

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF OLYMPIA, WASHINGTON
APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY
OF OLYMPIA AND GOLDON ALON DEVELOPMENT COMPANY,
LLC.**

WHEREAS, pursuant to RCW 36.70B.200, the Olympia City Council held a public hearing on May 5, 2015, and considered testimony from the public and City staff on the proposed Development Agreement between the City of Olympia and Goldon Alon Development Company; and

WHEREAS, the development agreement adopted by this Resolution is consistent with applicable development regulations; and

WHEREAS, the City reserves its authority to impose new or different regulations to the extent required by a serious threat to public health; and

WHEREAS, the development agreement adopted by this Resolution meets the requirements of chapter 36.70B RCW and chapter 18.53 OMC; and

WHEREAS, like vesting under a formal subdivision process, a development agreement protects a developer from subsequent changes in land use laws;

NOW, THEREFORE, BE IT RESOLVED BY THE OLYMPIA CITY COUNCIL THAT the *Development Agreement By and Between the City of Olympia and Goldon Alon Development Company, LLC*, attached hereto and incorporated herein as Exhibit A, is hereby approved in accordance with RCW 36.70B.200.

PASSED BY THE OLYMPIA CITY COUNCIL this _____ day of _____ 2015.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Darren Nienaber DCA

CITY ATTORNEY

**DEVELOPMENT AGREEMENT FOR
GOLDEN ALON DEVELOPMENT**

This Development Agreement (hereinafter "Agreement") is effective as of the date of the last authorizing signature affixed hereto. The parties to this Development Agreement are the City of Olympia, a Washington municipal corporation (hereinafter "City") and Golden Alon Development Company, LLC, a Washington limited liability company (hereinafter "Developer").

RECITALS

WHEREAS, the Washington State Legislature has authorized the execution of development agreements between local governments and property owners under the conditions contained in RCW Chapter 36.70B, and

WHEREAS, the Developer is the owner of that property legally described in Exhibit A attached hereto (hereinafter "Development Property or subject parcel"), and

WHEREAS, the Developer wishes to build a multi-family housing project on the subject parcel with vested rights granted by the City pursuant to RCW 36.70B and OMC 18.53, the City and the Developer have come to an agreement on the Development Standards to govern development of the Development Property that are current with existing law; and

WHEREAS, the City and the Developer agree that the development plans may be modified as market demand fluctuates pursuant to the limitations contained in this Agreement; and

WHEREAS, the intent of this Agreement includes acknowledgement by both the City and Developer that the regulation of wetlands and other environmental protection measures may significantly affect the viability of the entire project; and

WHEREAS, the intent of this Agreement includes, but is not limited to, providing certainty for the Developer concerning the stability of environmental law and regulations for wetland conservation as well as other environmental protection

regulations; and includes a determination that the current wetland conservation and other environmental protection measures shall be conforming for the duration of this Agreement; and

WHEREAS, the City has reviewed the documentation provided by the Developer in support of this Project; and

NOW THEREFORE, in consideration of the mutual promises and benefits contained herein, the City and the Developer agree that the project that the Developer shall construct on the Development Property shall be consistent with the following Development Standards:

1. Term. The Term of this Agreement shall commence upon the effective date of the Ordinance approving this Agreement (“Effective Date”) and shall continue in full force and effect for a period of Ten (10) Years unless amended by mutual agreement of the City and the Developer.
 - A. *Option to Extend Term.* The City hereby grants to Developer the Option to extend the term of this Agreement for an additional five (5) years; provided that the Developer provides evidence of substantial progress and commitment to construction of the Development Property. If Developer seeks to exercise the Option hereby granted, the Developer shall notify the Director of Community Planning and Development for the City, in writing not less than 180 days nor more than 365 days prior to the termination date of this Agreement, of Developer’s intent to exercise the Option. Developer shall provide evidence of substantial progress and commitment to construction of the Development Property not later than 180 days prior to the termination date of this Agreement.

2. Vesting of Development Standards.
 - A. *Vesting.* The Zoning and Development Standards under the Olympia Municipal Code (hereinafter “OMC”), the Comprehensive Plan, or other applicable law, in place on the Effective Date of this Agreement, shall vest for the Development Property except as further modified by this Agreement. Any subsequent amendment to the Zoning, Development Standards,

Comprehensive Plan, or other applicable law, shall be effective upon the expiration of this Agreement, including expiration of the Option term if exercised. Zoning, Development Standards, Comprehensive Plan, and other applicable law shall include but not be limited to the following categories:

- a) The uses permitted by existing zoning;
- b) The density and intensity of uses permitted by existing zoning;
- c) The maximum height and size of the proposed buildings;
- d) The provisions for reservation and dedication of land;
- e) The public improvements required to be constructed to mitigate the additional development;
- f) The environmental regulations including SEPA mitigation requirements and wetland setbacks and buffers; and
- g) The development regulations applicable on the date of this Agreement.

B. *Acknowledgement.* The City agrees and acknowledges that the development rights specified in this Agreement, including the right to build the project as described in the attached design documents as supplemented by the building rules and regulations in effect upon the date of this Agreement, are fully vested in the Developer. The City may require the Developer to (1) conform to rules or regulations that came into effect after the date of this Agreement, or (2) add requirements as a condition of issuing a building permit for this project that are inconsistent with the attached design documents; provided that such new rules or regulations result from superseding state or federal law. In addition, pursuant to OMC 18.53.010, this development agreement reserves authority by the City to impose new or different regulations to the extent required by serious threat to public health and safety.

3. Project Development Plans.

A. *Project Development Plan Documents.* The Developer Agrees to construct the Development Property consistent with the Project

Development Plans attached as Exhibits B - E and incorporated herein by reference, as approved in a final decision by the Olympia Hearing Examiner. These Plans specifically consist of the following individual documents:

- a) Land Use Approval,
- b) Conceptual Design Review Approval,
- c) Hearing Examiner Decision and all documents referenced therein, and
- d) All documents attached herein.

B. *Non-Substantive Modifications.* The Developer shall have the right to make minor modifications to the documents described in Section 3(A) herein. However, the modifications shall not (1) increase the total number of buildings or increase the total number of buildings dedicated to a specific use, (2) reduce the density below the minimum standard, (3) include any changes that would increase the traffic impacts, (4) remove any environmental mitigation measures or encroach into any of the wetland buffers, and (5) fundamentally alter the layout of the site plan or alter the approved design character of the project. Such changes shall not be considered substantive under this Agreement and thus shall not require amendment to this Agreement.

4. Phases. The Parties acknowledge that the most efficient and economic development of the Subject Property depends upon numerous factors, such as market orientation and demand, interest rates, competition and similar factors, and that generally it will be most economically beneficial to the ultimate purchasers of the Subject Property to have the rate of development determined by the Developer. However, the parties also acknowledge that, because the Development will be phased, certain amenities associated with the Project must be available to all phases of the Project, in order to address health, safety and welfare of the residents. Therefore, the Parties agree that the improvements associated with the Project shall be constructed and developed according to the design guidelines set forth in Exhibit B and C, and as approved in the final decision of the Olympia Hearing Examiner, whether the development and construction is carried out in one phase or a series of phases as anticipated by the Project Development Plans.

- A. *70/30 Split*. The "70/30" split regarding type of housing units shall be met upon completion of all phases of the Development and not necessarily per each phase.
- B. *Condominium*. For the purposes of financing these phases, the Developer may divide the property consistent with the map contained in Exhibit B as approved in the final decision of the Olympia Hearing Examiner, and the Washington Condominium Act at RCW 64.34, as amended.
- C. *Infrastructure*. Infrastructure improvements shall be built consistent with the planned phasing, and as approved in the final decision of the Olympia Hearing Examiner. The developer may limit the extent of infrastructure to be built to such infrastructure as approved by the City to be necessary to serve the current phase. For the purposes of this Agreement, infrastructure shall include but not be limited to all (1) roads, (2) utility connections including sewer, (3) storm water drainage, (4) sidewalks and trails, (5) open space areas, and (6) such other items that serve the project as a whole. See Exhibit C.

5. Environmental Review.

- A. *Additional Review Not Required*. In approving this Agreement, the City acknowledges that it has undertaken a comprehensive environmental review of the Development Project. No further environmental review shall be required for individual permits falling within the scope of this project where such permits are consistent with this Agreement; provided that the project is built as approved herein and illustrated on Exhibits E1 - E7. Should the Developer request substantial modification to the Development Project, and the scope of impacts is modified beyond the scope of impacts reviewed herein, then the City may require further environmental review.
- B. *Wetland Buffer*. The environmental review conducted pursuant to this Section 5 herein defines the wetland boundaries that shall

affect this project. The wetland delineation, as outlined in the Project Development Plans, shall be binding on the City and Developer for the term of this Agreement, including any option. Furthermore, the setback and mitigation requirements for this project shall vest on the date of this Agreement and apply throughout the term of this Agreement including any option.

C. *SEPA Conditions.* Having fully reviewed the environmental conditions of the subject property, the City has issued and the Developer agrees to implement Environmental Mitigation Requirements attached as Exhibit E1 - E7.

6. Transfer of Property. The Developer retains the right to sell, transfer, convey, mortgage and otherwise encumber the Development Property. However, any such action shall be expressly subject to the rights and obligations of this Agreement. This Agreement shall be binding upon and inure to the benefit of any subsequent owner.
7. Default. Subject to extensions of time by mutual consent in writing, failure or delay by either party to perform any term or provision of this Agreement shall constitute a default of this Agreement. In the event of the alleged default or breach of any terms or conditions of this Agreement, the party alleging such breach shall give the other party not less than thirty (30) days' notice in writing specifying the nature of the alleged default and the manner in which said default may be cured. During this thirty (30) day period, the Party charged shall not be considered in default for the purposes of termination of this Agreement or for the institution of any legal or dispute resolution proceedings.

After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other Party to this Agreement may, at its discretion, institute dispute resolution proceedings consistent with this Agreement. In addition to these remedies, the City may file an action to enforce this Agreement, the vested development codes, and to obtain penalties for any violations of this Agreement or the vested development codes.

8. Authority to Execute Agreement.

- A. *Developer.* By executing this Agreement, the Developer represents and warrants that it has taken all necessary steps under its corporate governance to authorize this Agreement and that this Agreement shall be valid and binding for all purposes.
- B. *City.* By executing this Agreement, the City represents and warrants that it has taken all necessary steps under its charter to authorize the execution of this Agreement.

9. Miscellaneous Provisions.

- A. *Governing Law.* This Agreement shall be construed and enforced in accordance with the laws of the State of Washington.
- B. *Amendments.* This Agreement may not be amended except upon the mutual consent of the parties, which consent may be withheld for any reason.
- C. *Headings.* The headings in this Agreement are inserted for convenience only and shall not affect the interpretations of this Agreement.
- D. *Waivers.* The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.
- E. *Severability.* If any provision of this Agreement or the application thereof to any party or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

F. *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute the complete Agreement.

G. *Entire Agreement.* This Agreement constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement.

H. *Attorney Fees.* In the event any party shall bring any suit or action to enforce this Agreement or any term or provisions hereof, the prevailing party shall be entitled to a reasonable sum as attorneys' fees and all costs and expenses incurred in connection with such suit or action.

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed as of the dates set forth below:

**GOLDEN ALON
DEVELOPMENT COMPANY, LLC:**

CITY OF OLYMPIA:

By _____
Its Managing Member

By _____
Stephen H. Buxbaum, Mayor

Date _____

Date _____

ATTEST:

By _____
City Clerk

APPROVED AS TO FORM:

By Darren Nienaber DCA
City Attorney

STATE OF WASHINGTON)

) ss.

COUNTY OF THURSTON)

On the ____ day of _____ 2015, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Stephen H. Buxbaum, to me known to be the Mayor of the City of Olympia, a municipal corporation, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned and on oath states that he is authorized to execute the said instrument.

WITNESS my hand and official seal the day and year first above written.

Signature
Print Name: _____
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____

STATE OF WASHINGTON)

) ss.

COUNTY OF THURSTON)

I certify that I know or have satisfactory evidence that Joseph Sueno signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Managing Member of Golden Alon Development Company, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____

Signature
Print Name: _____
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____

**DEVELOPMENT AGREEMENT FOR
GOLDEN ALON DEVELOPMENT
EXHIBIT LIST**

Description	Exhibit
Legal Description	A
Bayan Trails: Land Use Code Compliance Form	B1 (Land use approvals)
Land Use Review (Site Plan) Supplement	B2
Sueno Property—Bayan Trails, various site plan, site context, street elevations, floor plans, elevations, senior housing renderings, Town House floor plans, town house elevations, town house renderings, community building floor plans, elevations, renderings, pool bldg elevations, renderings, and phasing site plan.	B3 Conceptual Design Review Approval
Bayan Trails SPR Submittal	C Civil Engineer Documents and Infrastructure Per Phase
Overall Landscape Plan	D
SEPA checklist	E1
Traffic Impact Analysis	E2
Traffic Impact Analysis Addendum	E3
EDDS Deviation Request	E4
Project Emissions Summary	E5
Stormwater Site Plan	E6
Wetland and Soils Report and Mitigation Proposal	E7