

ORDINANCE NUMBER 74-15

AMENDMENT TO THE BELFAIR URBAN GROWTH AREA ZONING MAP – RE-ZONING OF PARCELS 12320-41-00010 AND 12320-44-00020 FROM R-4 (LOW DENSITY RESIDENTIAL) TO MIXED USE

ORDINANCE amending the Belfair Urban Growth Area Zoning Map adopted by the Mason County Board of County Commissioners under the authority of RCW 36.70A.

WHEREAS, the Washington State Growth Management Act (RCW 36.70A) requires each site specific rezone amending the Belfair Urban Growth Area Zoning map be adopted by Ordinance; and

WHEREAS, Seattle Inceptive Group LLC, hereinafter referred to as "Applicant", owner of real property in Mason County has requested an amendment to the Belfair Urban Growth Area Zoning Map as it affects their property; and

WHEREAS, Applicant's request to rezone includes parcel 12320-41-00010 which is 9.78 acres in size and parcel 12320-44-00020 which is 2.15 acres in size, for a total of 11.93 acres to be rezoned from R-4 (Low Density Residential) to Mixed Use; and

WHEREAS, Applicant has proposed a Development Agreement under the authority of RCW 36.70B in addition to the rezone request restricting the allowed uses in the approved Mixed Use zone to Marijuana Production (pursuant MCC §17.17.006), Marijuana Processing (pursuant MCC §17.17.007), and Detached dwelling per lot (one) pursuant MCC §17.23.130(19) only; and

WHEREAS, Section 17.05.080 of the Mason County Code provides criteria for consideration in rezoning parcels from an existing land use zone to another zone, and is reviewed through a public process in front of the Mason County Planning Advisory Commission and the Board of County Commissioners; and

WHEREAS, on November 30, 2015 Mason County Department of Community Development Staff presented to the Planning Advisory Commission at a public hearing a staff report recommending approval of the requested rezone, based on meeting the rezone criteria only upon the condition that a Development Agreement be adopted herewith; and

WHEREAS, said Development Agreement shall remain in effect until such time as the use of the subject parcels discontinues from Marijuana Production and/or Marijuana Processing and at such time the parcels will revert to their original zoning of R-4 (Low Density Residential), or such other district as the Board of County Commissioners deems appropriate; and

WHEREAS, at the November 30, 2015 public hearing, Mason County Planning Advisory Commission considered the amendments, together with the Staff's Report and Applicant's proposal for a Development Agreement and passed a motion to recommend approval of the request with the Development Agreement; and

WHEREAS, on December 22, 2015 the Board of County Commissioners considered the Applicant's request; and

WHEREAS, the Board of County Commissioners took public testimony from interested parties, considered all the written and oral arguments and testimony, and considered all the comments presented; and

WHEREAS, the Board of County Commissioners also considered the Staff Report and recommendations of the Mason County Planning Advisory Commission; and

WHEREAS, the Board of County Commissioners finds that the proposed amendments to the Belfair Urban Growth Area Zoning Map comply with all applicable requirements of the Growth Management Act and the Mason County Code, and that they are in the best public interest; and

WHEREAS, the Board of County Commissioners conditions the rezone limiting the allowed land uses through the adoption of a Development Agreement to be recorded by the Applicant on the title of both parcels.

BE IT HEREBY ORDAINED, the Mason County Board of Commissioners hereby approves and ADOPTS the attached Findings of Fact (ATTACHMENT A), the revisions to the Belfair Urban Growth Area Zoning Map (ATTACHMENT B) and Development Agreement (ATTACHMENT C) as submitted and described herein.

DATED this 22 day of December 2015.

Board of Commissioners
Mason County, Washington

ATTEST:


Clerk of the Board

BOARD OF COUNTY COMMISSIONERS
MASON COUNTY, WASHINGTON


Randy Neatherlin, Chair

APPROVED AS TO FORM:


Deputy Prosecuting Attorney

NAY

Tim Sheldon, Commissioner

Terri Jeffreys, Commissioner

ATTACHMENT A

MASON COUNTY BOARD OF COMMISSIONERS

FINDINGS OF FACT

ADOPTION OF AMENDMENTS BELFAIR URBAN GROWTH
AREA ZONING MAP

1. Applicant has made application to Mason County for its consideration of amendments to the Belfair Urban Growth Area Zoning Map.
2. Applicant is requesting an amendment rezoning parcel 12320-41-00010 (9.78 acres) and parcel 12320-44-00020 (2.15) for a total of 11.93 acres from R-4 (Single Family or Low Density Residential) to Mixed Use.
3. Mason County Development Regulations, Title 17, Section 17.05.080 provides criteria and characteristics for consideration in rezoning parcels from an existing land use zone to another zone. A rezone request is reviewed through a public process in front of the Mason County Planning Advisory Commission and the Board of County Commissioners.
4. A Development Agreement between the County and the Applicant will condition the rezone to limit the land uses allowed to Marijuana Production (pursuant MCC §17.17.006), Marijuana Processing (pursuant MCC §17.17.007), and Detached dwelling per lot (one) pursuant MCC §17.23.130(19)) only.
5. Based upon the evaluation of the Rezone Criteria together with Applicant's proposal for conditioning the rezone through a Development Agreement, Staff would make the following findings:

Criterion 1: Development allowed by the proposed rezone designation shall not damage public health, safety and welfare is met as the current use would remain unchanged as a legal nonconforming plant nursery. Due to the nature of the continued use, public access is restricted and public safety increased by state regulations.

Criterion 2: The zone designation shall be consistent with the Mason County comprehensive plan, development regulations, and other county ordinances, and with the Growth Management Act; and that designation shall match the characteristics of the area to be rezoned better than any other zone designation is met in that the current use will continue under a the new zoning designation. The mixed use district permits the production and processing of marijuana, which is the property's current legal non-conforming use, as well as residential similar to surrounding current zoning.

Criterion 3: No rezone shall be approved if, either by itself or together with other rezoning and/or development, whether actual or potential, the cumulative impacts of such zoning would be to materially increase sprawling, low-density rural development, or to significantly increase uses incompatible with resource-based uses in the vicinity is met as the current use would not change.

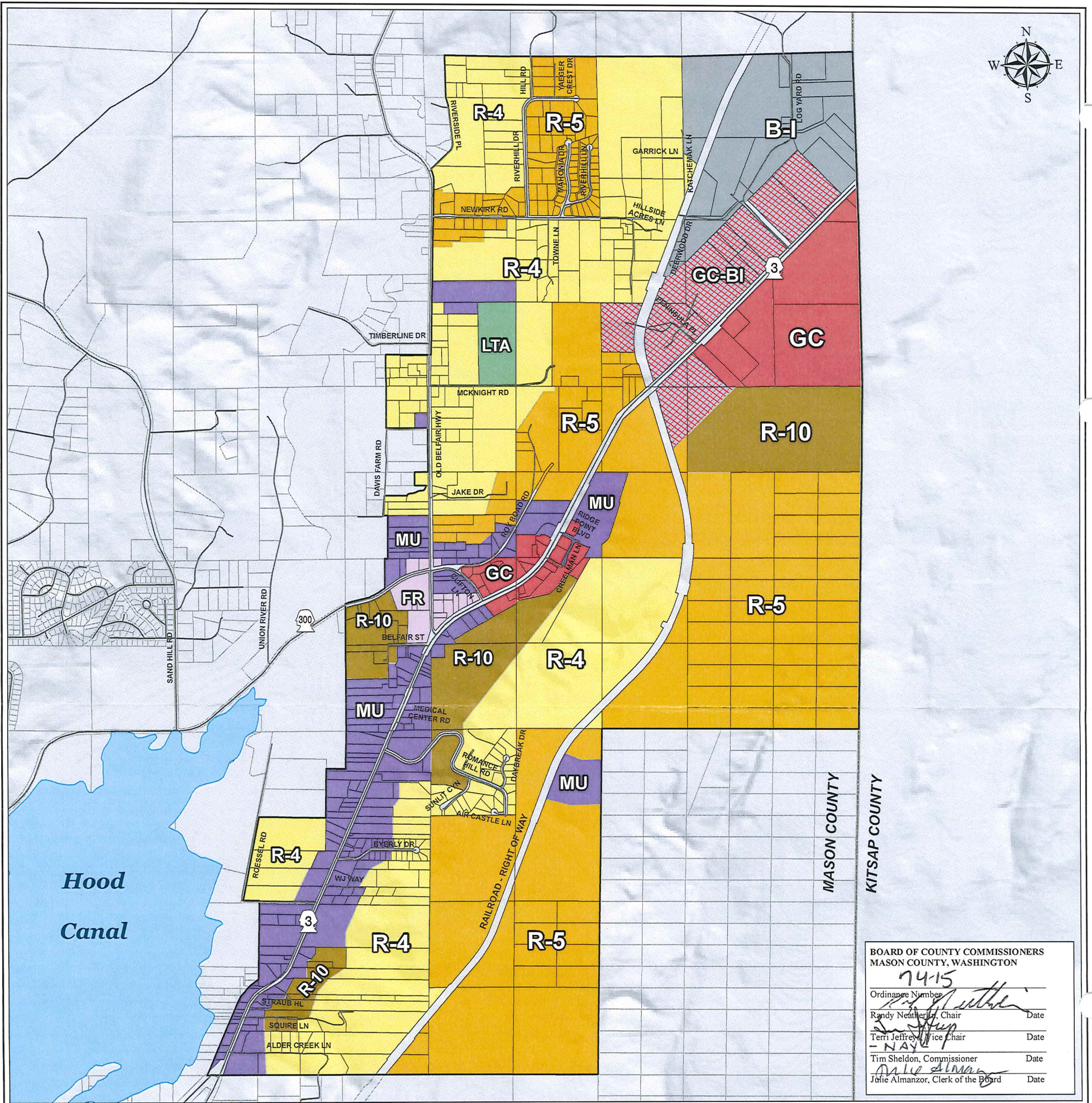
Criterion 4: No rezone to more intensive land use shall be approved if, either by itself or together with other rezoning and/or development, whether actual or potential, the cumulative impacts of such zoning would be to materially increase demand for urban services in rural areas, including, but not limited to, streets, parking, utilities, fire protection, police and schools is met as the current use would not change.

Criterion 5: No rezone to more intensive land use shall be approved if, either by itself or together with other rezoning and/or development, whether actual or potential, the cumulative impacts of such zoning would be to materially interfere with the Growth Management Act goal to encourage development in urban areas where adequate public services and facilities exist or can be provided in an efficient manner is met at the current use does not demand increased urban services and the expansion of that use under a mixed use would not increase that demand.

Criterion 6: No rezone to more intensive land use shall be approved if, either by itself or together with other rezoning and/or development, whether actual or potential, the cumulative impacts of such zoning would be to materially interfere with the Growth Management Act goal to encourage retention of open space, to conserve fish and wildlife habitat, and generally to protect the environment, including air and water quality is met as the current use will remain under the new zoning district and no development will occur beyond the Development Agreement.

Criterion 7: No rezone to more intensive land use shall be approved if, either by itself or together with other rezoning and/or development, whether actual or potential, the cumulative impacts of such zoning would be to create pressure to change land use designations of other lands or to increase population growth in rural areas as projected in the Mason County comprehensive plan is met as the property and current use is unique and unlikely to cause similar land use changes or a population increase in the rural zones.

Criterion 8: These criteria shall not be construed to prevent corrective rezoning of land necessitated by clerical error or similar error of typography or topography committed in the original zoning of such land. This is not applicable to this request. Although there is some indication that Applicant believes the property have may be mis-zoned considered the current and past uses of the property, there is no tangible and historical evidence to validate that this proposal would necessitate the use of this criterion.



Belfair Urban Growth Area Zoning Map

DISCLAIMER AND LIMITATION OF LIABILITY

The data used to make this map have been tested for accuracy, and every effort has been made to ensure that these data are timely, accurate and reliable. However, Mason County makes no guarantee or warranty to its accuracy as to labeling, dimensions, or placement or location of any map features contained herein. The boundaries depicted by these data are approximate, and are not necessarily accurate to surveying or engineering standards. These data are intended for informational purposes and should not be considered authoritative for engineering, navigational, legal and other site-specific uses. Mason County does not assume any legal liability or responsibility arising from the use of this map in a manner not intended by Mason County. In no event shall Mason County be liable for direct, indirect, incidental, consequential, special, or tort damages of any kind, including, but not limited to, loss of anticipated profits or benefits arising from use of or reliance on the information contained herein. The burden for determining fitness for use lies entirely with the user and the user is solely responsible for understanding the accuracy limitation of the information contained in this map.



DEVELOPMENT AGREEMENT BY AND BETWEEN
MASON COUNTY AND SEATTLE INCEPTIVE GROUP LLC, FOR THE REZONE OF
PARCELS 12320-41-00010 AND 12320-44-00020

THIS DEVELOPMENT AGREEMENT (hereinafter, the "Agreement") is made and entered into this 22nd day of December, 2015, by and between Mason County, a political subdivision of the State of Washington (hereinafter, the "County"), and Seattle Inceptive Group LLC, a limited liability company organized under the laws of the State of Washington (hereinafter, the "Developer").

RECITALS

WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction (RCW 36.70B.170(1));

WHEREAS, a development agreement must set forth the development standards and other provisions that will apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement (RCW 36.70B.170(1)); and

WHEREAS, for the purposes of this development agreement, "Development Standards" includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3);

WHEREAS, 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));

WHEREAS, this Development Agreement by and between the County and the Developer, relates to the development of real property located at 860 NE OLD BELFAIR HWY, BELFAIR, WASHINGTON 98528; and

WHEREAS, the following events have occurred in the processing of the Developer's Application for Requested Rezone:

- a) By Notice of Application, the public was provided notice and opportunity to be heard at a public hearing held by the Mason County Planning Advisory Commission on the request for rezone on November 30, 2015 at 6:00 P.M. in the County Commissioners Chambers, Bldg. 1, 411 N. 5th Street, Shelton, WA.
- b) By formal SEPA Determination of Nonsignificance (WAC 197-11-340), the lead agency determined the proposal has no probable significant adverse impact on the environment and an Environmental Impact Statement (EIS) was not required under RCW 43.21C.030(2)(c)
- c) By Department of Community Development Staff Report, Staff recommended approval of the rezone and adoption of this Agreement to the Planning Advisory Commission.
- d) By unanimous vote at the Planning Advisory Commission Meeting held November 30, 2015, the Planning Advisory Commission recommended approval of the rezone and adoption of this Agreement to the Mason County Board of Commissioners.

e) After public hearing, by Amendment to the Belfair Urban Growth Area Zoning Map (Rezone), the Mason County Board of Commissioners approved the rezone of Parcel Numbers 12320-41-00010 and 12320-44-00020 from R-4 to Mixed Use and adoption of this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

GENERAL PROVISIONS

Section 1. *The Subject Property.* The Subject Property is the real property located at 860 NE OLD BELFAIR HWY, BELFAIR, WASHINGTON 98528 and legally described in Exhibit A, attached hereto and incorporated by this reference.

Section 2. *The Project.* The Project is the anticipated rezone of the Subject Property, consisting of 9.78 acres (Parcel No. 12320-41-00010, "A") and 2.15 acres (Parcel No. 12320-44-00020, "B") in the Belfair Urban Growth Area from R-4 (single family/low density residential) to Mixed Use.

Section 3. *Use and Mitigation.* The Project as described in Section 2 rezones two parcels from a residential use to a substantially commercial use, in an area that is predominantly residential. To mitigate the impacts of this change in zoning and the resulting intensification of land use, this Agreement mitigates the rezone through development restrictions that reduces the permitted uses to Marijuana Production (pursuant MCC §17.17.006), Marijuana Processing (pursuant MCC §17.17.007), and Detached dwelling per lot (one) pursuant MCC §17.23.130(19)) only.

Section 4. *Definitions.* As used in this Agreement, the following terms, phrases and words will have the meanings and be interpreted as set forth in this Section.

- a) "Adopting Ordinance" means the Ordinance which approves the rezone together with this Agreement, as required by RCW 36.70B.200.
- b) "Commissioners" means the elected legislative body governing the County.
- c) "Director" means the County's Community Development Director.
- d) "Effective Date" means the date by which the Commissioners approve Adopting Ordinance.
- e) "Existing Land Use Regulations" means the ordinances adopted by the County that govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards and specifications applicable to the development of the Subject Property, including, but not limited to the Mason County Code, Comprehensive Plan, Development Regulations, Resource Ordinance, Belfair Urban Growth Area (UGA), Belfair Zoning Map, SEPA, and all other ordinances, codes, rules and regulations of the County that govern or control zoning and land use standards. Existing Land Use Regulations does not include non-land use regulations, which include tax and impact fees.
- f) "Landowner" is any party who has subsequently acquired any portion of the Subject Property from the Developer and who, unless otherwise released as provided in this Agreement, will be subject to the applicable provisions of this Agreement.

Section 5. *Legal Description.* Legal description of the Subject Property provided in Exhibit A.

Section 6. *Project is a Private Undertaking.* The parties agree the Project is a private development and the County has no interest therein except as authorized in the exercise of its governmental functions pursuant to the terms of this Agreement.

Section 7. *Term of Agreement.* This Agreement will commence upon the Effective Date and continue until termination pursuant to Section 12 of this Agreement.

Section 8. *Vested Rights of Developer.* During the term of this Agreement, unless sooner terminated in accordance with Section 12, in developing the Subject Property consistent with the Project described herein, Developer is assured, and the County agrees, that the development rights, obligations, terms and conditions specified in this Agreement, are fully vested in the Developer and cannot be changed or modified by the County, except in accordance with, the express terms and conditions of this Agreement, including the Exhibits hereto, or with the express written consent of the Developer.

Section 9. *Minor Modifications.* Minor modifications from the approved permits or the exhibits attached hereto may be approved in accordance with the provisions of the County's code, and will not require an amendment to this Agreement.

Section 10. *Further Discretionary Actions.* Developer acknowledges that the Existing Land Use Regulations contemplate the exercise of further discretionary power by the County. These powers include, but are not limited to, review of additional permit applications under SEPA. This Agreement must not be construed to limit the authority or the obligation of the County to hold public hearings required by law, nor limit the discretion of the County or any of its officers or officials in complying with or applying Existing Land Use Regulations.

Section 11. *Default.*

a) Subject to mutual consent in writing, failure or delay by either party or Landowner not released from this Agreement, to perform any term or provision of this Agreement may constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach must give the other party or Landowner 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 or Landowner charged will not be considered in default for purposes of termination or institution of legal proceedings.

b) 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 party alleging the default may, at its option, institute legal proceedings pursuant to this Agreement. In addition, the County may decide to file an action to enforce the County's Code, and to obtain penalties and costs as provided in the Mason County Code for violation of this Agreement and the Code, or as provided by law.

Section 12. *Termination.* This Agreement will terminate solely at the election of the Developer or Landowner by written notice delivered to the Director.

Section 13. *Effect upon Termination.* Upon termination of this Agreement, the entitlements, permitted uses and all other terms and conditions of this Agreement and the Adopting Amendment will no longer be vested with respect to the Subject Property, and the Subject Property will revert back to

the land use designation in place prior to the Effective Date, including application of the prior legal nonconforming use which permits operation of a nursery on the Subject Property with all developments and improvements made during the term of this Agreement. In the event the prior land use designation is no longer suitable or appropriate for the Subject Property, the Commissioners will have the discretion to approve a different land use designation as permitted under the Existing Land Use Regulations.

Section 14. *Assignment and Assumption.* The Developer may sell, assign or transfer this Agreement with all appurtenant rights, title and interests therein to any person during the Term of this Agreement. Developer must provide at least thirty (30) days notice to the County before any sale, assignment, or transfer.

Section 15. *Covenants Running with the Land.* The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits will run with the land and the benefits and burdens will bind and inure to the benefit of the parties. The Developer, Landowner and every purchaser, assignee or transferee of an interest in the Subject Property, or any portion thereof, will be obligated and bound by the terms and conditions of this Agreement, and will be the beneficiary thereof and a party thereto, but only with respect to the Subject Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee will observe and fully perform all of the duties and obligations of the Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Subject Property sold, assigned or transferred to it.

Section 16. *Amendment to Agreement; Effect of Agreement on Future Actions.* This Agreement may be amended by mutual consent of the parties, provided that any such amendment follow the process established by law for the adoption of a development agreement (RCW 36.70B.200). However, nothing in this Agreement may prevent the Commissioners from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations affecting the Subject Property during the term of this Agreement, but only as the Commissioners deem necessary to the extent required by a serious threat to public health and safety.

Section 17. *Releases.* Developer, and any subsequent Landowner, may free itself from further obligations relating to the sold, assigned, or transferred property, and the buyer, assignee or transferee expressly assumes the obligations under this Agreement as provided herein.

Section 18. *Notices.* Notices, demands, correspondence to the County and Developer will be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated on the signature page. Notice to the County will be to the attention of both the Director and the County Attorney. Notices to subsequent Landowners will be required to be given by the County only for those Landowners who have given the County written notice of their address for such notice. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

Section 19. *Applicable Law and Attorneys' Fees.* This Agreement will be construed and enforced in accordance with the laws of the State of Washington. If litigation is initiated to enforce the terms of this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. Venue for any action will lie in Mason County Superior Court.

Section 20. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner to challenge this Agreement or any provision herein, the County may elect to tender the defense of such lawsuit or individual claims in the lawsuit to Developer and/or Landowner(s). The Developer and/or Landowner will not settle any lawsuit without the consent of the County. The County will act in good faith and not unreasonably withhold consent to settle.

Section 21. Severability. If any phrase, provision or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the Effective Date, the remainder of this Agreement and its application will not be affected and will be enforceable to the fullest extent permitted by law. Alternatively, if either party in good faith determines that such provision or provisions are material to its entering into this Agreement, that party may elect to terminate this Agreement as to all of its obligations remaining unperformed.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on this 22 day of December, 2015.

OWNER/DEVELOPER:

Seattle Inceptive Group LLC
860 NE Old Belfair Hwy
Belfair, WA 98528

 12-23-15
By: Jeff Way Date
Title: Member-Manager

BOARD OF COUNTY COMMISSIONERS
MASON COUNTY, WASHINGTON

ATTEST:


Julie Almanzor, Clerk of the Board


Randy Neatherlin, Chair

APPROVED AS TO FORM:

NAY
Tim Sheldon, Commissioner


Tim Whitehead, Chief DPA


Terri Jeffreys, Commissioner

EXHIBIT A

LEGAL DESCRIPTION OF SUBJECT PROPERTY

Tax Parcel Number: 12320-41-00010:

Total Acres: 9.78000

THE SOUTH 10 ACRES OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 20, TOWNSHIP 23 NORTH, RANGE 1 WEST, W.M., IN MASON COUNTY, WASHINGTON.

EXCEPTING THEREFROM RIGHT OF WAY FOR OLD BELFAIR HIGHWAY, COUNTY ROAD NO. 98250.

Tax Parcel Number: 12320-44-00020

Total Acres: 2.15000

A TRACT OF LAND IN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 20, TOWNSHIP 23 NORTH, RANGE 1 WEST, W.M., IN MASON COUNTY, WASHINGTON.

PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER, WHICH IS EAST 254.2 FEET FROM THE NORTHWEST CORNER OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER; THENCE EAST ALONG SAID NORTH LINE 477.8 FEET; THENCE SOUTH 193.2 FEET; THENCE WEST, PARALLEL TO SAID NORTH LINE 477.8 FEET; THENCE NORTH 193.2 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM, ALL THAT PORTION THEREOF, IF ANY, WHICH LIES WITHIN THE EAST 584 FEET OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER, AND EXCEPTING THEREFROM, ALL THAT PORTION THEREOF, IF ANY, WHICH LIES WITHIN A TRACT OF LAND CONVEYED TO WALTER H. PHILLIPS, ET UX, IN DEED RECORDED UNDER AUDITOR'S FILE NO. 113865, RECORDS OF MASON COUNTY, WASHINGTON.