

RESOLUTION NO. 677

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT WITH HARBOR ESTATES LLC.

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)); and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall 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); and

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)); and

WHEREAS, Harbor Estates applied to the City for a Comprehensive Plan Amendment and Comprehensive Plan Land Use Map Amendment (the "Comp Plan Amendment" or "CPA"), to change the Comprehensive Land Use designation on the Property from Planned Community Development Residential Low Density (PCD-RLD) to Planned Community Development Residential Medium Density (PCD-RMD); and

WHEREAS, on July 10, 2006, the City Council held a public hearing on the Development Agreement during a regular public meeting and voted to approve the

Development Agreement attached hereto as Exhibit A; Now, Therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. The City Council hereby authorizes the Mayor to execute the Development Agreement attached hereto as Exhibit A, with the applicant Harbor Estates LLC.

Section 2. The City Council hereby directs the Community Development Director to record the Development Agreement against the Property legally described in Exhibit A to the Development Agreement, at the cost of the applicant, pursuant to RCW 36.70B.190.

PASSED by the City Council this 10th day of July 2006.

APPROVED:



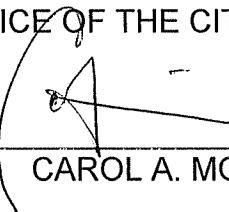
MAYOR, CHARLES L. HUNTER

ATTEST/AUTHENTICATED:



CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM;
OFFICE OF THE CITY ATTORNEY:

BY: 

CAROL A. MORRIS

FILED WITH THE CITY CLERK: 07/10/06
PASSED BY THE CITY COUNCIL: 07/10/06
RESOLUTION NO. 677

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF GIG HARBOR
AND HARBOR ESTATES LLC, FOR A
COMPREHENSIVE PLAN AMENDMENT/RESIDENTIAL SUBDIVISION**

THIS DEVELOPMENT AGREEMENT is made and entered into this 10 day of July, 2006, by and between the City of Gig Harbor, a noncharter, optional code Washington municipal corporation, hereinafter the "City," and Harbor Estates, LLC, a Limited Liability Corporation organized under the laws of the State of Washington, hereinafter the "Developer" or "Harbor Estates."

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)); and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall 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); and

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)); and

WHEREAS, this Development Agreement by and between the City of Gig Harbor and the Developer (hereinafter the "Development Agreement"), relates to the development known as Gig Harbor Estates, which is located at 4000 Borgen Boulevard, Gig Harbor, Washington; and

WHEREAS, the following events are relevant to the processing of the Developer's comprehensive plan amendment application:

- a) Harbor Estates LLC is the fee simple owner of the property located at 4000 Borgen Boulevard, Gig Harbor, which is legally described in Exhibit A, attached hereto and incorporated herein by this reference (the "Property"); and
- b) Harbor Estates applied to the City for a Comprehensive Plan Amendment and Comprehensive Plan Land Use Map Amendment (the "Comp Plan Amendment" or "CPA"), to change the Comprehensive Land Use designation on the Property from

Planned Community Development Residential Low Density (PCD-RLD) to Planned Community Development Residential Medium Density (PCD-RMD); and

- c) Harbor Estates seeks the Comprehensive Plan Amendment ("CPA") so that it may apply for a residential preliminary plat; and
 - e) The City issued a Determination of Significance under the State Environmental Policy Act ("SEPA") for the CPA associated with the three applications for CPA's submitted to the City for 2006, and prepared a Supplemental Environmental Impact Statement ("SEIS") to consider the probable adverse environmental impacts of the three proposed CPA's; and
 - f) The Final SEIS that issued on April 5, 2006, for the three proposed CPA's, concluded that the significant transportation impacts resulting from adoption of the CPA proposed by Harbor Estates could be mitigated by the conditions that are listed in Exhibit E, attached hereto;
 - g) The Final SEIS recommended certain potential mitigation measures to be imposed on the FHS Comp Plan Amendment, and that Harbor Estates would participate proportionately in the cost of such improvements, all as set forth in Exhibit E; and
 - h) The Final SEIS notes that the Washington State Department of Transportation "has not fully commented on the proposed mitigation that impact state owned transportation facilities," (Final SEIS, April 5, 2006, App. C-13); and
 - i) During the SEIS process, representatives from FHS, the City, WSDOT, the development community and Pierce County, participated in a number of meetings to discuss the transportation improvements described in the EIS and Final SEIS, yet Pierce County has yet to comment on the EIS or Final SEIS; and
 - j) The Planning Commission recommended that the City Council approve the Harbor Estates Comp Plan Amendment, subject to the mitigation measures recommended by the Final SEIS, and that the City enter into a development agreement with Harbor Estates to clarify the manner and timing of the performance of those mitigation measures; and

WHEREAS, the parties desire by this Development Agreement to establish the mitigation to be performed by Gig Harbor Estates as a condition of the City's approval of Harbor Estates' Comp Plan Amendment; and

WHEREAS, by Ordinance No. 1051, the City approved the Harbor Estates Comp Plan Amendment, subject to and conditioned upon execution of this Development Agreement; and

WHEREAS, after a public hearing, by Resolution No. 677, the City Council authorized the Mayor to sign this Development Agreement with the Developer; and

Now, therefore, the parties hereto agree as follows:

General Provisions

Section 1. The Project. The Project is the development and use of the Property, consisting of 19.32 acres in the City of Gig Harbor. After approval of the CPA, the Developer plans to submit a 126 Lot Single Family Residential Preliminary Plat application.

Section 2. The Subject Property. The Project site or the "Subject Property" is legally described in Exhibit A, attached hereto and incorporated herein by this reference.

Section 3. Definitions. As used in this Development Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section.

- a) "Certificate of Occupancy" means either a certificate issued after inspections by the City authorizing a person(s) in possession of property to dwell or otherwise use a specified building or dwelling unit, or the final inspection if a formal certificate is not issued.
- b) "Construction Engineering" means on-site construction management pertaining to the coordination of separate contracts, phased construction, monitoring of individual phases of the work, adjustment of the work to accommodate changed conditions or unanticipated interferences, determination of whether materials and workmanship are in conformance with the approved contract drawings and specifications arrangement for the performance of necessary field and laboratory tests, preparation of change orders, and review of progress payments.
- c) "Council" means the duly elected legislative body governing the City of Gig Harbor.
- d) "Director" means the City's Community Development Director.
- e) "Effective Date" means the effective date of the Ordinance adopting the Comprehensive Plan amendment and the date of passage of the Resolution authorizing the execution of this Development Agreement, whichever is later.
- f) "Landowner" is the party who has acquired any portion of the Subject Property from the Developer who, unless otherwise released as provided in this

Agreement, shall be subject to the applicable provisions of this Agreement. The "Developer" is identified in Section 5 of this Agreement.

g) "Mitigation for Harbor Estates' Project" is the specific mitigation described in Exhibit E, as well as Harbor Estates' financial participation as described in Exhibit E for the design and construction of the Transportation Mitigation Improvements, described in Exhibits C and D.

g) "Project" means the anticipated development of the Subject Property, as specified in Section 1.

h) "Project Manager" means the City's contract person responsible for the management of all phases of the project.

i) "Transportation Mitigation Improvements" are those specifically described in Exhibit C and pictorially depicted in Exhibit D, attached hereto and incorporated herein.

Section 4. Exhibits. Exhibits to this Agreement are as follows:

- a) Exhibit A - Legal description of the Subject Property.
- b) Exhibit B - Map showing approved Comp Plan Amendment.
- c) Exhibit C - List of required Transportation Mitigation Improvements to be performed by FHS, subject to a separate Development Agreement with the City, for which Gig Harbor Estates will participate in the cost.
- d) Exhibit D - Map showing the required Transportation Mitigation Improvements.
- e) Exhibit E - Mitigation to be performed by Gig Harbor Estates.

Section 5. Parties to Development Agreement. The parties to this Agreement are:

- a) The "City" is the City of Gig Harbor, 3510 Grandview Street, Gig Harbor, WA 98335.
- b) The "Developer" or Owner is Harbor Estates LLC, whose mailing address is P.O. Box 64160, Tacoma, WA 98464.

Section 6. Project is a Private Undertaking. It is agreed among the parties that the Project is a private development and that the City has no interest therein except as authorized in the exercise of its governmental functions.

Section 7. Commencement, Duration and Termination.

A. Commencement. This Agreement shall commence upon the Effective Date. Adoption of the Ordinance approving the Developer's Comprehensive Plan Amendment, and is contingent upon execution of this Development Agreement. The Developer acknowledges that the Ordinance as well as this Development Agreement is subject to appeal, and that the outcome of any appeal may affect the validity of this Agreement.

B. Duration.

1. The initial term of this Development Agreement shall be two years. Within this two year period, the Developer will submit project permit applications for the Project to the City for review, and if the City approves those permits without imposing any additional or different mitigation/conditions on these project permit applications, this Agreement shall continue in force until all of the required mitigation described in Exhibits C, D and E is constructed/performed, unless extended or terminated as provided herein.

2. As described in the "whereas" sections above, the Developer intends to submit applications to the City immediately after approval of the Comprehensive Plan Amendment for the Project. These applications must include SEPA checklists, because the City is required to issue a SEPA threshold determination and the City will further evaluate the environmental impacts of the applications/comments from affected agencies and the public. Based on that review, the City may impose different or additional mitigation or conditions on the development of the Developer's Property. If the City imposes different or additional mitigation, then the parties shall amend this Agreement to reflect the mitigation/conditions imposed on the project permit applications. The Developer's execution of this Agreement shall not waive the Developer's ability to administratively or judicially appeal the City's imposition of any mitigation/conditions imposed on the project permit applications that are different from the mitigation/conditions set forth herein.

C. Termination. This Agreement shall expire and/or terminate as provided below:

1. This Agreement shall expire and be of no further force and effect if the Developer does not submit an application to the City for a preliminary plat within two years after the Effective Date of this Agreement. If this application is submitted to the City within this time frame, then the provisions of Section 7(B) above shall apply to the duration of this Agreement.

2. This Agreement shall terminate upon the expiration of the term identified in this Section 7 or when the Subject Property has been fully developed, which ever first occurs, and all of the Developer's obligations in connection therewith are satisfied as determined by the City. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City Attorney that the

Agreement has been terminated. This Agreement shall automatically terminate and be of no further force and effect as to residential or non-residential building and the lot or parcel upon which such building is located, when it has been approved by the City for occupancy.

D. Generally. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject however, to post-termination obligations of the Developer or Landowner.

Section 8. Limited Vested Rights Applicable to Comp Plan Amendment.

Comprehensive Plan Amendments are not subject to the vested rights doctrine. However, because the City Council's consideration of the public health, safety and welfare under a Comprehensive Plan Amendment necessarily involves an evaluation of the available water, sewer capacity and transportation capacity for the Project, the City agrees that if the Developer applies for a preliminary plat application within two years of the anniversary date of this Development Agreement, and if the Developer does not change the scope or intensity of the Project as described herein, the Developer shall not be required to obtain a new concurrency evaluation for water, sewer or transportation. The Developer shall obtain no vested rights under any other codes, ordinances or regulations as a result of execution of this Development Agreement.

Section 9. Further Discretionary Actions. Developer acknowledges that the City's existing land use regulations, as well as any other land use regulations adopted by the City after execution of this Agreement, contemplate or will likely contemplate the exercise of further discretionary powers by the City, specifically with regard to future preliminary plat and building permit applications. These powers include, but are not limited to, review of these additional permit applications under SEPA. Nothing in this Agreement shall be construed to limit the authority or the obligation of the City to hold legally required public hearings, or to limit the discretion of the City and any of its officers or officials in complying with or applying existing land use regulations or any other land use regulations adopted in the future.

Section 10. Developer's Obligation to Design and Construct Transportation Mitigation Improvements; City's Assumption of Developer's Obligation.

A. Developer's Obligation. Developer agrees that as a condition of the City's approval of the Comp Plan Amendment, as well as approval of a subsequent preliminary plat application (consistent with the Comp Plan Amendment), that the Developer shall participate financially in the design and construction of the transportation mitigation improvements described in Exhibits C and D attached hereto, on or before the City's issuance of any occupancy certificates for the Project. The proportionate share of financial participation is set forth in Exhibit E, attached hereto.

B. Subsequent Agreement for Financial Contribution. The Developer agrees to pay its proportionate share of the cost of all of the Transportation Mitigation Improvements, as identified in Exhibits C, D and E, along with all the City design and construction engineering costs. The parties agree to negotiate an agreement on or before the City's final decision on the Developer's preliminary plat application that will establish the following: (a) the timing of the Developer's proportionate share of the initial payment for design costs; (b) the establishment of a set aside account at the Developer's bank for the Developer's proportionate share of the funds necessary to construct the Transportation Mitigation Improvements, using the forms approved by the City Attorney, so that the City can draw funds as needed for the construction; (c) the manner in which change orders increasing the cost of the Transportation Improvements will be handled; and (d) the manner in which disputes between the parties will be settled. The Developer acknowledges that failure to enter into an agreement with the City as set forth above will result in the City's decision not to construct the Transportation Mitigation Improvements, and may require the Developer to enter into an agreement with FHS and others in order to ensure construction of the Transportation Improvements.

The City's decision to construct these Transportation Mitigation Improvements as set forth herein shall not be interpreted to mean that the City (or the public in general) has any responsibility for the funding of the Transportation Mitigation Improvements. If the City receives the CERB grant, and if the grant covers any of costs paid by the Developer, the City agrees to reimburse the Developer for Developer's costs relating to the Transportation Mitigation Improvements that are listed in Exhibits C and D. However, the CERB grant, if received, will only cover a portion of the Transportation Mitigation Improvements. The Developer shall pay the City for its proportionate share of all costs relating to the City's construction of all Transportation Mitigation Improvements, including those not covered by the CERB grant, as shown in Exhibit E.

C. Additional Financing Methods. The Developer acknowledges that in order for the City to construct the Transportation Mitigation Improvements, the City must adopt some framework for the assessment and collection of funds from property owners for same (it is unknown whether the City will receive the CERB grant, and the CERB grant will not cover all of the Transportation Mitigation Improvements). Therefore, the City may create a street assessment reimbursement district pursuant to chapter 35.72 RCW, local improvement district or other means of financing the construction of the Transportation Mitigation Improvements. The City agrees to reimburse the Developer for the costs of any Transportation Mitigation Improvements that have been previously paid by the Developer, to the extent allowed by law.

The Developer acknowledges that the Property legally described in Exhibit A would be specially benefited by the Transportation Mitigation Improvements and the mitigation described in Exhibit E. The Developer agrees to sign a petition for the formation of a LID or ULID for the Transportation Mitigation Improvements and/or the mitigation described in Exhibit E at such time as one is circulated and the Developer hereby

appoints the Mayor of the City of Gig Harbor has his/her/its attorney-in-fact to sign such a petition in the event the Developer fails or refuses to do so.

With full understanding of the Developer's right to protest formation of an LID or ULID to construct the Transportation Mitigation Improvements pursuant to RCW 35.43.180, the Developer agrees to participate in any such LID or ULID and to waive his/her/its right to protest formation of the same. The Developer shall retain the right to contest the method of calculating any assessment and the amount thereof, and shall further retain the right to appeal the decision of the City Council affirming the final assessment roll to the superior court. Notwithstanding any other provision of this Agreement, this waiver of the right to protest shall be valid for a period of ten (10) years from the date this Agreement is signed by the Developer.

The Developer acknowledges that formation of any street assessment reimbursement district is subject to the procedures in chapter 35.72 RCW, and that the City Council's ruling on such area is final. RCW 35.72.040(2). The Developer agrees not to challenge the adoption of an ordinance adopted pursuant to RCW 35.72.010.

The Developer acknowledges that nothing in this Section requires the City to construct the Transportation Mitigation Improvements on or before a date certain, or at all, in the event of an appeal of the Comprehensive Plan Amendment(s) or Development Agreements, the street assessment reimbursement district, LID or other method of financing design and construction of the Transportation Mitigation Improvements.

Section 11. No Obligation to Financially Contribute to the Required Transportation Mitigation Improvements or Perform Mitigation if Permits for the Project are Not Approved. The parties acknowledge that the Developer shall not have any obligation to financially contribute to the design and construction of the Transportation Mitigation Improvements or the Mitigation described in Exhibit E if the City does not approve (or conditionally approve) the Developer's application for a preliminary plat for the Project described herein. In the event that the applications submitted by FHS for its Property are not approved, the City may, in its sole discretion, elect not to perform as described in Section 10(B) above.

Section 12. Additional Mitigation May be Imposed on Subsequently Issued Permits, Additional Traffic Studies May Also be Required. The parties acknowledge that the City's approval of the preliminary plat for Gig Harbor Estates may include the Transportation Mitigation Improvements, the mitigation described in Exhibit E, as well as additional mitigation under SEPA and the City's land use regulations, as they now exist or may be amended in the future. The parties further acknowledge that neither the Washington State Department of Transportation nor Pierce County have approved or commented on the mitigation proposed in this Development Agreement, and that additional mitigation suggested by either agency may be imposed at the time the City reviews the application for preliminary plat.

Section 13. Existing Land Use Fees and Impact Fees.

A. Permitting and Impact Fees adopted by the City by ordinance as of the Effective Date of this Agreement may be increased by the City from time to time, and applicable to permits and approvals for the Subject Property, as long as such fees apply to similar applications and projects in the City.

B. All imposition and payment of impact fees shall be performed in accordance with chapter 19.12 of the Gig Harbor Municipal Code, as it now exists or may hereafter be amended.

C. The Developer may request a credit from transportation impact fees for the construction of the Transportation Improvements (eligible for impact fees) or dedication of property (required for impact fee projects) at the time of project permit application, under chapter 19.12 GHMC, to the extent that the Developer has actually dedicated property, constructed improvements or paid for any improvements.

Section 14. Dedication of Public Lands. Within fifteen (15) days of submission of an application for final plat to the City for any phase of the Development, the Developer agrees to dedicate any or all road rights-of-way without expense to the City.

Section 15. Default.

A. Subject to extensions of time by 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 shall 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 shall 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 shall 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 other party or Landowner to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement. In addition, the City may decide to file an action to enforce the City's Codes, and to obtain penalties and costs as provided in the Gig Harbor Municipal Code for violations of this Development Agreement and the Code.

Section 16. Effect upon Termination on Developer Obligations.

Termination of this Agreement as to the Developer of the Subject Property or any portion thereof shall not affect any of the Developer's obligations to comply with the City Comprehensive Plan and the terms and conditions or any applicable zoning

code(s) or subdivision map or other land use entitlements approved with respect to the Subject Property, any other conditions of any other development specified in the Agreement to continue after the termination of this Agreement or obligations to pay assessments, liens, fees or taxes.

Section 17. Assignment and Assumption. The Developer shall have the right to sell, assign or transfer this Agreement with all their rights, title and interests therein to any person, firm or corporation at any time during the term of this Agreement. Developer shall provide the City with written notice of any intent to sell, assign, or transfer all or a portion of the Property, at least 30 days in advance of such action.

Section 18. Covenants Running with the Land. The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land and the benefits and burdens shall 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, shall be obligated and bound by the terms and conditions of this Agreement, and shall 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 shall observe and fully perform all of the duties and obligations of a 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 19. Amendment to Agreement; Effect of Agreement on Future Actions. This Agreement may be amended by mutual consent of all of the parties, provided that any such amendment shall follow the process established by law for the adoption of a development agreement (see, RCW 36.70B.200). However, nothing in this Agreement shall prevent the City Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations affecting the Subject Property during the next five years, as the City Council may deem necessary to the extent required by a serious threat to public health and safety. Nothing in this Development Agreement shall prevent the City Council from making any amendments of any type to the Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations relating to the Property.

Section 20. Releases. Developer, and any subsequent Landowner, may free itself from further obligations relating to the sold, assigned, or transferred property, provided that the buyer, assignee or transferee expressly assumes the obligations under this Agreement as provided herein.

Section 21. Notices. Notices, demands, correspondence to the City and Developer shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated in Section 5. Notice to the City shall be to the attention of both the City Administrator and the City Attorney. Notices to subsequent

Landowners shall be required to be given by the City only for those Landowners who have given the City 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 22. Applicable Law and Attorneys' Fees. This Agreement shall 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 shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. Venue for any action shall lie in Pierce County Superior Court or the U.S. District Court for Western Washington.

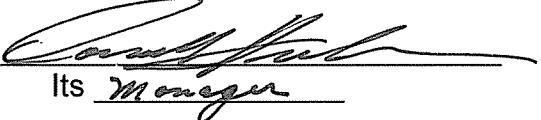
Section 23. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner to challenge this Agreement or any provision herein, the City may elect to tender the defense of such lawsuit or individual claims in the lawsuit (but not the liability associated with such lawsuit or claims) to Developer and/or Landowner(s). In such event, Developer and/or such Landowners shall hold the City harmless from and defend the City from all costs and expenses incurred in the defense of such lawsuit or individual claims in the lawsuit, including but not limited to, attorneys' fees, costs, expert witness fees. The Developer and/or Landowner shall not settle any lawsuit without the consent of the City. The City shall act in good faith and shall not unreasonably withhold consent to settle.

Section 24. Specific Performance. The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Development Agreement by any party in default hereof.

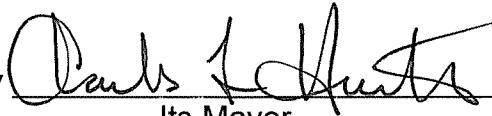
Section 25. Severability. If any phrase, provision or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the effective date of the ordinance adopting this Development Agreement, and 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 Development Agreement to be executed as of the dates set forth below:

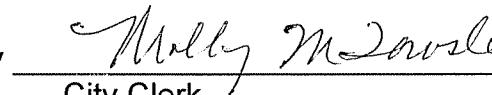
OWNER/DEVELOPER:
HARBOR ESTATES, LLC

By 
Its Manager

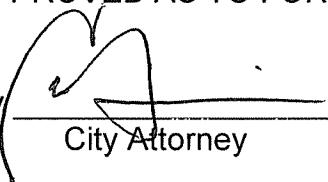
CITY OF GIG HARBOR

By 
Its Mayor

ATTEST:

By 
City Clerk

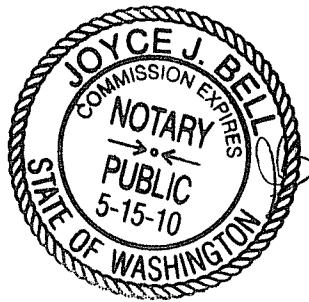
APPROVED AS TO FORM:

By 
City Attorney

STATE OF WASHINGTON)
COUNTY OF Pierce) ss.
)

I certify that I know or have satisfactory evidence that Don Huber is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Manager of Harbor Estates LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 7/5/04



Joyce J. Bell

Joyce J. Bell
(print or type name)

NOTARY PUBLIC in and for the
State of Washington, residing at:
Auburn WA

My Commission expires: 5/15/10

STATE OF WASHINGTON)
COUNTY OF PIERCE) ss.
)

I certify that I know or have satisfactory evidence that Charles L. Hunter is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of Gig Harbor to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 7-10-06

Molly M. Towslee

Molly M. Towslee
(print or type name)

NOTARY PUBLIC in and for the
State of Washington, residing at:
Gig Harbor

My Commission expires: 12/12/07

Exhibit A

Legal description of the Subject Property

Tax Parcel #02-22-30-3-002

The East half of the Southeast quarter of the Southwest quarter of Section 30,
Township 22 North, Range 2 East of the Willamette Meridian; except Borgen Boulevard
deeded to the City of Gig Harbor through AFN 2000-07-13-0671

Exhibit B- Map showing approved Comprehensive Amendment

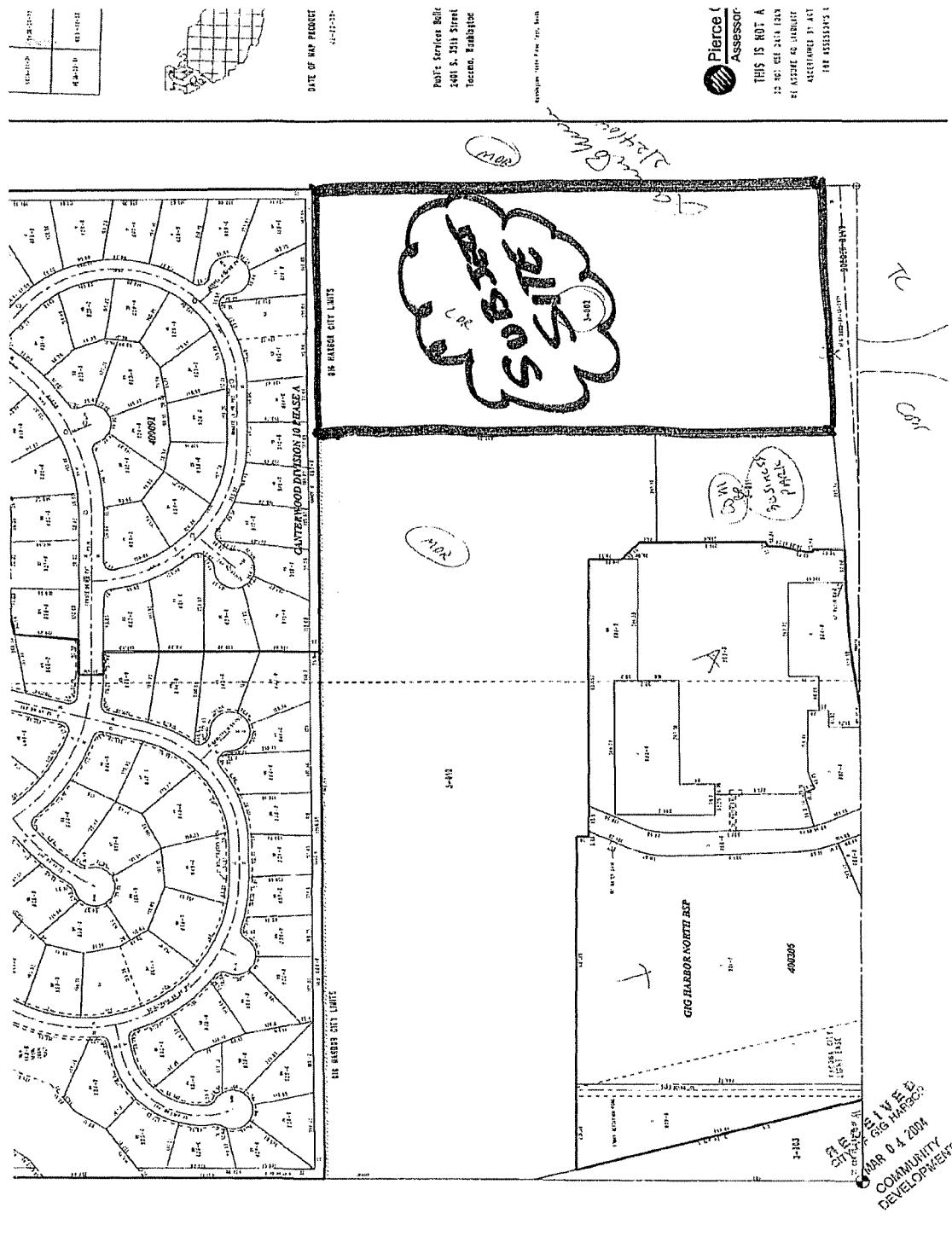


Exhibit C

List of required Transportation Mitigation Improvements to be performed by FHS, subject to a separate Development Agreement with the City, for which Harbor Estates LLC will participate in the cost.

In satisfaction of the conditions of the Comprehensive Plan Amendment and as consideration for the Development Agreement, the Developer shall:

1. Implement transportation demand management measures in accordance with the City's adopted commute trip reduction regulations, as set forth in chapter 10.28 GHMC, to reduce single occupant vehicle use.
2. Allow future transit service to be provided directly to the Property, consistent with the plans of Pierce Transit, and provide accommodations for such service in the approved site plan for the Project.
3. Construct full frontage improvements along the west boundary of the Property that fronts on Canterwood Boulevard, and construct a waterline transmission main extension along Canterwood Blvd. up to and across the entire Property frontage, consistent with adopted City standards. Improvements shall consist of a twelve (12) foot wide lane, cement concrete curb and gutter, planter strip, sidewalk, retaining walls, street illumination, storm drain system and an irrigation system.
4. Construct on Canterwood Boulevard a second southbound lane along with a ten (10) foot wide paved shoulder from the East Roundabout to the south boundary of the Property. South Access of FHS to RAB required. The City is responsible for the design and construction of the improvements to the right-of-way.
5. Construct on the northbound (east) side of Canterwood Boulevard a ten (10) foot wide paved shoulder from the East Roundabout to the south boundary (or south access) of the Property.
6. Construct a bypass lane on the north side of the East Roundabout from Canterwood Boulevard southbound to the SR 16 on-ramp northbound(Westbound). The design shall meet WSDOT standards.
7. Construct a second exit lane on the SR 16 on-ramp northbound (westbound) from the East Roundabout for an appropriate taper length acceptable to the Washington State Department of Transportation ("WSDOT"). The design shall meet WSDOT standards
8. Construct and extend the storage of the SR 16 off-ramp northbound 450 feet south of the East Roundabout. This additional lane on the ramp may trigger the need to prepare an interchange justification report (IJR) to determine if the revision might

adversely affect the level of service for through traffic on the mainline. The design shall meet WSDOT standards.

9. Construct a bypass lane on the south side of the East Roundabout from the SR 16 off-ramp northbound(westbound) to Burnham Drive southbound.

10. Construct a second southbound lane on the SR 16 off-ramp to the existing Roundabout intersection with Burnham Drive, for a length of approximately 1,500 feet of additional storage. This additional lane on the ramp may trigger the need to prepare an interchange justification report (IJR) to determine if the revision might adversely affect the level of service for through traffic on the mainline. The design shall meet WSDOT standards.

11. Construct a second lane circulating lane around the entire circumference of the West Roundabout. The design shall meet WSDOT standards.

12. Construct a second exit lane on the SR 16 on-ramp southbound from the West Roundabout for an appropriate taper length acceptable to WSDOT. The design shall meet WSDOT standards.

13. Convert the channelization of the existing Burnham Drive bridge over SR 16 to a three-lane section, with two lanes eastbound and one lane westbound across the bridge, or as required by WSDOT within the existing bridge width. The design shall meet WSDOT standards.

14. Convert the channelization of the East Roundabout to align with the revised channelization on the existing Burnham Drive bridge over SR 16.

15. Exhibit D pictorially depicts the required improvements.

Exhibit D- Map showing the required Transportation Mitigation Improvements

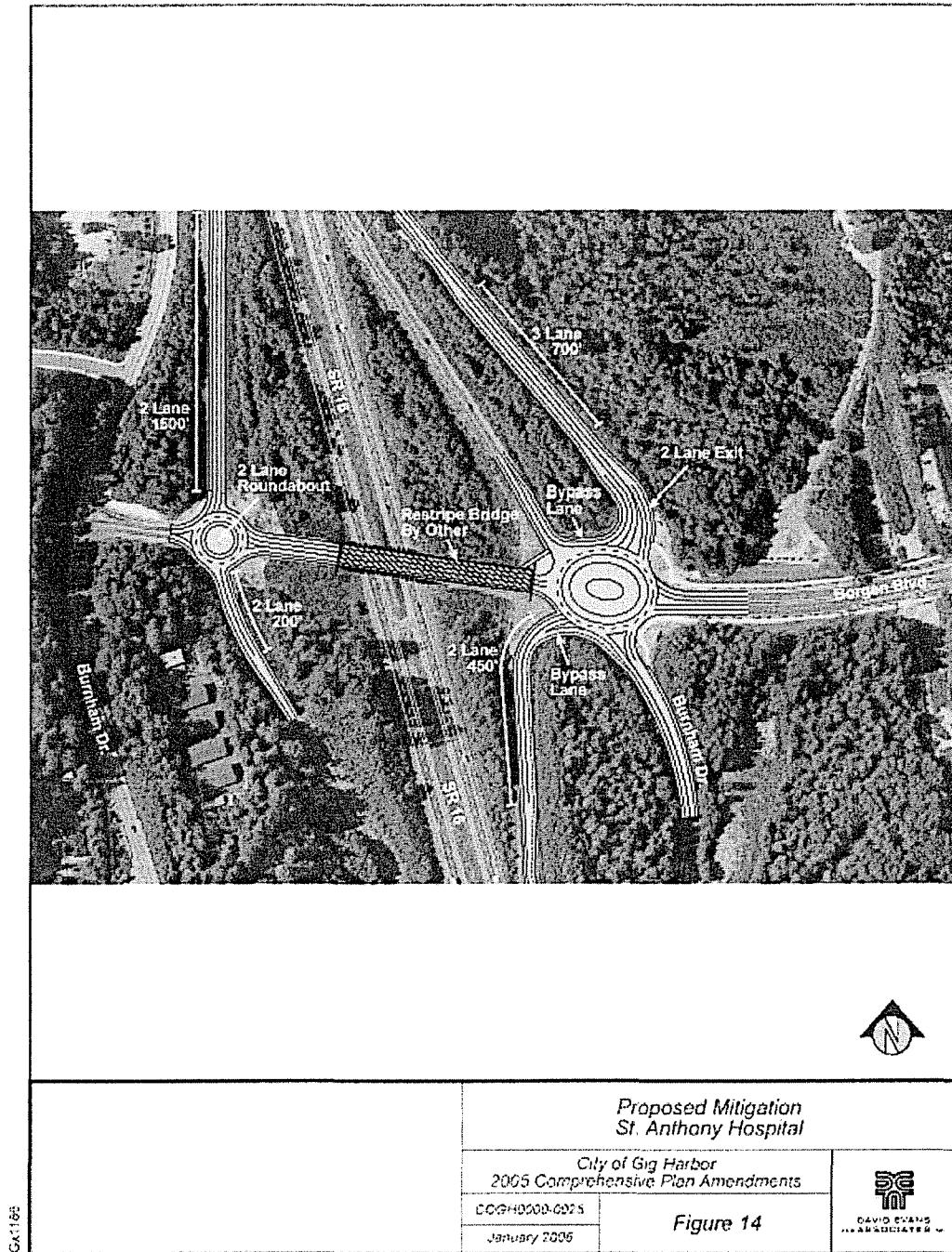


Exhibit E
Mitigation to be performed by Harbor Estates LLC

CPA 04-01 (Huber/Bingham Property) Site-Specific Mitigation Measures
Pages 90 & 91 FSEIS

Land use impacts from the proposed development would be regulated by the provisions of the Comprehensive Plan and the Gig Harbor Municipal Code. Where more intense development is possible on the Huber/Bingham Property site (CPA 04-01) due to higher densities allowed under the PCD-RMD zone, the Housing Element of the City's Comprehensive Plan contains specific policies designed to mitigate the impacts of higher density housing, including Policies 5.2.1., 5.2.2., and 5.2.3. More specifically the provisions of the PCD-RMD zone (GHMC 17.21), the City's subdivision regulations (GHMC Title 16), and the City's development standards are expected to mitigate any impacts to a nonsignificant level.

The Huber/Bingham Property CPA application in particular could generate between 122 and 169 PM peak hour trips depending on whether the project develops as proposed or were to utilize higher residential densities on the site allowed under the proposed rezone scenario. The TIA prepared for the CPA application by PacWest Engineering (2005) estimated 127 PM peak hour trips on Borgen Boulevard will be generated by the proposed 121 lot single family subdivision. That calculation relied on an unverified trip rate formula not commonly used in traffic studies, and is excessive. The 122 PM peak hour trip figure estimated in the SEIS can be used for subsequent development review purposes.

As part of a pre-annexation agreement in 2001, the City reserved 3.2 percent of the existing two-lane capacity of Borgen Boulevard for future residential development on the parcel which amounts to approximately 480 total daily trips in two directions or a maximum of 240 daily trips in any one direction. This translates to a maximum reserved capacity of 48 PM peak hour trips onto the Borgen Boulevard corridor. That capacity reservation expires as of January 1, 2006 according to the original pre-annexation

development agreement between the applicant and the city. The City could issue a new CRC for 1,160 Average Daily Trips, subject to acceptance of mitigation conditions.

Under the traffic concurrency management provisions of GHMC 19.10, the City must evaluate roadway capacity planned to be available for the proposed CPA/rezone and may award a CRC upon the satisfactory performance of that evaluation. Based on the Borgen Boulevard corridor roadway and intersection improvements identified in the North Gig Harbor Traffic Mitigation Plan (DEA Inc., December 2005) and the Land Use Map and Comprehensive Plan Policy Amendments recommended in this SEIS (including adoption of LOS E at the Borgen Boulevard/SR 16 intersection), it appears

that sufficient planned roadway capacity will exist to render CPA 04-01 compliant with the concurrency requirements GHMC 19.10.

The specific mitigation requirements for this development should include:

- The developer of the subdivision may be subject to payment of traffic impact fees in accordance with the provisions of GHMC 19.12, to the extent such fees do not duplicate the following required mitigation measures for the proposed CPA 04-01 residential subdivision:
- Required frontage improvements along Borgen Boulevard consistent with adopted design standards for the facility.
- Require the developer to participate proportionately in the cost of the Borgen Boulevard/SR 16 interchange roundabout improvements and ramp improvement, or equivalent interchange replacement, described hereafter as mitigation for St. Anthony Hospital. Based on 122 trips for the Huber/Bingham development and 535 trips for the hospital development, the proportional shares are 18.57% and 81.43%, respectively.
- Require, at the project level review, a second access point for the subdivision consistent with projects L-2 and L-3 in Figure 13. If neither alternate access can be constructed and open at time of occupancy, then redesign the proposed single access point onto Borgen Boulevard to allow for additional lanes to alleviate peak hour congestion and ensure safe public access during peak periods (i.e., to ensure safe ingress/egress for emergency vehicles and to reduce the potential for accidents from turning movements during peak periods).

UNAVOIDABLE ADVERSE IMPACTS

With respect to cumulative impacts of development up to the limits of the land use plan, traffic volumes will greatly increase in the Borgen Boulevard corridor until buildout is realized. Assuming all suggested mitigation measures are implemented, LOS standards will be met (or nearly so) at all locations; however, the congestion at key intersections will remain greater than existing conditions. With respect to site-specific unavoidable adverse impacts of CPA 04-01, CPA 05-01, and CPA 05-03, none are anticipated provided that all recommended mitigation is provided.