

RESOLUTION NO. 918

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, AUTHORIZING THE EXECUTION OF AMENDMENT NO. 1 TO THE DEVELOPMENT AGREEMENT WITH HARBOR HILL, LLC AND OPG PROPERTIES, LLC RELATED TO AN APPROVED PLANNED RESIDENTIAL DEVELOPMENT AND PRELIMINARY PLAT (FILE NOS. PL-PPLAT-08-0001 AND PL-PRD-08-0001) AND LOTS 1A, 1B, 3, 4B, AND 5 OF THE HARBOR HILL BUSINESS PARK (FILE NO. SUB 06-1208); APPLYING TO TEN PARCELS, TOTALING 235 ACRES OF PROPERTY, GENERALLY LOCATED NORTH AND SOUTH OF BORGEN BOULEVARD BETWEEN HARBOR HILL DRIVE AND PEACOCK HILL AVENUE N.W. IN THE CITY OF GIG HARBOR, PIERCE COUNTY, WASHINGTON.

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 City of Gig Harbor has adopted development regulations for development agreements in Chapter 19.08 of the Gig Harbor Municipal Code; and

WHEREAS, the Developer has a fee simple or other substantial beneficial interest in the real property located on ten parcels, totaling 235 acres generally located north and south of Borgen Boulevard between Harbor Hill Drive and Peacock Hill Avenue N.W. in the City of Gig Harbor, Pierce County, Washington, which is legally described in Exhibit A of Amendment No. 1 to the Development Agreement, attached hereto and incorporated herein by this reference; and

WHEREAS, pursuant to Resolution No. 845 adopted by the City Council on November 8, 2010, the City and Harbor Hill entered into a Development Agreement dated November 9, 2010 for the property legally described in Exhibit A of Amendment No. 1 to the Development Agreement, which was recorded in the real

property records of Pierce County, Washington, under Auditor's File No. 201011160780, with the recording cover sheet amended and rerecorded at Auditor's File No. 201011241249; and

WHEREAS, by a subsequent Joinder Agreement dated November 22, 2010, and recorded in the real property records of Pierce County, Washington, under Auditor's File No. 201012020196, OPG as the owner of a portion of the property subject to the Development Agreement joined in and agreed to be bound by the Development Agreement; and

WHEREAS, On September 19, 2012, Harbor Hill LLC filed with the City a complete application for an Amendment No. 1 to the Development Agreement dated November 9, 2010 (File No. PL-DEV-12-0001); and

WHEREAS, on October 8, 2012, the Council reviewed the Amendment No. 1 to the Development Agreement application, initiated consideration of the Amendment and directed the Planning and Building Committee of the Council to make a recommendation on the Amendment; and

WHEREAS, on October 13, 2010, the City's SEPA Responsible Official issued a Determination of Non-Significance (DNS) for the original Development Agreement, pursuant to WAC 197-11-340(2) and on October 31, 2012, the SEPA Responsible Official issued an addendum to that DNS for Amendment No. 1 to the Development Agreement; and

WHEREAS, on October 30, 2012, the Planning and Building Committee considered Amendment No. 1 to the Development Agreement and recommended approval to the Council; and

WHEREAS, Section 19.08.020(B)(2) of the Gig Harbor Municipal Code provides that a development agreement cannot authorize deviations from the uses and minimum and maximum densities allowed in the underlying zoning district unless approved by a majority plus one of the whole council after a minimum of two public hearings; and

WHEREAS, on November 13, 2012, the City Council held its first public hearing on Amendment No. 1 to the Development Agreement; and

WHEREAS, on November 26, 2012, the City Council held its second public hearing on Amendment No. 1 to the Development Agreement during a regular public meeting and after considering the application, the staff report and all public testimony presented, approved Amendment No. 1 to the Development Agreement attached hereto as Exhibit A; Now, Therefore,

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

Section 1. The City Council hereby authorizes the Mayor to execute Amendment No. 1 to the Development Agreement attached hereto as Exhibit A, with Harbor Hill, LLC and OPG Properties, LLC.

Section 2. The City Council hereby directs the Planning Director to record Amendment No. 1 to the Development Agreement against the Property legally described in Exhibit A to Amendment No. 1 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 26th day of November, 2012.

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: 11/21/12
PASSED BY THE CITY COUNCIL: 11/26/12
RESOLUTION NO. 918

AMENDMENT NO. 1 TO DEVELOPMENT AGREEMENT
AMONG THE CITY OF GIG HARBOR, HARBOR HILL LLC,
AND OPG PROPERTIES LLC FOR THE
HARBOR HILL DEVELOPMENT

This Amendment No. 1 to Development Agreement is made and entered into this 26 day of November, 2012, by and between the CITY OF GIG HARBOR, a Washington municipal corporation (the "City"), HARBOR HILL LLC, a Washington limited liability company ("Harbor Hill"), and OPG PROPERTIES LLC, a Washington limited liability company ("OPG") (Harbor Hill and OPG are sometimes jointly referred to as "Developer").

RECITALS

A. 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. Pursuant to Resolution No. 845 adopted by the City Council, the City and Harbor Hill entered into a development agreement dated November 9, 2010 (the "Development Agreement"), which was recorded in the real property records of Pierce County, Washington, under Auditor's File No. 201011160780, concerning the development of the property legally described on Exhibit A to this Amendment (the "Property") and generally located north and south of Borgen Boulevard between Harbor Hill Drive and Peacock Hill Avenue N.W. in the City of Gig Harbor, Pierce County, Washington.

B. By a subsequent Joinder Agreement dated November 22, 2010, and recorded in the real property records of Pierce County, Washington, under Auditor's File No. 201012020196, OPG as the owner of a portion of the Property joined in and agreed to be bound by the Development Agreement. Both Harbor Hill and the City consented to the Joinder Agreement.

C. The City and Developer wish to amend the Development Agreement to permit certain additional uses, to modify the site plan, and to provide for future amendments to the Harbor Hill development plan.

D. This Amendment is made under the authority of the City's police power, contracting authority, and other authority, including the authority granted to the City under RCW 36.70B.170 et seq. to make development agreements, and GHMC Chapter 19.08 as amended. This Amendment establishes development standards for the Property and other provisions that apply to and govern and vest the development, use, and mitigation of the development of the Property. Actual construction of improvements on the Property requires approval of subsequent City permits, which will be issued in accordance with the standards and procedures described in the Development Agreement as amended by this Amendment.

Now, therefore, the parties hereto agree as follows:

AGREEMENT

1. Revised Phasing Plan. The Phasing Plan attached as Exhibit I to this amendment is hereby substituted for Exhibit I to the Development Agreement.

2. Additional Permitted Uses. The following additional uses are permitted within Parcel M-2 of the Property as depicted on the Phasing Plan attached as Exhibit I to this amendment: an “assisted living facility” as defined in GHMC 17.04.438, an “independent living facility” as defined in GHMC 17.04.439, and a “skilled nursing facility” as defined in GHMC 17.04.630.

3. Minor Modifications. The following is hereby substituted for Section 9 of the Development Agreement:

Section 9. Minor Modifications.

(a) Minor modifications to the approved permits or the exhibits attached hereto, including without limitation modifications proposed between preliminary plat and final plat decisions, may be approved in accordance with the provisions of the City’s code, including without limitation GHMC 16.05.006, 17.89.120, and Chapter 19.01, or as provided below in this Section 9, and shall not require an amendment to this Agreement.

(b) Any modification to an approved preliminary plat that changes the number of lots, boundaries, configuration, design, or layout of lots, parcels, tracts, or roadways within the preliminary plat, or changes the conditions of approval of the preliminary plat may be approved by the Director administratively as a Type II decision if the Director finds that the preliminary plat will continue to satisfy the criteria for approval of a preliminary plat under GHMC 16.05.003 after the modification.

(c) Any modification to an approved preliminary PRD that changes the number of lots, boundaries, configuration, design, or layout of lots, parcels, tracts, or roadways within the PRD, or changes the conditions of approval of the preliminary PRD may be approved by the Director administratively as a Type II decision if the Director finds that the PRD will continue to satisfy the criteria for approval of a preliminary PRD under GHMC 17.89.070 after the modification.

4. New Section 13.K. The following new Section 13.K is added to the Development Agreement:

K. Timing of Site Plan and Design Review Approvals for Parcel M-2. Site plan and design review approvals for the parcel identified as M-2 on the Preliminary Plat of Harbor Hill, as it may be amended, may occur prior to final plat approval, but no building permit shall be issued by the City until final plat approval. A site plan or design review approval shall expire if the Preliminary Plat of Harbor Hill expires or is otherwise abandoned or modified in such a way that creates an inconsistency with the approved site plan or design review approval unless such site plan or design review approval is amended concurrently for consistency. Developer acknowledges and accepts the risk of seeking and obtaining site plan and design review approval prior to final plat approval and hereby releases and covenants not to sue the City for any damages that may be suffered as a result of seeking such advance approval. Developer further acknowledges that the grant of site plan or design review approval prior to final plat approval in no way guarantees final plat approval.

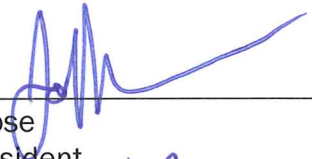
5. Revised List of Modified City Development Standards. The List of Modified City Development Standards attached to this Amendment as Exhibit H is hereby substituted for Exhibit H to the Development Agreement.

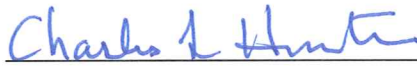
6. Other Provisions. All other provisions of the Development Agreement shall remain in effect. The Development Agreement, as amended by this Amendment, is hereby confirmed and ratified.

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

HARBOR HILL LLC, a Washington limited liability company

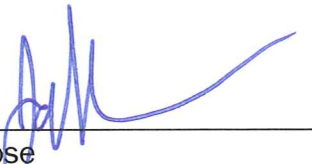
CITY OF GIG HARBOR, a Washington municipal corporation

By: 
Jon Rose
Its President
Date: 11/19/12

By: 
Charles L. Hunter
Its Mayor
Date: NOV. 27, 2012

OPG PROPERTIES LLC, a Washington limited liability company

ATTEST:

By: 
Jon Rose
Its President
Date: 11/19/12


City Clerk

APPROVED AS TO FORM:


City Attorney

STATE OF WASHINGTON)
 : ss.
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that JON ROSE 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 President of Harbor Hill LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 11/19/12



Sarah Steffen
Printed: SARAH J. STEFFEN
NOTARY PUBLIC in and for Washington
Residing at: Poulsbo
My appointment expires: 12/15/2014

STATE OF WASHINGTON)
 : ss.
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that JON ROSE 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 President of OPG Properties LLC be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 11/19/12



Sarah Steffen
Printed: SARAH J. STEFFEN
NOTARY PUBLIC in and for Washington
Residing at: Poulsbo
My appointment expires: 12/15/2014

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 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: Nov. 27, 2012



Molly M Towslee
Printed: Molly M Towslee
NOTARY PUBLIC in and for Washington
Residing at: Gig Harbor
My appointment expires: 12/2/15

EXHIBIT A

Legal Description of the Property

RESIDENTIAL AREA

TAX PARCEL NUMBER 4002930010

PARCEL E OF THE HARBOR HILL PHASE 1A PLAT (CITY FILE NO. PL-FPLAT-12-0001, PL-FPRD-12-0001) RECORDED UNDER PIERCE COUNTY AFN 201204255001, SAID PARCEL BEING A PORTION OF THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M., PIERCE COUNTY, WASHINGTON.

TAX PARCEL NUMBER 4002930020

PARCEL M1 OF THE HARBOR HILL PHASE 1A PLAT (CITY FILE NO. PL-FPLAT-12-0001, PL-FPRD-12-0001) RECORDED UNDER PIERCE COUNTY AFN 201204255001, SAID PARCEL BEING A PORTION OF THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M., PIERCE COUNTY, WASHINGTON.

TAX PARCEL NUMBER 4002930030

PARCEL X OF THE HARBOR HILL PHASE 1A PLAT (CITY FILE NO. PL-FPLAT-12-0001, PL-FPRD-12-0001) RECORDED UNDER PIERCE COUNTY AFN 201204255001, SAID PARCEL BEING A PORTION OF THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M., PIERCE COUNTY, WASHINGTON.

TAX PARCEL NUMBER 0222311000

THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER AND THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN.
EXCEPT ROADS.
SITUATE IN THE CITY OF GIG HARBOR, COUNTY OF PIERCE, STATE OF WASHINGTON.

TAX PARCEL NUMBER 0222311009

PARCEL "B" OF THE BOUNDARY LINE ADJUSTMENT RECORDED UNDER PIERCE COUNTY AFN 200407275004, SAID PARCEL "B" BEING PORTIONS OF THE WEST HALF OF THE NORTHEAST QUARTER AND OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M.
SITUATE IN THE CITY OF GIG HARBOR, COUNTY OF PIERCE, STATE OF WASHINGTON.

COMMERCIAL AREA

TAX PARCEL NUMBER 4002470011

THAT PORTION OF LOT 1, BUSINESS PARK AT HARBOR HILL, PER THE PLAT THEREOF RECORDED UNDER AUDITOR'S FILE NUMBER 200605235007, SAID LOT 1 BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M., PIERCE COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF SAID LOT 1 LYING 287.61 NORTHERLY OF THE SOUTHEAST CORNER OF SAID LOT 1, AS MEASURED ALONG THE EAST LINE OF SAID LOT 1, THENCE NORTH 77°06'13" WEST 644.52 FEET TO AN ANGLE POINT IN THE WEST LINE OF SAID LOT 1;

THENCE ALONG THE BOUNDARY OF SAID LOT 1 THE FOLLOWING COURSES:

THENCE NORTH 88°22'24" WEST 110.70 FEET;

THENCE NORTH 05°55'53" EAST 181.58 FEET;

THENCE SOUTH 88°22'24" EAST 33.73 FEET;

THENCE NORTH 14°26'00" EAST 232.65 FEET;

THENCE SOUTH 48°15'42" EAST 247.61 FEET;

THENCE NORTH 77°19'55" EAST 95.23 FEET;

THENCE NORTH 37°16'34" EAST 168.29 FEET;

THENCE SOUTH 88°22'24" EAST 177.38 FEET TO A POINT ON A 766.00 FOOT CURVE TO THE RIGHT, THE RADIUS OF WHICH BEARS SOUTH 64°21'11" WEST

THENCE SOUTHERLY ALONG SAID CURVE, AN ARC DISTANCE OF 358.65 FEET, THROUGH A CENTRAL ANGLE OF 26°49'36";

THENCE SOUTH 01°10'47" WEST 189.56 TO THE POINT OF BEGINNING.

TAX PARCEL NUMBER 4002470012

THAT PORTION OF LOT 1, BUSINESS PARK AT HARBOR HILL, PER THE PLAT THEREOF RECORDED UNDER AUDITOR'S FILE NUMBER 200605235007, SAID LOT 1 BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M., PIERCE COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF SAID LOT 1 LYING 287.61 NORTHERLY OF THE SOUTHEAST CORNER OF SAID LOT 1, AS MEASURED ALONG THE EAST LINE OF SAID LOT 1;

THENCE ALONG THE BOUNDARY OF SAID LOT 1 THE FOLLOWING COURSES:

THENCE SOUTH 01°10'47" WEST 287.61 FEET;

THENCE NORTH 88°22'24" WEST 631.54 FEET;

THENCE NORTH 01°15'21" EAST 412.28 FEET TO AN ANGLE POINT IN SAID BOUNDARY;

THENCE DEPARTING SAID BOUNDARY SOUTH 77°06'13" EAST 644.52 FEET TO THE POINT OF BEGINNING.

TAX PARCEL NUMBER 4002470030

LOT 3, BUSINESS PARK AT HARBOR HILL, PER THE PLAT THEREOF RECORDED UNDER AUDITOR'S FILE NUMBER 200605235007, SAID LOT 3 BEING PORTIONS OF THE NORTHWEST QUARTER AND THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M. PIERCE COUNTY, WASHINGTON.

TAX PARCEL NUMBER 4002470042

THE NORTHERLY 5.3367 ACRES OF THE REVISED LOT 4 OF THE PLAT OF THE BUSINESS PARK AT HARBOR HILL PER BOUNDARY LINE ADJUSTMENT RECORDED IN PIERCE COUNTY, WASHINGTON, AUDITOR'S FILE NUMBER 200710195003 FURTHER DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID PARCEL ADJACENT TO HARBOR HILL DRIVE, THENCE N 01°10'47" E ALONG THE EASTERLY MARGIN OF HARBOR HILL DRIVE 514.00 FEET TO THE TRUE POINT OF BEGINNING;
THENCE CONTINUING N 01°10'47" E ALONG THE EASTERLY MARGIN OF HARBOR HILL DRIVE 428.04 FEET TO THE NORTHERLY BOUNDARY OF THE PARCEL;
THENCE S 88°15'35" E ALONG THE NORTHERN BOUNDARY 585.60 FEET TO THE EASTERN BOUNDARY OF THE PARCEL;
THENCE S 05°02'54" W, 12.02 FEET;
THENCE S 27°57'14" W, 112.58 FEET;
THENCE S 01°33'50" E, 199.54 FEET;
THENCE S 00°23'25" W, 110.52 FEET TO THE SOUTHERN BOUNDARY OF THE PARCEL;
THENCE N 88°49'13" W, 545.12 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION.

ACCORDING TO REQUEST OF SEGREGATION AS PER CITY OF GIG HARBOR, DATED 02/06/2008.

TAX PARCEL NUMBER 4002470051

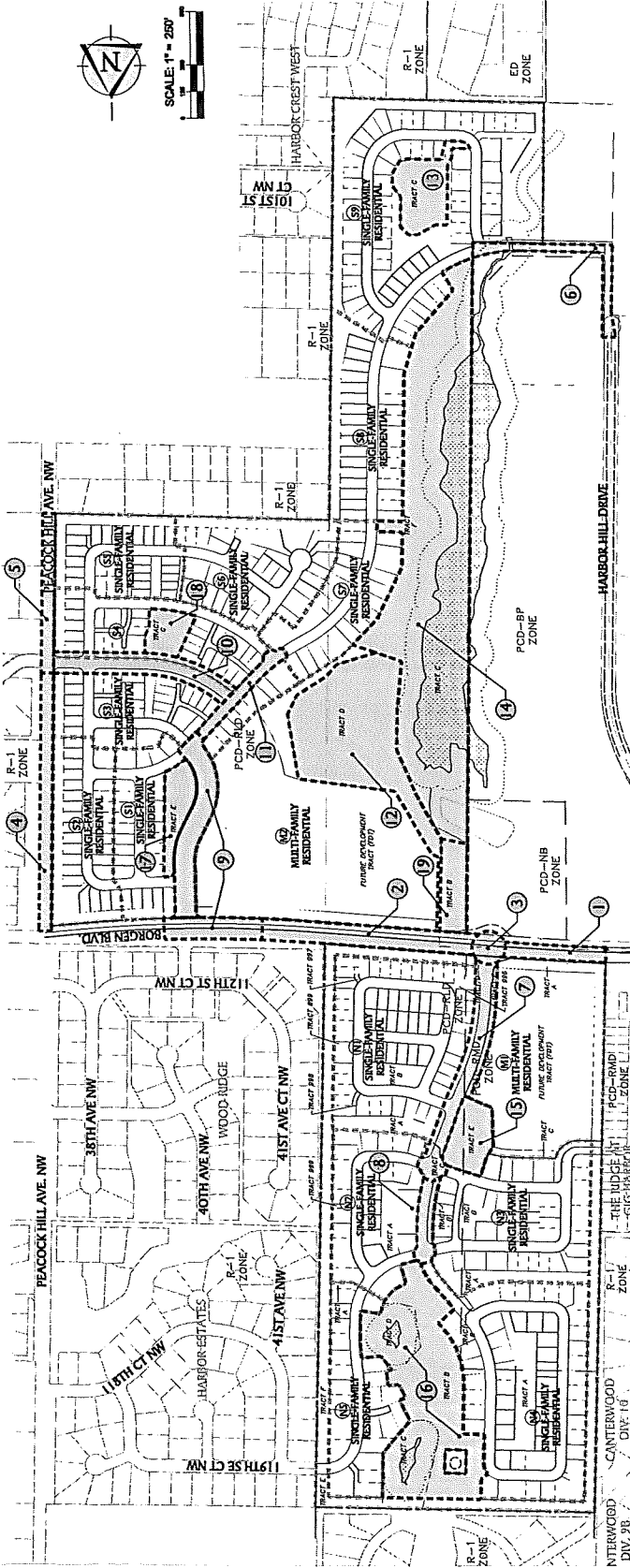
PARCEL "B" OF THE BOUNDARY LINE ADJUSTMENT RECORDED UNDER PIERCE COUNTY AUDITOR'S FILE NUMBER 200710195003, SAID PARCEL "B" BEING PORTIONS OF THE NORTHEAST QUARTER AND OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M. PIERCE COUNTY, WASHINGTON.

EXHIBIT H

List of Modified City Development Standards

Item No.	Description	GHMC Section	Agreement Section
1	Increased vesting periods for Project approvals	Various	6.D
2	Simplification of process for review and approval of certain preliminary plat and preliminary PRD revisions	16.05 17.89	9.A, 9.B, 9C
3	Allows modified timing of Site Plan and Design Review Approvals for the M-2 Parcel.	Various	13.K
4	Reduction of Harbor Hill Business Park open space requirements from 20 percent to 15 percent of lot area based on dedication of Lot 3 for public park	17.54.030.C	13.H.iii
5	Director approval of certain revisions to Phasing Plan	19.01.003	13.A
6	Allows independent living facility, assisted living facility, and skilled nursing facility in RLD zone within modified parcel M-2.	17.14.020	
7	No setbacks under GHMC 17.54.030.B required along certain boundaries of Lot 3 (future public park) of Harbor Hill Business Park	17.54.030.B	
8	Allowing clustering of residential density	Title 17	17
9	Allocations of capacity reservations	Chapter 19.10	15

HARBOR HILL



INFRASTRUCTURE SEQUENCE

INFRASTRUCTURE	DEVELOPMENT PHASE																		
	DT	SPR NORTH					SPR SOUTH					SFR SOUTH							
Dwelling Unit	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19
1. Harbor Hill Frontage - West	X																		
2. Harbor Hill Frontage - East		X																	
3. Interchange on Barron			X																
4. Peacock Hill Ave Frontage - North				X															
5. Peacock Hill Dr Off-Site					X														
6. Harbor Hill Dr Off-Site						X													
7. North Parkway south section							X												
8. North Parkway north section								X											
9. South Parkway north section									X										
10. South Parkway south section										X									
11. South Parcel Collector stub											X								
12. Detention North (M4 - Tract D)												X							
13. Detention South (S5 - Tract C)													X						
14. Detention West (W6 - Tract B)														X					
15. North Central Park (M1 - Tract E)															X				
16. North Westland Park																X			
17. South Connector Park (S1 - Tract G)																	X		
18. South Central Park (S4 - Tract F)																		X	
19. Gateway Park (M2 - Tract B)																			X

1. Infrastructure for the project must be completed prior to or concurrent with development phases.
 2. The noted infrastructure improvement may be triggered by a number of the indicated milestones. The noted infrastructure improvement may be triggered by a number of the indicated milestones. The noted infrastructure improvement may be triggered by a number of the indicated milestones.
 3. Development of some phases may depend on the sequence of development (see M1 and M2 could develop before M3).
 4. Development of some phases may depend on the sequence of development (see M1 and M2 could develop before M3).
 5. Development of some phases may depend on the sequence of development (see M1 and M2 could develop before M3).
 6. Development of some phases may depend on the sequence of development (see M1 and M2 could develop before M3).
 7. Infrastructure Item No. 9 in table includes the associated design and improvement.

EXHIBIT I