

AGREEMENT REGARDING CONDITIONS OF ANNEXATION

THIS AGREEMENT, made and entered into this 9 day of JANUARY, 2002 by and between the CITY OF SEDRO-WOOLLEY, a Washington Municipal Corporation, hereinafter referred to as "City", and:

- 1. S-W LAND COMPANY, LLC, A Washington Limited Partnership, and THE FOXHALL LAND COMPANY, LLC, A Washington Limited Partnership, as Tenants in Common;
- 2. MARY THERESE JANICKI McGOFFIN and LISA JANICKI, as Co-Trustees for THE JANICKI FAMILY TRUST dated May 1, 1988;
- 3. JOHN A. LANGE and GAYLE LANGE, Husband and Wife;
- 4. GALEN KINDRED and SONDRRA KINDRED, husband and wife;
- 5. DUKES HILL, LLC, a Washington Limited Liability Company;

hereinafter referred to jointly and severally as "Petitioner",

WITNESSETH:

WHEREAS, the Petitioner has requested that the City of Sedro-Woolley annex that real property legally described on the attached Exhibit A, shown on the map attached as Exhibit B for illustrative purposes, and has plans and intentions of developing a portion of the annexed property for residential development; and

WHEREAS, said property is presently contiguous to the City of Sedro-Woolley, but presently not a part thereof; and

WHEREAS, it is the intent of the Petitioner to complete annexation proceedings and for incorporation of said area into the City of Sedro-Woolley; and

WHEREAS, the City has determined that there are certain impacts as a result of this annexation, apart from whether the development is completed, and that the City has an obligation to ensure that the property is developed to the densities required by the Growth Management Act, related decisions of the Western Washington Growth Management Hearing Board (WWGMHB), and the Sedro-Woolley Comprehensive Plan; and

WHEREAS, the City Council, functioning in its legislative capacity, will annex the real property at issue if the Petitioner agrees to make certain infrastructure improvements as set forth herein, regardless of future development of the property being annexed; and



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WHEREAS, the Petitioner has agreed to make such improvements as a condition of annexations, to induce the City Council to approve the annexation process; and

WHEREAS, the Petitioner voluntarily agrees to enter into this agreement to provide for certain improvements as specified herein, all as a condition of annexation, to induce the City Council to complete the annexation process,

**NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**1. Completion of Annexation Process.** The Petitioner will file with the City all documents necessary to complete the annexation process, as required by Chapter 35.13 RCW, including the annexation of other lands as deemed necessary by the City Council and Washington State Boundary Review Board.

**2. Development of Annexed Area to City Standards.** The Petitioner agrees that the real property described on the attached Exhibit A in which Petitioner has any interest whatsoever shall be developed at a minimum average density of four (4) units per acre, as contemplated by the decisions of the WWGMHB and Sedro-Woolley Comprehensive Land Use Plan, within five (5) years of annexation. The Petitioner agrees to apply for subdivision and development permits for property within the annexed area in which it has an interest, consistent with such densities, and applicable City ordinances, within five (5) years of annexation.

The Petitioner agrees that prior to approval of Petitioner's application for any permits for fill and grade or construction of any buildings or structures, or improvements, including subdivision and infrastructure improvements, on the real property described on the attached Exhibit A in which Petitioner has any interest whatsoever, Petitioner will execute a Development Agreement with the City of Sedro-Woolley pursuant to RCW Ch. 36.70B and such other basis as provided by law, which complements this Annexation Agreement.

**3. Improvements.** In addition to any other improvements subsequently determined to be necessary as a condition of development of any portion of the annexed area owned by Petitioner and described on the attached "Exhibit A", and not in lieu thereof, Petitioner agreed to completely perform the obligations set forth in this Section within five (5) years of annexation of the real property described on the attached Exhibit A, or upon development or subdivision of the real property described in Exhibit A in which it has an interest, whichever is sooner:

- a. Convey or provide for the conveyance of two acres of real property to the City for use as a park in the annexed area, said property to be adjacent to a public



street and reasonably acceptable to the City Planner, to the satisfaction of the City, in the approximate location identified in *Exhibit C* attached hereto.

- b. Convey or provide for the conveyance of 12,000 SF of real property located on a public right-of-way, with all infrastructure in place to the City's satisfaction, to the City for use as a fire station in the annexed area, said property to be in a location reasonably acceptable to the Sedro-Woolley Fire Chief, to the satisfaction of the City. (The City shall construct any future building to reasonably conform to architectural appearance standards compatible with adjacent residential development, at Petitioner's request, if the Petitioner shall pay any increase in construction cost due to this standard), in the approximate location identified in *Exhibit C* attached hereto.
- c. Convey or provide for the conveyance of street right-of-way for an East-West arterial collector between Fruitdale Road and Highway 9, in such location on real property presently owned or to be acquired by Petitioners as is reasonably acceptable to the City Engineer, to the satisfaction of the City, in the approximate location identified in *Exhibit C* attached hereto.
- d. Convey or provide for the conveyance of a North-South walking trail right-of-way from McGarigle Street to the North end of the development, in such location and design as approved by the City Planner (which approval shall not be unreasonably withheld), to the satisfaction of the City, in the approximate location identified in *Exhibit C* attached hereto.

(The Sedro-Woolley City Planner may attach Exhibit C to this agreement after signatures.)

**4. Sewer improvements.** Petitioner agrees to pay or provide for to payment of \$60,000.00 to the City prior to annexation, towards sewer improvements for upgrading a collapsed main line located on Township Street, the scope of said work to be determined by the City Engineer. Provision for payment may include a bond, security account, letter of credit, or agreement secured by a deed of trust acceptable to the City Attorney.

**5. Credit Towards Development Impacts.** Upon performance of the obligations identified above, the Petitioner shall receive a credit as follows against City impact fees for planned developments SWMC Chapter, at the time of application for building permits:

- a. For conveyance of land and improvements in paragraph 3(b), the Petitioner shall receive a credit against fire impact fees of \$30,000.00 for the lot.
- b. For conveyance of the land in paragraph 3(a), a credit of two (2) acres towards parkland for any development as computed pursuant to City ordinances on the date of application for subdivision.

This credit may only apply to construction or development activity in property owned by Petitioner in the annexed area described in Exhibit A. The Petitioners signing below shall provide for allocation of the credit among them, and shall provide appropriate documentation to the City of such allocation prior to application of the credit prior to development.

The Petitioner shall receive no credit (against impact fees or otherwise), and waives the same, for any other item in *Section 3 and 4* not specified in this *Section 5*.

Except as herein provided, the credit shall be subject to the requirements of SWMC Ch. 15.60.

**6. Successors Bound.** This agreement shall be a covenant running with the above-described property owned by Petitioners or in which Petitioners have an interest, and shall bind the heirs, executors, assigns and successors in interest of the undersigned to the real property described herein, and shall constitute an obligation which may be specifically enforced against the parties and their successor's in interest, in addition to any other remedy allowed by law. The obligations of the Petitioner set forth in this agreement are cumulative, and in addition all other obligations and regulations, and not in lieu thereof.

The obligations of this agreement are in addition to the requirements of the Sedro-Woolley development code, environmental regulations, and other statutes and regulations, and not in lieu thereof. Nothing in this agreement shall relieve or excuse the Petitioner from performing any obligation or condition of subdivision and development of the annexed property in effect at the time of application for development activity or land use action, except as allowed as a credit *by Section 5*. In the development process, the Petitioner shall comply with all statutes, ordinances, regulations, and discretionary requirements relating to the development allowed by law.

**7. Litigation – Mediation - Arbitration.** Should any court action be brought to enforce any terms of this agreement, to defend the rights of either party hereto or in the event of

any controversial claim or dispute arising out of, or relating to this agreement or the method and manner of performance thereof or the breach thereof, the prevailing party shall be entitled, in addition to any other relief, a reasonable sum as litigation expenses. In the event neither party wholly prevails, the party that substantially prevails shall be awarded a reasonable sum as litigation expenses. Venue of an action to enforce the terms and conditions of this agreement shall be in Skagit County, Washington.

In the event that the parties are unable to agree upon the location of parkland, right-of-ways, or the fire station, the parties shall participate in mediation with a neutral mediator agreed upon by the parties or appointed by the presiding judge of the Skagit County Superior Court.

If the location of parkland, right-of-ways, or the fire station is not resolved by agreement or mediation, a neutral arbitrator selected by agreement of all parties shall locate these facilities, or if the parties cannot agree on an arbitrator, then one shall be selected by the presiding judge of the Skagit County Superior Court. The parties shall proceed pursuant to the arbitration rules of the American Arbitration Association. In determining these issues, the arbitrator shall give due weight to the terms of this agreement and the reasonable engineering, financial, traffic safety and fire prevention needs of the City.

The parties shall each pay 1/6<sup>th</sup> the cost of mediation and arbitration, and each pay their own costs and attorney fees in such a proceeding. The arbitrator's decision shall be enforceable as a judgment in Superior Court.

All issues other than the location of parkland, right-of-ways, or the fire station shall be decided by the Superior Court.

**8. In Contemplation of Annexation.** This agreement is conditioned upon annexation of all or substantially all of the real property described on the attached Exhibit A. It shall be void and of no effect if the City shall fail or refuse to annex said property. Provided further, nothing in this agreement shall bind the City Council of the City to annex said property, nor obligate the City to approve the subdivision and development of this property described herein, nor to impose or not impose any particular conditions or requirements for said development or land use actions.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.



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