

**RESOLUTION NO. 825**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND THE SUBDIVISION OF LAND, AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT WITH W. SMITH, LLC; APPLYING TO ONE PARCEL, TOTALING 6.21 ACRES OF PROPERTY, LOCATED WEST OF BURNHAM DRIVE AND NORTH OF 120<sup>TH</sup> STREET NW EXTENDED TO THE EAST, GIG HARBOR, WASHINGTON.**

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WHEREAS, RCW 36.70B.170 authorizes a local government and a person having ownership or control of real property within its jurisdiction to enter into a development agreement; 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, 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, the Developer has a fee simple or other substantial beneficial interest in the real property located property located at 12110 Burnham Drive (Parcel No. 0122251027) Gig Harbor, Washington, which is legally described in Exhibit A of the Development Agreement, attached hereto and incorporated herein by this reference; and

WHEREAS, Pierce County originally authorized Preliminary Plat Approval for the proposed 25 lot subdivision and last extended its authorization for a one year period on April 9, 2009; and

WHEREAS, the County's authorization of the Preliminary Plat expires on March 2, 2010; and

WHEREAS, the City's Preliminary Plat Ordinance (Gig Harbor Municipal Code Title 16) contains no provision to extend the plat; and

WHEREAS, applicant Carl E. Halsan submitted a Development Agreement Application to the city of Gig Harbor requesting a two-year extension to the previously authorized Preliminary Plat Approval and its most recent extension; and

WHEREAS, environmental review was previously conducted on the Plat by Pierce County and the subject Development Agreement is exempt from the threshold determination and Environmental Impact Statement requirements of the State Environmental Policy Act; and

WHEREAS, on February 22, 2010, the City Council held a public hearing on the Development Agreement; and voted to authorize the Mayor to execute the agreement on behalf of the city; Now, Therefore,

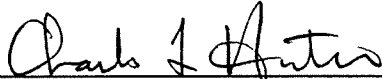
THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

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

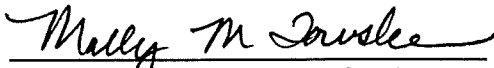
Section 2. The City Council hereby directs the Planning Director to record the Development Agreement against the Property legally described in Exhibit A to the Development Agreement, at the cost of the applicant, pursuant to RCW 36.70B.190.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor this 22nd day of February, 2010.

CITY OF GIG HARBOR

  
\_\_\_\_\_  
Mayor Charles L. Hunter

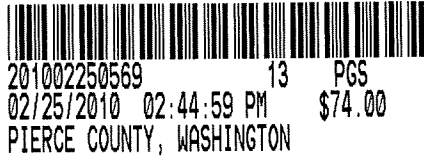
ATTEST/AUTHENTICATED:

  
\_\_\_\_\_  
Molly M. Towslee, City Clerk

APPROVED AS TO FORM:  
Office of the City Attorney

  
\_\_\_\_\_  
Angela S. Belbeck

FILED WITH THE CITY CLERK: 2/17/10  
PASSED BY THE CITY COUNCIL: 2/22/10  
RESOLUTION NO. 825



Return Address:  
 City Clerk  
 City of Gig Harbor  
 3510 Grandview Street  
 Gig Harbor, WA 98335

Please print legibly or type information.

Document Title(s) (Or transaction contained therein):  
 1. **Adopting Resolution and Development Agreement**  
 2.  
 3.

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Grantor(s) (Last name first, then first name and initials):  
 1. W SMITH, LLC  
 2.  
 3.

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Grantee(s) (Last name first, then first name and initials):  
 1. **CITY OF GIG HARBOR**  
 2.  
 3.

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Legal Description (Abbreviated: i.e., lot, block, plat; or section, township, range):  
 That portion of the southwest quarter of the Northeast quarter of Section 25, Township 22 North, Range 1 East of the Willamette Meridian lying westerly of Gig Harbor-Purdy County Road; except that portion conveyed to the State of Washington for State Route 16 and State Highway No. 14. ...

Additional Legal Description on Page 11 of Document

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Reference Number(s) (Of documents assigned or released):  
 AFN 200190170321  
 PC File Nos. 377377 & 378158

Additional Reference numbers on Page 2, 3 of Document.

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Assessor's Property Tax Parcel/Account Number  
 AFN 200190170321

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The Auditor/Recorder will rely on the information provided on this cover sheet. The staff will not read the Document to verify the accuracy or completeness of the indexing information provided

**DEVELOPMENT AGREEMENT  
BY AND BETWEEN THE CITY OF GIG HARBOR  
AND W SMITH, LLC, FOR THE  
RITA PLAT/PLANNED DEVELOPMENT DISTRICT DEVELOPMENT**

THIS DEVELOPMENT AGREEMENT is made and entered into this 23<sup>rd</sup> day of February, 2010, by and between the CITY OF GIG HARBOR, a Washington municipal corporation, hereinafter the "City," and W SMITH, LLC, a limited liability company organized under the laws of the State of Washington, hereinafter the "Developer."

**RECITALS**

WHEREAS, RCW 36.70B.170 authorizes the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction; and

WHEREAS, Developer is the owner of the subject real property; 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; and

WHEREAS, this Development Agreement relates to the development known as RITA, which is located at: 12110 Burnham Drive NW, Application No. PL-DEV-10-0001; and

WHEREAS, the following events have occurred in the processing of the Developer's application:

a) The Pierce County Hearing Examiner approved the 29 lot Preliminary Plat/Planned Development District on February 19, 1999;

b) The City of Gig Harbor and the original developer entered into a Utility Extension Agreement for sewer service to the project and recorded the Agreement under AFN 200109170321;

c) The Pierce County Planning Director approved a Minor Amendment for the project on September 17, 2004 reducing the number of lots in the project to 25 and increasing setback requirements thereby eliminating zero lot line development (see Pierce County File Nos. 377337 and 378158);

d) The Pierce County Hearing Examiner granted a time extension for the final plat on April 9, 2009 with a new deadline of March 2, 2010 (see Pierce County File No. 655557;

e) The subject project site was annexed into the City limits of Gig Harbor in May of 2009;

f) After a public hearing, by Resolution No. 825, 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 contemplated in this Agreement. The Plat/PDD describes the Project as 25 lot single family project.

**Section 2. The Property.** The Property consists of 6.21 acres and 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. "Adopting Resolution" means the resolution which approves this Development Agreement, as required by RCW 36.70B.200.

B. "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.

C. "Design Guidelines" means the Gig Harbor Design Manual, as adopted by the City.

D. "Development Standards" includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3).

E. "Director" means the City's Community Development Director or Director of Planning and Building.

F. "Effective Date" means the effective date of the Adopting Resolution.

G. "Existing Land Use Regulations" means the ordinances adopted by the City Council of Gig Harbor in effect on the Effective Date, including the adopting ordinances 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 Property, including, but not limited to the Comprehensive Plan, the City's Official Zoning Map and development standards, the Design Manual, the Public Works Standards, SEPA, Concurrency Ordinance, and all other ordinances, codes, rules and regulations of the City establishing subdivision standards, park regulations, building standards. Existing Land Use Regulation does not include non-land use regulations, which includes taxes and impact fees.

H. "Landowner" is the party who has acquired any portion of the Property from the Developer who, unless otherwise released as provided in this Agreement, shall be subject to the applicable provisions of this Agreement.

**Section 4. Exhibits.** Exhibits to this Agreement are attached hereto and incorporated herein, including the following:

Exhibit A – Legal Description of the Property

Exhibit B – Project Site Plan

**Section 5. 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 6. Term of Agreement.** This Agreement shall commence upon the effective date of the Adopting Resolution approving this Agreement, and shall continue in force for a period of 2 years unless extended or terminated as provided herein. 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 7. Vested Rights of Developer.** During the term of this Agreement, unless sooner terminated in accordance with the terms hereof, in developing the Property consistent with the Project described herein, Developer is assured, and the City agrees, that the development rights, obligations, terms and conditions specified in this Agreement, are fully vested in the Developer and may not be changed or modified by the City, except as may be expressly permitted by, and in accordance with, the terms and conditions of this Agreement, including the exhibits hereto, or as expressly consented thereto by the Developer.

**Section 8. Permitted Uses and Development Standards.** The permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation and dedication of land or payment

of fees in lieu of dedication for public purposes, the construction, installation and extension of public improvements, development guidelines and standards for development of the Property shall be those set forth in this Agreement, the permits and approvals identified herein, as amended, and all exhibits incorporated herein. Developer acknowledges the requirement of Moderate Density Single Family (MSF) zone classification setbacks (front yard setback of 25 feet, side yard setback of 5 feet, and rear yard setback of 10 feet) as approved by Pierce County on September 17, 2004 in connection with a request for minor amendment, and further acknowledges and agrees zero lot line development is not permitted.

**Section 9. Final Plat.** On or before March 2, 2012, the Developer shall submit a complete application for final plat approval to the City together with the required filing fee.

**Section 10. Minor Modifications.** Minor modifications from the approved permits or the exhibits attached hereto may be approved in accordance with the provisions of the City's code, and shall not require an amendment to this Agreement.

**Section 11. Further Discretionary Actions.** Developer acknowledges that the Existing Land Use Regulations contemplate the exercise of further discretionary powers by the City. These powers include, but are not limited to, review of 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.

**Section 12. Existing Land Use Fees and Impact Fees.**

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

B. All impact fees shall be paid as set forth in the approved permit or approval, or as addressed in chapter 19.12 of the Gig Harbor Municipal Code.

**Section 13. 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 Gig Harbor Municipal Code, and to obtain penalties and costs as provided in the Gig Harbor Municipal Code for violations of this Development Agreement and the Code.

**Section 14. Annual Review.** The City shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by Developer and Landowner with this Agreement. The City may charge fees as necessary to cover the costs of conducting the annual review.

**Section 15. Termination.** This Agreement shall terminate upon the expiration of the term identified in Section 6 or when the 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 any single-family residence and the lot or parcel upon which such residence is located, when it has been approved by the City for occupancy.

**Section 16. Effect upon Termination on Developer Obligations.** Termination of this Agreement as to the Developer of the 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 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. Effects upon Termination on City.** Upon any termination of this Agreement as to the Developer of the Property or any portion thereof, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the property affected by such termination (provided that vesting of such entitlements, conditions or fees may then be established for such property pursuant to then existing planning and zoning laws).



**Section 18. 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 19. 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, their respective heirs, successors and assigns. The Developer, Landowner and every purchaser, assignee or transferee of an interest in the 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 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 Property sold, assigned or transferred to it.

**Section 20. 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 Property during the term of this Agreement, 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 after termination of this Agreement.

**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 following addresses:

If to the Developer:

Walt Smith  
PO Box 1272  
Gig Harbor, WA  
98335-1272

If to the City:

City of Gig Harbor  
Attn: City Administrator  
3510 Grandview Street  
Gig Harbor, WA 98335

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. Reimbursement for Agreement Expenses of the City.**

Developer agrees to reimburse the City for actual expenses incurred over and above fees paid by Developer as an applicant incurred by City directly relating to this Agreement, including recording fees, publishing fees and reasonable staff, legal and consultant costs not otherwise included within application fees. Such payment of all fees shall be made, at the latest, within thirty (30) days from the City's presentation of a written statement of charges to the Developer. In the event Developer fails to pay the fees within the 30-day period, the City may declare the Developer in default and terminate this Agreement after 30 days written notice if the default is not timely cured.

**Section 23. 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 24. 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 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 and expenses of litigation, and damages awarded to the prevailing party or parties in such litigation. 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 25. 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 26. 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 Adopting Resolution, such invalidity shall not affect the validity of the remainder of this Agreement.

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

OWNER/DEVELOPER:

CITY OF GIG HARBOR

*W. Smith LLC*  
By: *Walter H Smith*  
Its: *Owner*  
Date: *2-23-2010*

By: *Charles J. Antin*  
Its: Mayor  
Date: *2-23-10*

ATTEST:

*Molly Dowdlee*  
City Clerk

APPROVED AS TO FORM:

*Angel Stelbun*  
City Attorney

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )

I certify that I know or have satisfactory evidence that *Walter H. Smith* 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 *Owner* of *W SMITH, LLC*, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: *2 / 23 / 2010*

PATRICIA M MCGALLIAN  
Notary Public  
State of Washington  
My Commission Expires  
January 22, 2013

*Patricia M. Mcgallian*  
Printed: *Patricia M. Mcgallian*  
NOTARY PUBLIC in and for Washington  
Residing at: *Kitsap County*  
My appointment expires: *1/22/2013*

[notary on following page]

STATE OF WASHINGTON        )  
  ) ss.  
COUNTY OF PIERCE         )

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 the City of Gig Harbor, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 2/23/10



Molly M Towslee  
Printed: Molly M. Towslee  
NOTARY PUBLIC in and for Washington  
Residing at: Gig Harbor  
My appointment expires: 12/2/11

## **EXHIBIT "A"**

### **RITA Legal Description**

That portion of the Southwest quarter of the Northeast quarter of Section 25, Township 22 North, Range 1 East of the Willamette Meridian lying westerly of Gig Harbor-Purdy County Road; except that portion conveyed to the State of Washington for State Route 16 and State Highway No. 14. Said property is more precisely described as follows:

Beginning at the Southwest quarter corner of the Northeast quarter of Section 25, Township 22 North, Range 1 East of the Willamette Meridian, then North  $02^{\circ}28'44''$  East 1,324.24 feet; then South  $88^{\circ}00'23''$  East 68.57 feet, then  $15^{\circ}29'57''$  East 310.16 feet, then South  $02^{\circ}01'21''$  East 432.40 feet, then South  $15^{\circ}37'20''$  East 359.38 feet, then South  $04^{\circ}23'34''$  East 256.17 feet, then North  $87^{\circ}59'40''$  West 340.55 feet to the Point of Beginning.



Exhibit C

**STERLING**  
SAVINGS BANK

February 4, 2010

RE: Preliminary Plat of Rita Estates

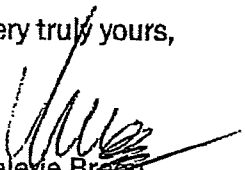
To Whom It May Concern:

Sterling Savings Bank acquired, through foreclosure, the property being developed as the Plat of Rita Estates in Gig Harbor. The legal description of that property is attached on Exhibit A.

Sterling Savings Bank has entered into a Purchase and Sale Agreement with Walter H. Smith (doing business under his company of W Smith, LLC). Pursuant to that Agreement, Sterling Savings Bank does hereby authorize Walter H. Smith (or his company, W Smith, LLC) to apply for an extension of time for completing the existing preliminary plat. If you need further documentation of this authority, please advise the undersigned. If you would like to discuss this authority further, please contact me as well.

This authority will terminate if the Purchase and Sale Agreement with Mr. Smith terminates. I will advise you in writing if that occurs.

Very truly yours,

  
Valerie Breen  
REO Disposition

**RECEIVED**  
CITY OF GIG HARBOR  
FEB 04 2010  
COMMUNITY DEVELOPMENT