

RESOLUTION NO. 819

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATED TO COMPREHENSIVE PLAN AMENDMENTS, DENYING APPLICATIONS COMP 09-0005 HAVEN OF REST LAND USE MAP AMENDMENT AND COMP 09-0012 3700 GRANDVIEW LAND USE MAP AMENDMENT AS PART OF THE 2009 COMPREHENSIVE PLAN ANNUAL CYCLE.

WHEREAS, the City of Gig Harbor plans under the Growth Management Act (chapter 36.70A RCW); and

WHEREAS, the Act requires the City to adopt a Comprehensive Plan; and

WHEREAS, the City is required to consider suggested changes to the Comprehensive Plan (RCW 36.70A.470); and

WHEREAS, under GHMC 19.09 the City has adopted a procedure for processing amendments to the Comprehensive Plan, which includes specific criteria for said amendments (19.09.170); and

WHEREAS, on May 11, 2009, the City Council evaluated the comprehensive plan amendment applications submitted for the 2009 annual cycle, and held a public hearing on such applications; and

WHEREAS, on May 26, 2009, the City Council forwarded twelve comprehensive plan amendment applications to the Planning Commission for further processing in the 2009 Comprehensive Plan annual cycle; and

WHEREAS, the Planning Commission held work study sessions on to discuss the applications on June, 18, 2009, July 16, 2009, July 30, 2009, August 6, 2009, August 20, 2009, September 3, 2009, September 17, 2009, September 24, 2009 and October 21, 2009; and

WHEREAS, the Planning Commission held public hearings on comprehensive plan amendments on July 16, 2009, July 30, 2009 and September 17, 2009; and

WHEREAS, on October 21, 2009 the Planning Commission voted to recommend approval of all twelve proposed amendments reviewed in the 2009 annual cycle; and

WHEREAS, on November 9, 2009, the Gig Harbor City Council held a

public hearing on the twelve amendments to the Gig Harbor Comprehensive Plan for the 2009 annual review cycle; and

WHEREAS, the Gig Harbor City Council considered applications COMP 09-0005 and COMP 09-0012 at their meetings of November 23, 2009 and December 14, 2009; and

WHEREAS, GHMC 19.09.180 requires that all comprehensive plan amendments that are rejected be addressed in a resolution,

Now, Therefore,

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

Section 1. Notice. The City Clerk confirmed that public notice of the public hearings held by the City Council on the following applications was provided.

Section 2. Hearing Procedure. The City Council's consideration of the comprehensive plan text amendments is a legislative act. The Appearance of Fairness doctrine does not apply.

Section 3. Testimony. The following persons testified on the applications at the November 9, 2009 public hearing:

(COMP 09-0005) Kathryn Jerkovich, Lee Murray, Patricia Manning, Mark Hoppen; (COMP 09-0012) Carl Halsan, Danielle Ittner, John McMillan, Kurt Salmon, Mark Hoppen, Bill Fogarty, Cliff Petersen, William Lynn.

Section 4. Criteria for Approval. The process for Comprehensive Plan amendments (Chapter 19.09) states that the City Council shall consider the Planning Commission's recommendations and after considering the criteria found in GHMC 19.09.170 make written findings regarding each application's consistency or inconsistency with the criteria. The criteria found in GHMC 19.09.170 are as follows:

19.09.170 Criteria for approval.

A. The proposed amendment meets concurrency requirements for transportation as specified in Chapter 19.10 GHMC;

B. The proposed amendment will not adversely impact the city's ability to provide sewer and water, and will not adversely affect adopted levels of

service standards for other public facilities and services such as parks, police, fire, emergency medical services and governmental services;

C. The proposed amendments will not result in overall residential capacities in the city or UGA that either exceed or fall below the projected need over the 20-year planning horizon; nor will the amendments result in densities that do not achieve development of at least four units per net acre of residentially designated land;

D. Adequate infrastructure, facilities and services are available to serve the proposed or potential development expected as a result of this amendment, according to one of the following provisions:

1. The city has adequate funds for needed infrastructure, facilities and services to support new development associated with the proposed amendments; or

2. The city's projected revenues are sufficient to fund needed infrastructure, facilities and services, and such infrastructure, facilities and services are included in the schedule of capital improvements in the city's capital facilities plan; or

3. Needed infrastructure, facilities and services will be funded by the developer under the terms of a developer's agreement associated with this comprehensive plan amendment; or

4. Adequate infrastructure, facilities and services are currently in place to serve expected development as a result of this comprehensive plan amendment based upon an assessment of land use assumptions; or

5. Land use assumptions have been reassessed, and required amendments to other sections of the comprehensive plan are being processed in conjunction with this amendment in order to ensure that adopted level of service standards will be met.

E. The proposed amendment is consistent with the goals, policies and objectives of the comprehensive plan;

F. The proposed amendment will not result in probable significant adverse impacts to the transportation network, capital facilities, utilities, parks, and environmental features which cannot be mitigated and will not place uncompensated burdens upon existing or planned services;

G. In the case of an amendment to the comprehensive plan land use map, that the subject parcels being redesignated are physically suitable for the allowed land uses in the designation being requested, including compatibility with existing and planned surrounding land uses and the zoning district locational criteria contained within the comprehensive plan and zoning code;

H. The proposed amendment will not create a demand to change other land use designations of adjacent or surrounding properties, unless the change in land use designation for other properties is in the long-term interest of the community in general;

I. The proposed amendment is consistent with the Growth Management Act, the countywide planning policies and other applicable interjurisdictional policies and agreements, and/or other state or local laws; and

J. The proposed effect of approval of any individual amendment will not have a cumulative adverse effect on the planning area.

**Section 5. COMP 09-0005 – Haven of Rest Land Use Map
Amendment**

Summary: A land use designation change from Residential Low (RL) to Residential Medium (RM) of 3.4 acres of property north of Rosedale Street and directly east of the Tacoma Power lines. Through a development agreement, the applicant sought to limit the rezone property to Medium-Density Residential (R-2) and limit the uses to all uses allowed (permitted and conditional) in the R-1 zone and cemeteries, clubs, and community recreation halls as conditional uses.

Findings: The City Council finds that the application does not meet criteria GHMC 19.09.170(E, G and H) for the following reasons:

- a) The RM designation states that businesses may be provided for if they do not significantly impact the character of the residential neighborhood and that the intensity of the non-residential use be compatible with the adjacent residential area (GHCP Policy 2.2.3.a). The proposed cemetery, club and community recreation hall uses will negatively impact the character of the residential neighborhood along Rosedale Street. Along Rosedale Street, the Tacoma Power Line property separates the higher intensity residential to the west from the single-family neighborhoods to the east. The subject property is located just east of the power lines and if this amendment was approved it would be the only R-2 zoning east of the power lines along Rosedale. Allowing the R-2 zoning and nonresidential uses (cemetery, clubs and community recreation halls) east of the power lines would not be consistent with the character of the existing single-family neighborhood.
- b) The amendment could create a demand for land use designation changes in the surrounding areas. The Tacoma Power lines serve as a separation between medium density and low density designations. To the east of the subject property is vacant land designated RL and zoned R-1; intensifying the land use designation of the subject property could cause the property owners of that vacant land to seek a redesignation to a higher density.

Conclusion: After consideration of the materials in the file, staff presentation, the Planning Commission recommendation, the City's Comprehensive Plan, criteria for approval found in Chapter 19.09 GHMC, applicable law, and public testimony, the City Council hereby **denies** application COMP 09-0005, as identified in Exhibit A attached to this Resolution.

**Section 6. COMP 09-0012 – 3700 Grandview Land Use Map
Amendment**

Summary: A land use designation change from Residential Low (RL) to Residential Medium (RM) for 2 acres of property located at 3700 Grandview Street; the northern corner of Stinson Avenue, Grandview Street and Pioneer Way. Through a development agreement, the property owners sought to limit the scope of any future development of the subject property and the 2.27 acre area north of the subject property.

Findings: The City Council finds that the application does not meet criteria GHMC 19.09.170(E, G and H) for the following reasons:


- a) The Community Design Element of the Comprehensive plan has policies related to maintaining building scale, in particular Goal 3.6 and 3.7. The City Council finds that these policies are not being met by the proposed land use amendment and accompanying development. The two buildings proposed would not “Maintain a small town scale” and would, “overpower existing structures” and “visually dominate Gig Harbor’s small town city-scape”.
- b) The existing character of the commercial properties surrounding the 3700 Grandview property consists of 1 – 2 story office buildings that range in size from 1,500 square feet to 9,700 square feet. The proposal for 3700 Grandview is for 2 mixed use buildings containing 21,100 and 24,900 square feet of habitable space. In addition, partially below-ground parking garages of 11,900 square feet and 14,500 square feet are proposed. The sizes of the buildings proposed in the 3700 Grandview amendment are substantially larger than other commercial buildings within the area.
- c) The proposed buildings are most similar to the BDR/Bayview Plaza building located in the Commercial/Business designation and Downtown Business District. The BDR building is two stories tall; 20,000 – 25,000 square feet in area; and has underground parking. The City Council finds that two buildings of that size (BDR) located between Pioneer and Stinson, north of Grandview in a Residential Medium designation would be inconsistent with the established neighborhood scale for commercial buildings.

- d) The RM designation states that professional offices or businesses may be provided for if they do not significantly impact the character of the residential neighborhood and that the intensity of the non-residential use be compatible with the adjacent residential area. The City Council finds that because of the inconsistency with the scale of the surrounding commercial uses, the proposed development would not be compatible with the existing land uses in the surrounding area.
- e) The intent of the RB-1 zoning is to serve as a buffer between high intensity commercial and lower density residential uses. The City Council finds that current RB-1 zoning is appropriate for the subject property and helps to protect and preserve the single-family residential north of the subject property. Increasing the building size limitations, through approving the application, would not provide an adequate buffer to the single-family neighborhoods.
- f) The City Council finds that the amendment could create a demand for land use designation north of Grandview Street. If the land use and zoning for this property becomes RM and RB-2, it would be the only RB-2 zoning north of Grandview Street in the Pioneer Way and Stinson Avenue vicinity. If the 3700 Grandview application is approved and the proposed mixed use is built, the residential character of Grandview Street's north side would change, potentially leading to more requests to amend the designation to RM for other properties along Grandview.


Conclusion: After consideration of the materials in the file, staff presentation, the Planning Commission recommendation, the City's Comprehensive Plan, criteria for approval found in Chapter 19.09 GHMC, applicable law, and public testimony, the City Council hereby **denies** application COMP 09-0012, as identified in Exhibit B attached to this Resolution.

RESOLVED by the City Council this 11th day of January, 2010.

APPROVED:


Charles L. Hunter, Mayor

ATTEST/AUTHENTICATED:


Molly M. Towslee, City Clerk

APPROVED AS TO FORM;

OFFICE OF THE CITY ATTORNEY:

BY: *Amy Helber*

FILED WITH THE CITY CLERK: 01/06/10
PASSED BY THE CITY COUNCIL: 01/11/10
RESOLUTION NO. 819

Exhibit "A"
Application COMP 09-0005:
Haven of Rest Land Use Map
Amendment



GIG HARBOR
"THE MARITIME CITY"

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**COMP 09-0005 Haven of Rest Land Use Amendment
Residential Low (RL) to Residential Medium (RM)**

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF GIG HARBOR
AND HAVEN OF REST, INC.,
REGARDING
LIMITATION OF FUTURE REZONE APPLICATIONS AND LAND USE**

THIS DEVELOPMENT AGREEMENT is made and entered into this _____ day of _____, 2009, by and between the CITY OF GIG HARBOR, a Washington municipal corporation (the "City"), and HAVEN OF REST, INC., a Washington corporation, with its principal offices located at 8503 SR Hwy. 16, Gig Harbor, Washington 98335 (the "Owner").

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, 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, Owner has made application to the City, known as the Haven of Rest Comprehensive Plan Land Use Map Amendment, COMP 09-0005, to change the land use designation of the subject property from Residential Low (RL) to Residential Medium (RM) (the "Application"), for the property located at 4223 Rosedale Street (Parcel No. 0221064151) and XXXX Mitts Lane (Parcel No. 0221064164), shown on Exhibit A and legally described on Exhibit B, both of which are attached hereto and incorporated herein (the "Property"); and

WHEREAS, after holding a public hearing on the Application, the Planning Commission recommended approval of the Application subject to a development agreement of five-to-ten years limiting any future rezone proposal of the Property to the R-2 zoning district; and

WHEREAS, on _____, the City Council adopted the recommendation of the Planning Commission, approving the Application, subject to approval of this Development Agreement; and

WHEREAS, on November 9, 2009, the City held a public hearing on this Development Agreement;

NOW, THEREFORE, in consideration of the City changing the land use designation of the Property from RL to RM, the parties agree and the Owner further covenants for itself, its heirs, successors and assigns, as follows:

1. Limitation on Future Rezone. Owner acknowledges the recommendation of the Planning Commission, as adopted by the City Council, to approve its application for change in Comprehensive Plan land use designation from Residential Low (RL) to Residential Medium (RM) with a limitation on future rezone of the Property to the R-2 zoning district, and on behalf of itself, its heirs, successors and assigns, Owner hereby covenants and agrees to limit, for the term of this Agreement, any application for rezone of the Property to the R-2 zoning district.

2. Limitation on Future Land Use and Density. In the event the Property is rezoned to the R-2 zoning district, Owner, on behalf of itself, its heirs, successors and assigns, hereby covenants and agrees that land uses shall be limited to those uses allowed (permitted or conditional) in the Single-Family Residential (R-1) zoning district. Cemetery, Community Recreation Hall and Club uses will be allowed as conditional uses. Owner, on behalf of itself, its heirs, successors and assigns, further covenants and agrees that development of residential uses shall conform to the development standards for the R-1 zoning district, including but not limited to a maximum of 4 dwelling units per acre, calculated in accordance with chapter 17.05 of the Gig Harbor Municipal Code (Density in Residential Zones).

3. Reservation of City Authority. Nothing in this Agreement is intended to guarantee approval of a future rezone to the R-2 zoning district, and the City retains its authority to approve or deny any such application for rezone based on criteria in existence at the time of consideration. In addition, nothing herein limits the City's authority to adopt new land use regulations as it deems appropriate, or to amend existing land use regulations. Land use regulations include 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, bulk regulations, 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.

4. Term. This Agreement shall commence upon the effective date of the resolution approving this Agreement, and shall continue in force for a period of 20 years unless extended or terminated in the manner set forth in Section 5 below.

5. Covenant Running with the Land. This Agreement shall be recorded with the Pierce County Auditor. The conditions and covenants set forth in this Agreement 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.

6. Amendments. 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.

7. Notices. All notices required to be given by either party to the other under this Agreement shall be in writing and shall be given in person or by mail to the addresses set forth below. Notice by mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, addressed as provided in this paragraph.

Haven of Rest
ATTN: Robert Glass
P.O. Box 156
Gig Harbor, WA 98335

City of Gig Harbor
ATTN: Molly Towslee, City Clerk
3510 Grandview Street
Gig Harbor, WA 98335
(253) 851-6170

Notices to subsequent Owners shall be required to be given by the City only for those who have given the City written notice of their address. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

8. Reimbursement for Expenses of City. Owner agrees to reimburse the City for actual expenses incurred over and above fees paid by Owner as an applicant incurred by City directly relating to this Agreement, including recording fees, publishing fees and reasonable staff and consultant costs not otherwise included within application fees. Such payment of all fees shall be paid, at the latest, within thirty (30) days from the City's presentation of a written statement of charges to the Owner.

9. 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.

10. Third Party Legal Challenge. This Agreement is intended and executed for the sole benefit of the parties hereto. Nothing herein shall be construed as creating any enforceable rights or causes of action in or for any other person or entity. In the event any legal action or special proceeding is commenced by any person or entity other than a party to this Agreement 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 Owner. In such

event, Owner 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 Owner 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.

11. 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 Agreement by any party in default hereof.


12. Severability. Any invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of any other provision.

13. Entire Agreement. This Agreement represents the entire integrated agreement between the City and the Owner, superseding all prior negotiations, representations or agreements, written or oral.

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

HAVEN OF REST, INC.

CITY OF GIG HARBOR

By: 
Its: President

By: _____
Its Mayor

ATTEST:

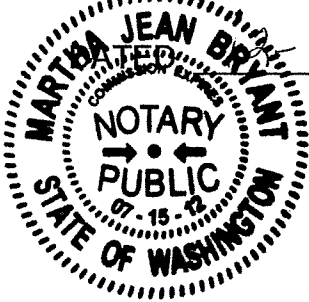
City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Robert L. Glass 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 President of HAVEN OF REST, INC., a Washington corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



Martha Jean Bryant
Printed: Martha Jean Bryant
NOTARY PUBLIC in and for Washington
Residing at: Pierce
My appointment expires: 7-15-2012

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

DATED: _____

Printed: _____
NOTARY PUBLIC in and for Washington
Residing at: _____
My appointment expires: _____

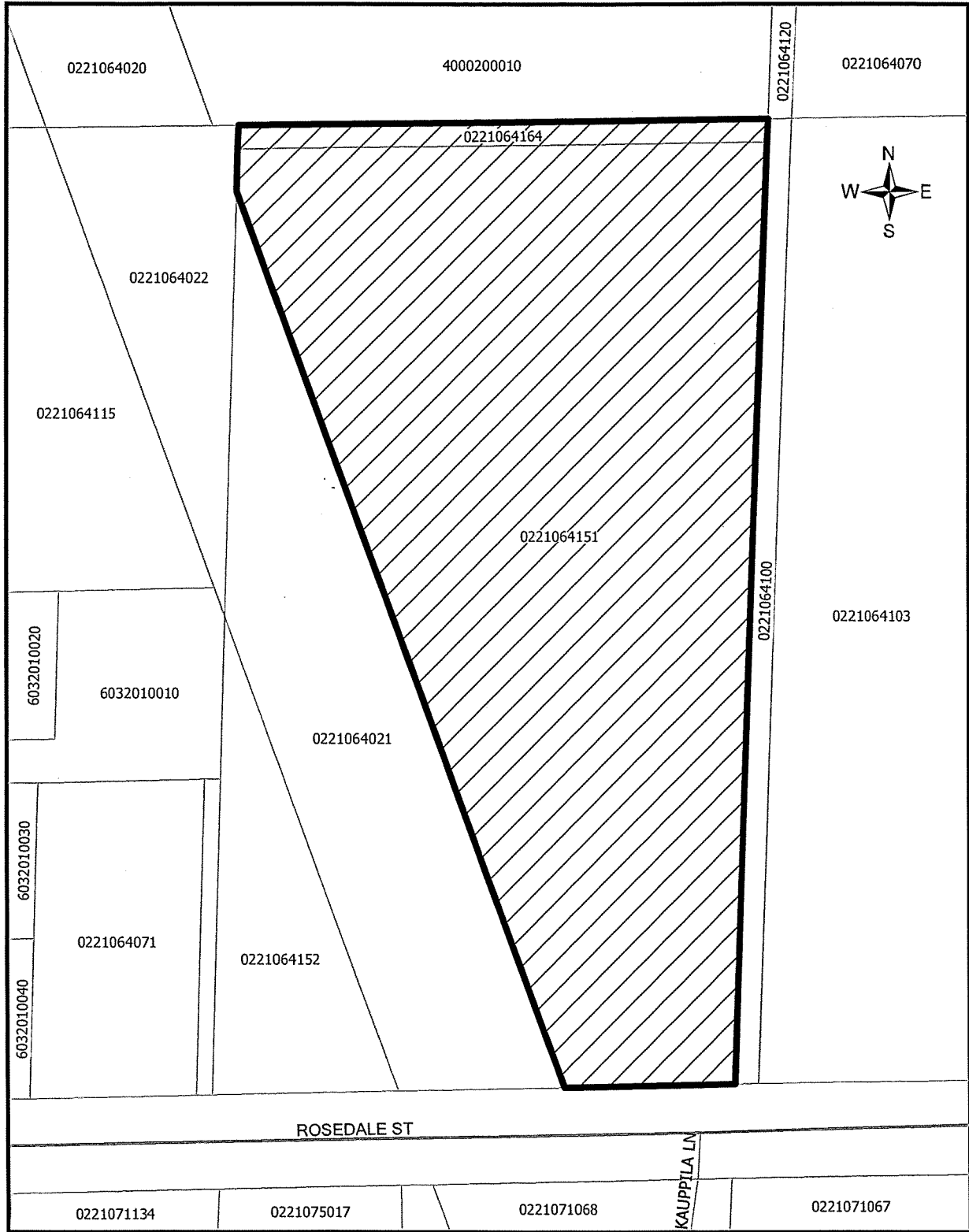


Exhibit A
COMP 09-0005 Haven of Rest Development Agreement

EXHIBIT "B"

PARCEL 0221064151

THE EAST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., IN GIG HARBOR, PEIRCE COUNTY, WASHINGTON;
EXCEPT THE NORTH 15 FEET THEREOF;
ALSO EXCEPT TACOMA CITY LIGHT TRANSMISSION RIGHT OF WAY LINE;
ALSO EXCEPT THAT PORTION LYING WEST OF SAID TRANSMISSION LINE.

PARCEL 0221064164

THE NORTH 15 FEET OF THE EAST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., IN GIG HARBOR, PIERCE COUNTY, WASHINGTON

SITUATE IN THE **CITY OF GIG HARBOR, COUNTY OF PIERCE, STATE OF WASHINGTON.**

Exhibit "B"

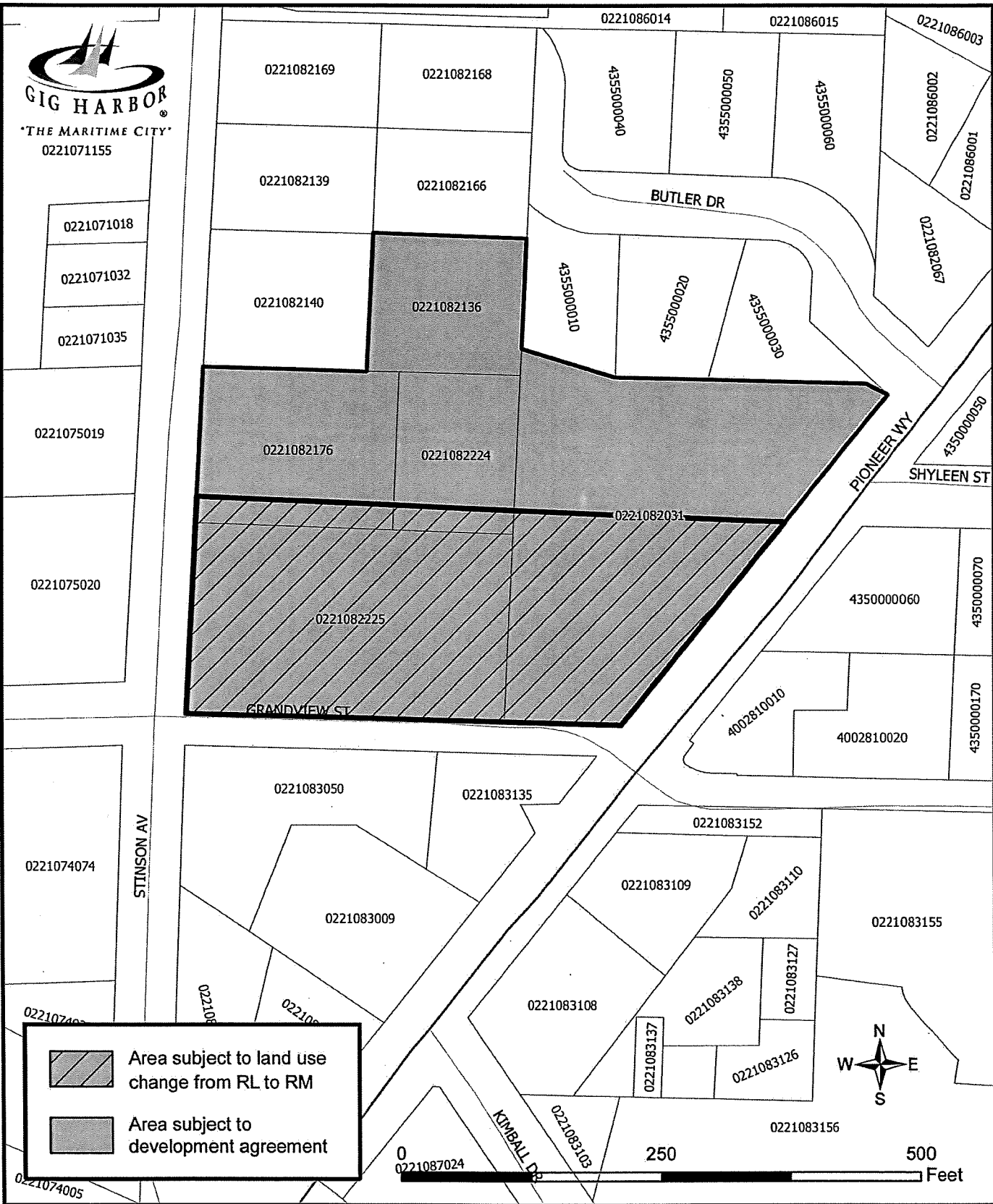
Application COMP 09-0012:

3700 Grandview Land Use Map

Amendment



"THE MARITIME CITY"
0221071155



COMP 09-0012 3700 Grandview Land Use Amendment Residential Low (RL) to Residential Medium (RM)

**DEVELOPMENT AGREEMENT
BY AND BETWEEN
CITY OF GIG HARBOR, MP8 LLC AND PIONEER & STINSON LLC,
FOR THE PIONEER & STINSON DEVELOPMENT**

THIS DEVELOPMENT AGREEMENT is made and entered into this ____ day of _____, 2009, by and between the CITY OF GIG HARBOR, a Washington municipal corporation, hereinafter the "City," and MP8, a Washington limited liability corporation, located at 3720 Horsehead Bay Drive NW, Gig Harbor, WA, and PIONEER & STINSON a Washington limited liability corporation, located at 3312 Rosedale Street, Gig Harbor, WA, hereinafter referred to collectively as 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, 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, the City has made application, known as the 3700 Grandview Comprehensive Plan Land Use Map Amendment, COMP 09-0012, to change the land use designation of the subject property from Residential Low (RL) to Residential Medium (RM) (the "Application"), for the property located at 3700 Grandview Street (Parcel No. 0221082225 and portions of 0221082176, 0221082224 and 0221082031), legally described on Exhibit A and shown on Exhibit B as Area 1, both of which exhibits are attached hereto and incorporated herein; and

WHEREAS, after holding a public hearing on the Application, the Planning Commission recommended approval of the Application subject to a development agreement of ten-to-twenty years limiting any future rezone proposal of the Property to the RB-2 zoning district, prohibiting rezone of the property designated as Area 2 on Exhibit B, and providing for tree preservation, residential buffering, zone transition buffering, parking, building size, height and use requirements and setbacks from streets; and

WHEREAS, on _____, the City Council adopted the recommendation of the Planning Commission, approving the Application, subject to approval of this Development Agreement; and

WHEREAS, on November 9, 2009, the City held a public hearing on this Development Agreement;

NOW, THEREFORE, in consideration of the City changing the land use designation of the Property from RL to RM, the parties agree and the Owner further covenants for itself, its heirs, successors and assigns, as follows:

Section 1. *The Project.* The Project is the development and use of the Property, consisting of 4.27 acres in the City of Gig Harbor. The Comprehensive Plan Amendment amends the land use designation from Residential-Low to Residential-Medium for the uphill 2 acre portion of the Property, as shown on Exhibit B and designated as Area 1. The lower 2.27 acres, shown on Exhibit B and designated as Area 2 are not directly affected by the Comprehensive Plan Amendment, and will remain designated Residential-Low, zoned R-1. For Area 1, the Developer plans to construct two mixed use buildings containing residential units over office or personal/professional service space or level 1 restaurant space, if a rezone to RB-2 is granted in the future. A portion of the on-site parking requirements for Area 1 will be located in below-average-grade parking structures located underneath each of the two buildings.

Section 2. *The Subject Property.* The Project site 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) "Below-Average-Grade" parking means to have as much of the parking as practical sub-terrainian given the existing topography; and to limit the amount of garage wall façade that is exposed. Where existing grade makes it impractical to eliminate façade exposure, the exposed façade will have architectural treatments added pursuant to Design Review Board approval.

c) "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.

d) "Council" means the duly elected legislative body governing the City of Gig Harbor.

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

f) "Director" means the City's Community Development Director or Director of Planning.

g) "Effective Date" means the effective date of the Adopting Resolution.

h) "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 Subject 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.

i) "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.

j) "Project" means the anticipated development of the Subject Property, as specified in Section 1 and as provided for in all associated permits/approvals, and all incorporated exhibits.

k) "Significant tree" means a tree having a trunk diameter of at least six inches as measured 54 inches above grade.

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

- a) Exhibit A – legal description of the Subject Property (Areas 1 and 2)
- b) Exhibit B – site plan
- c) Exhibit C – Existing Significant Tree Plan; Ancich Property Tree Plan Key

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 are two private enterprises which own the Subject Property in fee, and whose principal offices are located at 3312 Rosedale Street, Suite 201, Gig Harbor, WA 98335 and 3720 Horsehead Bay Drive NE, Gig Harbor WA 98335.

c) The "Landowner." From time to time, as provided in this Agreement, the Developer may sell or otherwise lawfully dispose of a portion of the Subject Property to a

Landowner who, unless otherwise released, shall be subject to the applicable provisions of this Agreement related to such portion of the Subject Property.

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. *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 twenty (20) 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 8. *Vested Rights of Developer.* During the term of this Agreement, unless sooner terminated in accordance with the terms hereof, in developing the Subject 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 to by the Developer. However, the Developer acknowledges that this Agreement only describes the conditions imposed on the Developer's comprehensive plan amendment for the Property. This Agreement does not provide any vested right or approval of any rezone or project permit application for the Property, whether or not such rezone or application is described in or contemplated by this Agreement.

Section 9. *Development Standards and Covenants regarding Rezone Limitations.*

A. **Limitations on Rezone.** Within 2 years of the effective date of the approval of the Comprehensive Plan Amendment known as COMP 09-0012, the Developer may submit application to the City for rezone of Area 1 of the Property from RB-1 to RB-2, consistent with this Agreement. Developer acknowledges the Comprehensive Plan Amendment was approved on the condition that it limit any rezone of Area 1 to RB-2, and not apply for any rezone of Area 2. As such, Developer covenants and agrees to limit, for the term of this Agreement, any application for rezone of Area 1 to RB-2, and such application must be made within the two-year period after the effective date of approval of COMP 09-0012. Developer further covenants and agrees, for the term of this Agreement, not to apply for any rezone for Area 2. Nothing in this Agreement is intended to guarantee approval of a future rezone to the RB-2 zoning district, and the City retains its authority to approve or deny any such application for rezone based on criteria in existence at the time of consideration. Along with the rezone application, the Developer will also submit project permit applications for development of the property to the City. These Project permit applications shall be consistent with the City's code in effect at that time, and also include the provisions set forth below.

B. Uses and Development on Area 1. The Developer shall limit the use and development of Area 1 to two mixed use buildings with residential units over office, and/or other non-residential uses as allowed by the RB-2 zone. By execution of this Agreement, the City does not agree to approve any subsequent permit applications for development of Area 1 with these uses, and specifically retains the right to deny any such proposals. The parties acknowledge that the review and processing of any development applications must follow the City's permit processing procedures, and that nothing in this Agreement shall alter these procedures (as they exist or may exist in the future). Developer agrees that it shall not develop Area 1 with any other uses.

C. Uses and Development on Area 2. As to the lower acreage of the Property, shown in Exhibit B as Area 2, the Developer shall limit use and development of the property to a single family development. By execution of this Agreement, the City does not agree to approve any subsequent permit applications for development of Area 2 with these uses, and specifically retains the right to deny any such proposal. The parties acknowledge that the review and processing of any development applications must follow the City's permit processing procedures, and that nothing in this Agreement shall alter these procedures (as they exist or may exist in the future). Developer agrees that it shall not develop Area 2 with any other uses.

D. Residential Buffering. Developer shall plant a 25-foot wide vegetative screen, consisting of dense evergreen tree plantings that create an opaque hedge with a mature height of 16 feet adjacent to the northern property line of the 4.27 acre project site. This buffer will be planted prior to occupancy of the first new building within the 4.27 acre project site. Existing significant trees within this buffer as shown on Exhibit C, attached hereto and incorporated herein, shall be retained. This buffer will extend from Pioneer Way to Stinson Avenue.

E. Zone Transition Buffering. Developer shall plant a 30-foot wide zone transition buffer adjacent to and south of the northerly line of Area 1. This buffer will be planted prior to occupancy of the first new building within the 4.27 acre project site. Existing significant trees within this buffer as shown on Exhibit C shall be retained. This buffer will extend from Pioneer Way to Stinson Avenue.

F. Tree Preservation. Developer shall retain no less than 38% of the existing significant trees on Area 1 and no less than 41% of the existing significant trees on Area 2, as shown on Exhibit C. At the time of submittal of development permits for the development on Area 1, each tree to be retained shall be flagged with a visible mark (e.g., streamer, paint). Developer acknowledges that additional tree protection measures may be required by the Gig Harbor Municipal Code or as a condition of permit approval.

G. West Building on Area 1. The westerly mixed use building closest to Stinson Avenue will contain no more than 11,900 square feet of office/non-residential space on the first floor with dedicated parking below-average-grade. The second floor will contain

no more than 9,200 square feet dedicated to residential uses only, and shall be stepped back from the floor below.

H. East Building on Area 1. The easterly mixed use building closest to Pioneer Way will contain no more than 14,500 square feet of office/non-residential space on the first floor with dedicated parking below-average-grade. The second floor will contain no more than 10,400 square feet dedicated to residential uses only, and shall be stepped back from the floor below.

I. Parking. Development of the buildings within Area 1 must provide below-average-grade parking spaces for no less than 62.5% of the parking spaces.

J. Setbacks. All development must be set back at least 30 feet from Stinson Avenue and Grandview Street, and no less than 25 feet from Pioneer Way.

K. Curb Cut. Unless otherwise required to meet minimum fire access requirements, development of Area 1 shall have only one curb cut and that curb cut shall be located along Grandview Street.

Section 10. Minor Modifications. Minor modifications from the approved 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. Tree Loss and Replacement.

A. In the event any trees that are required to be retained under this Agreement are lost for any reason including but not limited to construction, wind, storm, topping, disease, such trees shall be replaced no later than three months following the loss, unless a certified arborist provides a written statement that a delay in planting is warranted, as follows:

(i) Owner shall replace each deciduous tree lost with three deciduous trees of similar type (height at maturity, growth rate, spread), measuring 3 inches in diameter as measured six inches above grade, as near as practical to the site of the original tree loss.

(ii) Owner shall replace each evergreen tree lost with three evergreen trees of similar type (height at maturity, growth rate, spread), no less than 8 feet in height at planting, as near as practical to the site of the original tree loss.

(iii) In the event a replacement tree is lost for any reason, Owner shall replace such tree with another tree of similar type.

B. In addition to the replacement of any lost tree, Owner agrees to pay the City \$1,000 per lost tree, within 30 days of request by the City, and agrees that the City

may withhold development approvals until all amounts due under this Section are paid in full.

Section 12. 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 13. Design Review. In order to ensure maximum public involvement throughout the entitlement process, the Developer agrees to bring the project to the Design Review Board (DRB) for pre-application review for all items associated with design of the project, and will request that public notice be provided for the meeting. It is the Developer's intent to conform to as many of the Specific Requirements of the Design Manual (17.99 GHMC) as possible, but they will bring the project to the DRB prior to the Hearing Examiner hearing to solicit a DRB recommendation and public input on any of the project's design elements that do not meet the Specific Requirements, including but not limited to Zone Transition.

Section 14. Existing Land Use Fees and Impact Fees.

A. **Land Use Fees.** Land use 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. **Impact Fees.** 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.

C. **Sewer Facilities.** At the time of execution of this Agreement, the City is unable to issue sewer concurrency certificates.

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. 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 17. Termination.

A. This Agreement shall terminate upon the first to occur: (i) the expiration of the term identified in Section 7, or (ii) when the Subject Property has been fully developed, and all of the Developer's obligations in connection therewith are satisfied as determined by the City, or (iii) upon the City's redesignation of Area 1 by way of amendment to the Comprehensive Plan Land Use Map as set forth in subsection 17(B) below. 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 new single-family residence and the lot upon which such residence is located within Area 2, when it has been approved by the City for occupancy.

B. If the Developer does not submit an application for rezone of Area 1 within two years from the effective date of this Agreement, then: (i) all provisions of this Agreement relating to the development contemplated herein shall terminate, except the limitation and prohibition on rezones set forth in Section 9.A. shall remain in full force and effect for the term of this Agreement identified in Section 7; and (ii) the City may amend the Comprehensive Land Use Map designation of Area 1 to Residential Low (RL) or other designation in its discretion.

Section 18. 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 19. Effects upon Termination on City. Upon any termination of this Agreement as to the Developer of the Subject 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 20. 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 Subject Property, at least 30 days in advance of such action.

Section 21. 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 22. 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 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 Subject Property after termination or expiration of this Agreement.

Section 23. 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 24. 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 25. 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 the City directly relating to this Agreement, including recording fees, publishing fees and reasonable staff and consultant costs not otherwise included within application fees. Upon payment of all expenses, the Developer may request written acknowledgement of all fees. Such payment of all fees shall be paid, at the latest, within thirty (30) days from the City's presentation of a written statement of charges to the Developer.

Section 26. 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 27. 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.

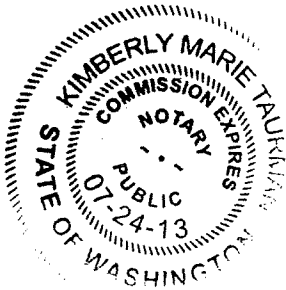
Section 28. Specific Performance. The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Development Agreement by any party in default hereof.

Section 29. Severability. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that MARTY PAUL 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 MEMBER of PIONEER & STINSON LLC, a Washington limited liability corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 12/09/2009



Kimberly Marie Taurman
Printed: KIMBERLY MARIETAURMAN
NOTARY PUBLIC in and for Washington
Residing at: GIG HARBOR, WA
My appointment expires: 07-24-2013

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: _____

Printed: _____
NOTARY PUBLIC in and for Washington
Residing at: _____
My appointment expires: _____

EXHIBIT A

AREA 1 **LEGAL DESCRIPTION**

COMMENCING FROM THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN; THENCE EASTERLY 30 FEET ALONG THE SOUTH LINE OF SAID SUBDIVISION TO A POINT ON THE EXTENSION OF THE EAST RIGHT OF WAY LINE OF STINSON DRIVE; THENCE NORTHERLY 30 FEET ALONG SAID EAST RIGHT OF WAY LINE TO THE INTERSECTION OF THE EAST RIGHT OF WAY LINE OF STINSON DRIVE AND A LINE 30' NORTHERLY OF AND PARRALLEL TO THE NORTH RIGHT OF WAY LINE OF GRANDVIEW DRIVE, ALSO KNOWN AS THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE NORTH 02°56'21" EAST 174.74 FEET ALONG SAID EAST RIGHT OF WAY LINE TO A POINT; THENCE LEAVING SAID RIGHT OF WAY SOUTH 89°17'10" EAST 563.75 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE OF PIONEER WAY; THENCE ON SAID WEST RIGHT OF WAY LINE SOUTH 37°58'26" WEST 217.64 FEET TO THE INTERSECTION OF SAID WEST RIGHT OF WAY LINE AND SAID LINE 30' NORTHERLY OF AND PARRALLEL TO THE NORTH RIGHT OF WAY LINE OF GRANDVIEW DRIVE; THENCE NORTH 89°27'47" WEST 438.76 FEET ALONG SAID LINE 30' NORTHERLY OF AND PARRALLEL TO THE NORTH RIGHT OF WAY OF GRANDVIEW DRIVE TO THE TRUE POINT OF BEGINNING. ALL LYING IN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, PIERCE COUNTY, WASHINGTON, AND CONTAINING 2.0 ACRES, MORE OR LESS.

AREA 2 **PROPERTY DESCRIPTION**

COMMENCING FROM THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN; THENCE EASTERLY 30 FEET ALONG THE SOUTH LINE OF SAID SUBDIVISION TO A POINT ON THE EAST LINE OF STINSON ROAD, ALSO KNOWN AS THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING EASTERLY ALONG SAID SOUTH LINE SOUTH 89°27'47" EAST 417.05 FEET TO A POINT ON THE NORTHWESTERLY LINE OF PIONEER WAY; THENCE NORTHEASTERLY NORTH 37°58'26" EAST 411.45 FEET ALONG SAID NORTHWESTERLY LINE OF PIONEER WAY TO THE SOUTH LINE OF BUTLER DRIVE; THENCE NORTHWESTERLY NORTH 81°01'01" WEST 24.84 FEET TO THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST

QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 8; THENCE NORTHWESTERLY NORTH $89^{\circ}17'10''$ WEST 242.72 FEET ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 8; THENCE NORTHWESTERLY NORTH $73^{\circ}40'22''$ WEST 92.83 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 8, AND 25.00 FEET NORTH OF THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 8; THENCE NORTHERLY NORTH $01^{\circ}58'35''$ EAST 105.99 FEET ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 8, TO A POINT THAT IS 200 FEET SOUTH OF THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 8; THENCE WESTERLY, NORTH $89^{\circ}01'18''$ WEST 149.32 FEET PARALLEL WITH THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 8; THENCE SOUTHERLY, SOUTH $01^{\circ}32'13''$ WEST 131.65 FEET PARALLEL WITH THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 8, TO A POINT ON THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 8; THENCE WESTERLY ON SAID NORTH LINE OF SAID SUBDIVISION NORTH $89^{\circ}17'10''$ WEST 147.63 FEET TO THE EAST LINE OF SAID STINSON ROAD; THENCE SOUTHERLY SOUTH $02^{\circ}56'21''$ WEST 332.59 FEET ALONG SAID EAST LINE TO THE TRUE POINT OF BEGINNING, CONTAINING APPROXIMATELY 4.3 ACRES, ALL LYING IN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, PIERCE COUNTY, WASHINGTON.

EXCEPTING THEREFROM:

COMMENCING FROM THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN; THENCE EASTERLY 30 FEET ALONG THE SOUTH LINE OF SAID SUBDIVISION TO A POINT ON THE EXTENSION OF THE EAST RIGHT OF WAY LINE OF STINSON DRIVE; THENCE NORTHERLY 30 FEET ALONG SAID EAST RIGHT OF WAY LINE TO THE INTERSECTION OF THE EAST RIGHT OF WAY LINE OF STINSON DRIVE AND A LINE 30' NORTHERLY OF AND PARALLEL TO THE NORTH RIGHT OF WAY LINE OF GRANDVIEW DRIVE, ALSO KNOWN AS THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE NORTH $02^{\circ}56'21''$ EAST 174.74 FEET ALONG SAID EAST RIGHT OF WAY LINE TO A POINT; THENCE LEAVING SAID RIGHT OF WAY SOUTH $89^{\circ}17'10''$ EAST 563.75 FEET TO A POINT ON THE WEST RIGHT

OF WAY LINE OF PIONEER WAY; THENCE ON SAID WEST RIGHT OF WAY LINE SOUTH 37°58'26" WEST 217.64 FEET TO THE INTERSECTION OF SAID WEST RIGHT OF WAY LINE AND SAID LINE 30' NORTHERLY OF AND PARRALLEL TO THE NORTH RIGHT OF WAY LINE OF GRANDVIEW DRIVE; THENCE NORTH 89°27'47" WEST 438.76 FEET ALONG SAID LINE 30' NORTHERLY OF AND PARRALLEL TO THE NORTH RIGHT OF WAY OF GRANDVIEW DRIVE TO THE TRUE POINT OF BEGINNING. ALL LYING IN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 21 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, PIERCE COUNTY, WASHINGTON, AND CONTAINING 2.0 ACRES MORE OR LESS.

ALSO:
EXCEPTING ROADS

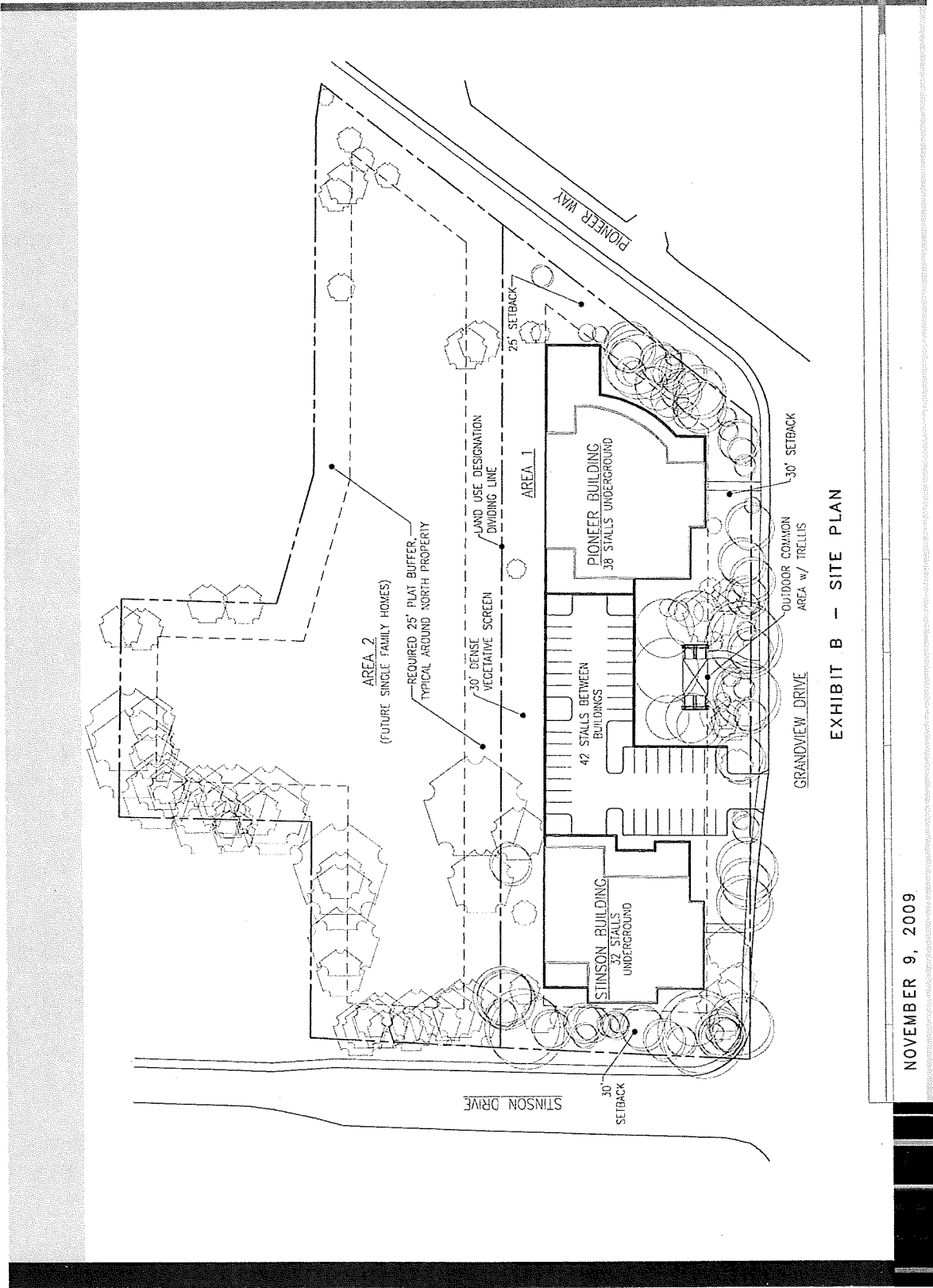


EXHIBIT B - SITE PLAN

NOVEMBER 9, 2009

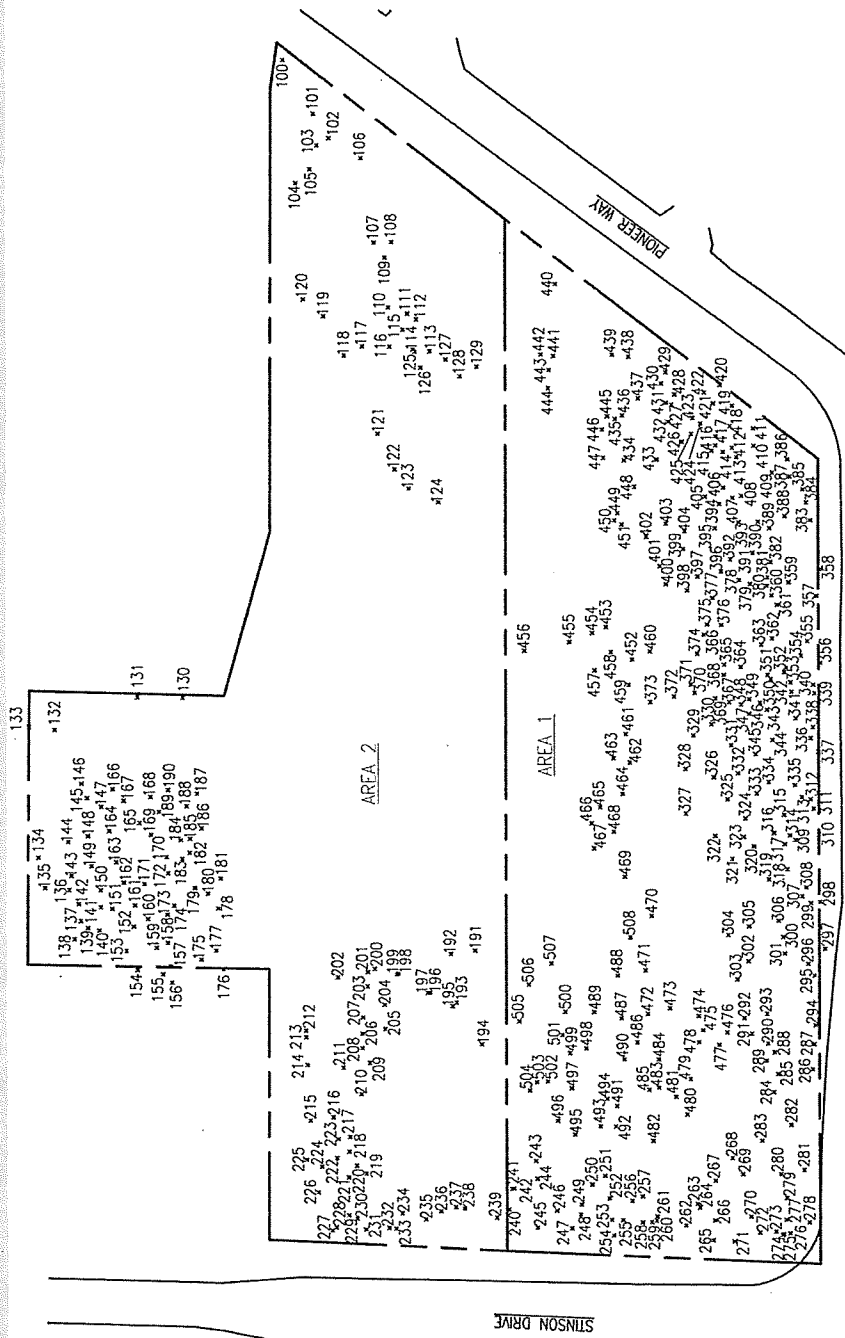


EXHIBIT C -- EXISTING SIGNIFICANT TREE PLAN

NOVEMBER 9, 2009

ANCICH PROPERTY TREE PLAN KEY - EXHIBIT C

TREE #	SAVE	TYPE	DIAMETER	TREE #	SAVE	TYPE	DIAMETER	TREE #	SAVE	TYPE	DIAMETER
100	X	MAPLE	2x 6"	165		FIR	16"	230	X	FIR	20"
101	X	ALDER	9" & 10"	166		FIR	18"	231	X	FIR	14"
102	X	ALDER	3x 9"	167		FIR	18"	232	X	FIR	2x 12"
103	X	ALDER	17"	168		FIR	20"	233	X	FIR	16"
104	X	ALDER	12"	169		FIR	30"	234	X	FIR	19"
105	X	ALDER	15"	170		FIR	20"	235	X	FIR	18"
106	X	MAPLE	2x 9"	171		FIR	16"	236	X	FIR	19"
107		MADRONA	8"	172		FIR	22"	237	X	FIR	19"
108		MAPLE	8"	173		FIR	10"	238	X	FIR	24"
109		MAPLE	5x 7"	174		FIR	24"	239	X	FIR	21"
110		MAPLE	4x 8"	175	X	FIR	16"	240	X	FIR	11"
111		FIR	13"	176	X	FIR	25"	241	X	FIR	22"
112		FIR	10"	177	X	FIR	28"	242	X	FIR	20"
113		FIR	11"	178		FIR	30"	243		FIR	17"
114		FIR	15"	179		FIR	20"	244	X	FIR	11"
115		FIR	7"	180		FIR	16"	245	X	FIR	28"
116		FIR	15"	181		FIR	24"	246	X	FIR	13"
117		FIR	7"	182		FIR	17"	247	X	FIR	14"
118		FIR	17"	183		FIR	20"	248	X	FIR	6"
119		FIR	32"	184		FIR	17"	249		MADRONA	12"
120	X	FIR	10"	185		FIR	22"	250		FIR	22"
121		FIR	22"	186		FIR	7"	251		FIR	13"
122		CEDAR	14"	187		FIR	36"	252		FIR	24"
123		CEDAR	17"	188		FIR	24"	253	X	FIR	14"
124		CEDAR	6"	189		FIR	11"	254	X	FIR	9"
125		FIR	10"	190		FIR	17"	255	X	FIR	13"
126	X	FIR	11"	191	X	FIR	36"	256		FIR	14"
127		FIR	12"	192		FRUIT	2x 8"	257		FIR	18"
128	X	FIR	15"	193	X	FIR	9"	258	X	FIR	8"
129	X	FIR	15"	194	X	FIR	23"	259	X	FIR	10"
130	X	APPLE	14"	195		FIR	19"	260	X	FIR	7"
131	X	APPLE	14"	196		FIR	16"	261		FIR	21"
132	X	FIR	15"	197		FIR	22"	262	X	FIR	16"
133	X	FIR	15"	198		FIR	10"	263		FIR	24"
134	X	FIR	30"	199		FIR	12"	264		MADRONA	2x 9"
135	X	FIR	32"	200		FIR	39"	265	X	FIR	15"
136	X	FIR	16"	201		FIR	9"	266		FIR	20"
137	X	FIR	21"	202		FIR	28"	267		FIR	14"
138	X	FIR	24"	203		FIR	14"	268		MADRONA	12"
139	X	FIR	12"	204		FIR	17"	269		FIR	20"
140	X	FIR	20"	205		FIR	28"	270	X	FIR	17"
141		FIR	15"	206		FIR	13"	271	X	FIR	11"
142	X	FIR	15"	207		FIR	14"	272	X	FIR	31"
143	X	FIR	14"	208		FIR	15"	273	X	FIR	7"
144	X	FIR	16"	209		FIR	16"	274	X	MADRONA	2x 15"
145		FIR	20"	210		FIR	22"	275	X	MADRONA	2x 18"
146		FIR	36"	211		FIR	17"	276	X	FIR	12"
147		FIR	18"	212	X	FIR	33"	277	X	FIR	12"
148		FIR	16"	213	X	FIR	17"	278	X	FIR	23"
149		FIR	20"	214	X	FIR	24"	279	X	FIR	19"
150		FIR	12"	215	X	FIR	25"	280		FIR	21"
151		FIR	11"	216		FIR	24"	281	X	MADRONA	14"
152	X	FIR	15"	217		FIR	13"	282	X	FIR	15"
153	X	FIR	20"	218		FIR	16"	283		MADRONA	2x 21"
154				219		FIR	11"	284		FIR	24"
155				220		FIR	15"	285		MADRONA	23"
156				221		FIR	9"	286	X	FIR	20"
157	X	FIR	14"	222		FIR	14"	287	X	MADRONA	2x 18"
158	X	FIR	25"	223		FIR	8"	288		FIR	16"
159	X	FIR	13"	224		FIR	21"	289		FIR	10"
160	X	FIR	13"	225	X	FIR	17"	290		FIR	10"
161		FIR	12"	226	X	FIR	24"	291		FIR	12"
162		FIR	14"	227	X	FIR	19"	292		FIR	9"
163		FIR	32"	228	X	FIR	15"	293		FIR	13"
164		FIR	16"	229	X	FIR	14"	294	X	FIR	22"

ANCICH PROPERTY TREE PLAN KEY (CONTINUED)

TREE #	SAVE	TYPE	DIAMETER	TREE #	SAVE	TYPE	DIAMETER	TREE #	SAVE	TYPE	DIAMETER
295	X	FIR	10"	360	X	FIR	6"	425		FIR	12"
296	X	FIR	7"	361		FIR	15"	426		FIR	10"
297		FIR	9"	362		FIR	17"	427	X	MAPLE	6x 8"
298		MAPLE	4x 12"	363		FIR	25"	428	X	FIR	24"
299		MADRONA	19"	364		MADRONA	8"	429	X	FIR	18"
300		FIR	15"	365		FIR	13"	430	X	FIR	12"
301		MADRONA	20"	366		FIR	10"	431	X	FIR	10"
302		FIR	29"	367	X	MAPLE	7"	432		FIR	12"
303		FIR	20"	368		FIR	9"	433		FIR	15"
304		MAPLE	11"	369	X	MAPLE	6"	434		MAPLE	4x 6"
305		FIR	20"	370		FIR	25"	435		FIR	15"
306		MADRONA	17"	371		FIR	12"	436		CEDAR	8"
307	X	MADRONA	12"	372		FIR	21"	437		FIR	30"
308	X	FIR	18"	373		FIR	9"	438	X	MAPLE	6"
309	X	FIR	15"	374		FIR	8"	439	X	MAPLE	6"
310	X	MAPLE	4x 12"	375		FIR	7"	440	X	FIR	8"
311	X	FIR	24"	376		FIR	27"	441	X	MAPLE	6x 7"
312	X	MADRONA	8"	377		FIR	15"	442	X	MAPLE	2x 8"
313	X	MADRONA	2x 11"	378		FIR	19"	443		MAPLE	6x 7"
314	X	FIR	9"	379		FIR	10"	444		MAPLE	2x 8"
315	X	MAPLE	6"	380		MADRONA	16"	445		FIR	13"
316	X	MADRONA	11"	381		MADRONA	6"	446		FIR	27"
317	X	FIR	10"	382		FIR	11"	447		MAPLE	2x 7"
318		FIR	24"	383	X	MADRONA	3x 8"	448		FIR	12"
319		FIR	24"	384	X	MAPLE	6x 10"	449		FIR	36"
320	X	FIR	15"	385	X	MADRONA	2x 15"	450		MAPLE	2x 10"
321		FIR	22"	386	X	ALDER	3x 7"	451		MAPLE	2x 11"
322	X	FIR	15"	387	X	ALDER	7"	452		FIR	9"
323	X	MADRONA	17"	388		FIR	22"	453		FIR	-
324		FIR	12"	389		FIR	13"	454		FIR	24"
325		FIR	14"	390		FIR	9"	455		FIR	10"
326	X	FIR	22"	391		FIR	26"	456	X	LAUREL	7"
327		FIR	22"	392		FIR	7"	457		FIR	15"
328		FIR	15"	393		FIR	18"	458		FIR	12"
329		FIR	21"	394		FIR	15"	459		FIR	18"
330	X	FIR	20"	395		MADRONA	7"	460		FIR	29"
331		MADRONA	10"	396		FIR	16"	461		FIR	8"
332		FIR	20"	397		FIR	14"	462		MAPLE	7"
333		FIR	13"	398		FIR	19"	463		BIRCH	8"
334		FIR	17"	399		FIR	10"	464		FIR	17"
335	X	FIR	7"	400		FIR	17"	465		ALDER	8"
336	X	FIR	27"	401		FIR	18"	466		FIR	17"
337	X	MADRONA	16"	402		FIR	18"	467		FIR	36"
338	X	FIR	7"	403		FIR	8"	468		MAPLE	5x 6"
339	X	MADRONA	2x 8"	404		FIR	25"	469		MAPLE	2x 9"
340	X	MADRONA	15"	405		FIR	22"	470		MAPLE	10"
341	X	FIR	17"	406		FIR	13"	471		FIR	27"
342	X	FIR	9"	407		FIR	16"	472		FIR	13"
343	X	FIR	19"	408		FIR	12"	473		FIR	24"
344	X	FIR	7"	409		FIR	13"	474		FIR	13"
345		FIR	14"	410	X	FIR	19"	475		FIR	11"
346	X	FIR	7"	411	X	FIR	19"	476		FIR	14"
347	X	FIR	20"	412	X	FIR	7"	477		FIR	23"
348	X	FIR	10"	413	X	FIR	9"	478		FIR	14"
349		FIR	23"	414		FIR	15"	479		FIR	12"
350		FIR	16"	415	X	FIR	8"	480		FIR	18"
351	X	FIR	8"	416		FIR	20"	481		FIR	14"
352		FIR	23"	417	X	FIR	13"	482		FIR	12"
353	X	FIR	12"	418	X	FIR	15"	483		FIR	11"
354		FIR	25"	419	X	FIR	17"	484		FIR	19"
355	X	MADRONA	17"	420	X	MAPLE	2x6"	485		FIR	11"
356	X	MADRONA	16"	421	X	FIR	12"	486		FIR	16"
357	X	MADRONA	2x 17"	422	X	FIR	15"	487		FIR	10"
358	X	FIR	6"	423	X	FIR	11"	488		FIR	10"
359		FIR	26"	424	X	FIR	15"	489		FIR	15"

ANCICH PROPERTY TREE PLAN KEY (CONTINUED)

TREE #	SAVE	TREE TYPE	DIAMETER	TREE #	SAVE	TREE TYPE	DIAMETER	TREE #	SAVE	TREE T	DIAMETER
490		FIR	10"	497		FIR	18"	504		FIR	23"
491		FIR	18"	498		FIR	-	505	X	FIR	15"
492		FIR	13"	499		FIR	12"	506	X	FIR	19"
493		FIR	12"	500		FIR	27"	507		FIR	27"
494		FIR	25"	501		FIR	21"	508		FIR	8"
495		FIR	20"	502		FIR	21"				
496		FIR	23"	503	X	FIR	9"				