage prepaid, return receipt requested, and addressed as follows:

If to the City:

City of Arlington

GRANTOR:

Smokey Point Investments, LLC

Date 12/10/08

By: [Signature]
Its: Managing Member

Date _____

By: _____
Its: _____

CITY OF ARLINGTON:

Date _____

By: Margaret Larson
Mayor

Approved as to Form:

[Signature]
City Attorney

238 North Olympic Avenue
Arlington, WA 98223

Smokey Point Investments, LLC
9623 32nd Street SE, Bldg. D112
Everett, WA 98291

If to the Grantor:

Notice by hand delivery or facsimile shall be effective upon receipt. If deposited in the mail, notice shall be deemed received 48 hours after deposit. Any party at any time by notice to the other party may designate a different address or person to which such notice shall be given.

IN WITNESS WHEREOF, the undersigned have set their hands the day and date set out next to their signatures.