RESOLUTION NO. 019-13

A RESOLUTION OF THE CITY OF PORT ORCHARD, WASHINGTON, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A DEVELOPMENT AGREEMENT WITH GEM1 LLC FOR MCCORMICK WOODS PRELIMINARY PLAT PHASES III, IV, AND V CONCERNING DEVELOPMENT STANDARDS, PERMIT TERMS, AND PHASING

WHEREAS, the parties recognize that the City's annexation of McCormick Woods contained previous subdivision approvals which were designed under Kitsap County development standards and that differences between County and City standards present challenges to both parties; and

WHEREAS, the purpose of a development agreement is to provide a framework for cooperative agreement between the City and GEM1 LLC to implement development standards and compliance with requirements of the Growth Management Act, Chapter 36.70A RCW; and

WHEREAS, the parties seek a set of development standard provisions which will provide ongoing certainty and development which is consistent with previously constructed phases of the project; and

WHEREAS, the current market conditions and the large size of the project require flexibility regarding phasing and the construction timeline; and

WHEREAS, development agreements are authorized pursuant to RCW 36.70B.170 and POMC 16.72.080; and

WHEREAS, On August 27, 2013 the Port Orchard City Council held a properly noticed public hearing regarding the proposed development agreement between the city and GEM 1 LLC in accordance with RCW 36.70B.200; now, therefore,

THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:
THAT: the Port Orchard City Council hereby approves and authorizes
the mayor to execute a Development Agreement with GEM1, LLC
concerning the McCormick Woods Preliminary Plat Phases III, IV, and V
in a form substantially as attached hereto.

PASSED by the City Council of the City of Port Orchard, SIGNED by the Mayor and
attested by the Clerk in authentication of such passage this 27th day of August 2013.

Timothy C. Matthes, Mayor

ATTEST:

Brandy Rinearson, CMC, City Clerk
DEVELOPMENT AGREEMENT
for
McCormick Woods
Phases III, IV, and V Preliminary Plats

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into between the City of Port Orchard, a Washington municipal corporation ("the City"), and GEM 1 LLC, a Washington limited liability company ("GEM 1").

RECITALS

A. GEM 1 is the owner and developer of the McCormick Woods development, which is a portion of a larger area generally known as the McCormick Urban Village. The McCormick Woods development is generally located on the south side of Old Clifton Road, east of the Sunnyslope area and west of Glenwood Road. The McCormick Woods area in general, and the remaining undeveloped portions of McCormick Woods Preliminary Plats Phases III, IV, and V (collectively "The Property") are shown in the site plan attached as Appendix A. The legal description of The Property is attached as Appendix B. This Agreement applies to The Property. A summary of the Preliminary Plats Phases III, IV and V is attached as Appendix F.

B. The McCormick Woods area, including The Property was annexed into the City of Port Orchard on July 8, 2009.

C. Prior to the annexation, GEM 1 obtained Kitsap County’s approval of a Sub-Area Plan (The McCormick Urban Village \ ULID #6 Sub-Area Plan) as well as Development Agreements for Transportation and Parks and Open Space, which regulate development of all of GEM 1’s developments in the Urban Growth Area, including The Property. In addition, GEM 1 obtained Kitsap County approval of a Master Plan for McCormick Woods, various Preliminary
Plats within McCormick Woods, and additional approvals for multiple Site Development Activity Permits for the development of portions of The Property. Those two Development Agreements and the approvals described in this paragraph remain in effect and binding upon GEM 1 and the City.

D. The Property comprises the vast majority of the remaining development of the planned community of McCormick Woods. The McCormick Woods Preliminary Plats Phases III, IV, and V share common infrastructure such as roadways, storm water management control systems, and sewer and water infrastructure, open space, and parks \ recreation areas. In effect, the three phases act as one development area. The various phases and supporting common infrastructure have been designed in an integrated manner to function as a single development area.

E. The City and GEM 1 recognize that GEM 1 has a vested right to develop The Property pursuant to the Kitsap County standards reflected in the Development Agreements and approvals described above. However, for a variety of reasons, both the City and GEM 1 believe it would be preferable to consolidate the further review of development plans for The Property using City permit procedures as modified or clarified in this Agreement. The City and GEM 1 also believe it would be preferable to complete the further review and development of The Property based on City of Port Orchard substantive standards, to the extent that use of such standards does not require significant redesign of the project.

F. The City and GEM 1 desire to enter into a Development Agreement, as authorized by RCW 36.70B.170, which will establish procedures and standards for the further review and development of The Property. This Agreement is intended to set forth the uses that will be permitted on the Property, the development standards that will apply, the period of time within which the development standards will apply, and the method and manner in which it may be developed.

Based on the foregoing considerations, the City of Port Orchard and GEM 1, LLC enter into the following Development Agreement.

DEVELOPMENT AGREEMENT

1. Definitions:

a. When used in this document, unless the context clearly indicates otherwise, the following words, when capitalized shall be defined as set forth in this paragraph.

(1) “Adopting Ordinance” means the ordinance that approves this Development Agreement, as required by RCW 36.70B.200.

(2) “Agreement” means this document, entitled Development Agreement.

(3) “City” means the City of Port Orchard.

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(4) "Construction Standards" means the City adopted regulations governing construction standards and specifications, such as, but not limited to, the International Building Code, Uniform Plumbing Code, National Electric Code, the International Fire Code, the Uniform Code for the Abatement of Dangerous Buildings, and such other codes adopted by the City, with or without amendment.

(5) "Development Standards" means the development requirements set forth in this Section 3 of this Agreement, and all of the regulations duly adopted by the City, either as a part of the Port Orchard Municipal Code, or adopted therein by reference, and any administrative regulations duly adopted by the City, that relate to the use, alteration or development of real property within the City. Development Standards does not include Construction Standards or the applicable fees in effect at such time as grading, building, or other applicable permit applications are submitted and deemed complete by the City. The term "Development Standards" will also include SEPA conditions imposed through the approval of this Development Agreement, which will also compile and consolidate previously imposed SEPA conditions from prior approvals that are still applicable.

(6) "Effective Date" means the effective date of the Adopting Ordinance.

(7) "GEM 1" means GEM 1, LLC the fee simple title holder of the Property, its successors or assigns.


(9) "Vesting Date" refers to January 15, 2013, the date which the parties agree should be the date on which the Development Standards for the Property should be vested as described below.

(10) "Vested Development Standards" means the Development Standards in effect on the Vesting Date, except as modified by the requirements set forth in Section 3 of this Agreement.

2. Status of Land Use Applications:

The City acknowledges and accepts the following status of land use approvals relating to the Property:

a. Planning Parcels C-M. Planning Parcels C-M as depicted on the site plan attached as Appendix A (the "Site Plan"), are all the subject of preliminary plats approved by
Kitsap County as McCormick Woods Phases III, IV and V. Those preliminary plats were approved in sequence, and there are some overlaps in the property included in the three plats. Further, the later plat approvals by Kitsap County modified certain elements approved with prior preliminary plats. The Site Plan represents a consolidation and clarification of all prior approvals for Planning Parcels C-M. The City hereby adopts and approves the Site Plan as the approved preliminary plat map for all of the development in Planning Parcels C-M. Final plats and other development approvals consistent with the Site Plan may occur consistent with this Development Agreement and with applicable provisions of the Port Orchard Municipal Code.

b. Planning Parcels A and B. Planning Parcels A and B as depicted on the Site Plan are neither benefited nor restricted by this Development Agreement. Those properties are set aside for future development in accordance with then-applicable development regulations and other provisions of the City’s Municipal Code, and are not governed by the terms and conditions of this Agreement.

3. Development Standards:

All development and use of The Property, including all permitted land uses, shall be reviewed, approved and conditioned based exclusively on the Development Standards in effect on the Vesting Date, with the following changes:

a. Minimum Residential Lot Size: The minimum residential lot size for the Property shall be 3,000 square feet.

b. Sprinkler Requirements. Although the City currently requires that homes served by private roads be built with fire sprinkler systems, this requirement shall not apply to the private roads listed on Appendix E and E-1 as private roads and any other privates roads in The Property which are maintained by the homeowners association. However, if the City, at some future date, adopts an ordinance requiring sprinklers in all new single family residential units, that requirement shall apply to homes for which building permit applications are submitted after the effective date of the ordinance.

c. Landscaping. The City and County have different requirements for provisions of open spaces and landscaping. In order to maintain appearance and consistency and provide uniformity, the City and GEM1 agree that the Property will be landscaped and developed in a manner consistent with the existing development. In order to accommodate this, development on lots within The Property shall be exempt from the provisions of the Port Orchard regulations POMC 16.50.130 and POMC 16.50.180 through 16.50.220, as now or hereafter amended, and shall instead meet the requirements of Kitsap County Code Chapter 17.385 as adopted on the Application Date. Appendix D is said Kitsap County Code Chapter 17.385.

d. Final plat - Minor Modifications. McCormick Woods was designed and approved based on Kitsap County’s system for approval of minor modifications to the preliminary plat during the final plat review and approval process. The parties recognize that the City’s standards for distinguishing between minor modifications, which may be approved by the staff, and major modifications, which require re-review by the Hearing Examiner, are more stringent than the County’s. During the final plat process for The Property, the City staff is authorized to permit
minor modifications without the necessity of further review by the Hearing Examiner so long as the modification does not (1) increase the number of authorized homes, (2) increase traffic volumes above the volume contemplated, (3) require modification or alteration of a critical area or buffer that was not contemplated or as allowed by code for buffer averaging and/or reduction, (4) increase the volume or rate of discharge of stormwater above that contemplated by the preliminary/ final SDAP drainage plan or Vested Development Standards or (5) reduce the amount of open space or recreational facilities contemplated.

e. Stormwater Management Standards. Stormwater management control standards for each development parcel within the Property are detailed in Appendix C, C-1, and C-2. There are three categories of stormwater control:

- Existing stormwater management facilities utilize regional drainage control infrastructure facilities approved and constructed in accordance with the McCormick Woods Master Drainage Plan. These regional facilities will continue to be used for stormwater management within Phases III, IV, and V preliminary plats.
- Facilities to be constructed but currently approved as part of existing land-use or site development permits.
- New facilities not yet approved but to be constructed to the standards in effect on the Vesting Date.

In order to implement this agreement, the City and GEM I agree that the following stormwater management facilities and facility design standards shall be deemed the stormwater management standards for development in The Property:

(1) Areas draining to existing Master Drainage Plan regional facilities may drain to those facilities without any additional water quantity control improvements. Water quality treatment facilities shall be provided for any new development in these areas through new water quality improvements or BMP’s consistent with City of Port Orchard Standards in effect on the Vesting Date.

(2) Areas draining to Stormwater management facilities that have site development activity permits in effect as of the Vesting Date may utilize those facilities as they have been permitted without further modification.

(3) Areas draining to receiving waters with no existing facilities or approved site development permits shall have new stormwater control facilities meeting City standards in effect on the Vesting Date.

f. Road Cross Sections. Road sections shown in Phases III, IV, and V are designed to be consistent with the existing road infrastructure in the McCormick Woods development in order to provide uniformity of appearance and consistency. The roads will be public and will be owned and maintained by the City, with the exception of the private access tracts. The road names and corresponding road cross sections are shown in Appendix E and E1.
(1) Road Sections 1 through 3 are the approved sections for St Andrews Drive SW, a future dedicated public Right-of-Way.

(2) Road Section 4 is the approved section for Hawkstone Avenue SW, a connector road between St. Andrews Drive SW and Hawkstone Avenue SW.

(3) Road Sections 5 through 7 are the main access roads throughout The Property.

h. **Zoning and Uses.** Future development in The Property shall be subject to the underlying City Zoning designation and associated land use codes and development regulations in Port Orchard Municipal Code in effect on the Vesting Date.

4. **Term of Agreement.**

a. Because the completion of The Property is expected to take considerably longer than the development of a single plat and because the City of Port Orchard and GEM 1 all desire that these properties be developed in a coordinated manner, including regional storm water treatment, the vesting of Development Standards shall be valid for a period of fifteen years from the Effective Date unless extended or terminated as provided herein. The City may grant a single five year extension if requested by GEM 1 and if the City finds that GEM 1 has made a reasonable effort to complete the final plat process, recognizing that the timing of development is dependent on market conditions, the availability of financing and various other factors beyond the control of the parties to this Agreement. Any further amendment of the Agreement requires approval by both parties in the same manner and a new Development Agreement. Final plat approval may be granted for portions of The Property, provided such final plat recording for all of the Property shall occur within the time periods established by this Section.

b. The City acknowledges the following Site Development Permits covering portions of the Property were issued by The City: SDAP # PW12 00447, and SDAP # PW 09-00220. These two permits are for various projects designed to implement the coordinated development and implementation of the regional storm water treatment and/or regional roadways and a soils management site. In that these plans cover large areas and regional type improvements, it is expected that the development could take longer than the development of a single individual plat. Therefore, the above listed permits shall be valid for a period of seven years from the Effective Date. Notwithstanding any other provision of this Agreement, any work covered by these Site Development Permits shall be governed exclusively by the permits and the code provisions under which they were issued, and that work shall not be subject to any other standards, codes or regulations.

5. **Phasing.**

GEM 1 shall be allowed to develop the property in phases, with the phases being allowed to occur in such sequence as GEM 1 deems necessary in order to meet economic demands. Provided, however, GEM 1 must complete in each phase the improvements that are determined necessary by the City to adequately protect the public health and safety with regards to
pedestrian and traffic circulation, emergency access, stormwater management, and utilities as they relate to the proposed phase.

6. Default.

No party shall be in default under this Agreement unless it has failed to perform following written notice of default from the other party. Notice of default shall allow the defaulting party thirty (30) days to cure or commence cure where thirty (30) days is insufficient for a complete cure. Each notice of default shall specify the nature of the alleged fault and the manner in which the default may be cured satisfactorily. 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 matter set forth in the notice, the other party to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement. A party not in default under this Agreement shall have all rights and remedies provided by law or equity, including without limitation: issuance of a stop work order, injunction, damages, action for specific performance, or to require action consistent with this Agreement. Nothing herein will operate to prevent either party from taking legal action regarding noncompliance that threatens public health, safety or welfare prior to the expiration of the thirty (30) day cure period following notice of default. No such action or preceding will operate to automatically terminate this Agreement, nor shall it release either party from any promise or obligation herein nor shall it release either party from any liability or obligation with respect to any breach of this Agreement occurring prior to the commencement of any legal action by a party.

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

a. This Agreement shall terminate upon the expiration of the term identified in Section 4 or when the Property has been fully developed, which ever first occurs, and all of the GEM 1’s obligations in connection therewith are satisfied as reasonably determined by the City.

b. This Agreement shall terminate and be of no further force and effect as to any single-family residence, any other residential dwelling unit, or any non-residential building and the lot or parcel upon which such residence or building is located, when it has been approved by the City for occupancy.

8. Effect of Termination.

a. Termination of this Agreement as to GEM 1 and the Property, or any portion thereof, shall not affect any of GEM 1’s obligations to comply with the City’s 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.

b. Upon termination of this Agreement, 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, or any portion thereof; provided, however, that vesting of
such entitlements, conditions, or fees may then be established for such property pursuant to then existing planning and zoning laws.


All notices required by this Agreement shall be deemed delivered to the respective party on the date that it is personally delivered to the address(es) set forth below, or on the date that it is successfully sent by facsimile transmission to the facsimile number(s) set forth below:

City:

City Development Director
216 Prospect Street
Port Orchard, WA 98366
Phone: 360-876-4991
Facsimile: 360-876-4980

With a copy to:

Gregory A. Jacoby
City Attorney
P.O. Box 1317
Tacoma, WA 98401
Phone: 253-627-1181
Facsimile: 253-627-2247

GEM 1

Doug Skrobut
McCormick Land Company
4978 SW Lake Flora Road
Port Orchard, WA 98367
Phone: 360-876-3395
Facsimile: 360-876-3511

With a copy to:

10. Reimbursement for Agreement Expenses of the City.

GEM 1 agrees to reimburse the City for actual expenses incurred over and above fees paid by GEM 1 as an applicant incurred by City directly relating to this Agreement, including recording fees, publishing fees, and reasonable consulting and legal fees not otherwise included within application fees. This Agreement shall not take effect until the fees provided for in this section are paid to the City. 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 GEM 1.
11. Amendments.

No change or modification of this Agreement shall be valid unless the same is in writing and is signed by authorized representatives of the City and GEM 1. Provided, that any such amendment shall follow the process established by law for the adoption of a development agreement, as set forth in RCW 36.70B.200. No purported or alleged waiver of any of the provisions of this Agreement shall be binding or effective unless in writing and signed by the party against whom it is sought to be enforced.

12. Serious Threat to Public Health and Safety.

Pursuant to RCW 36.70B.170(4), the City reserves the authority to impose new or different regulations affecting the Property, including but not limited to amendments to the Comprehensive Plan, Zoning Code, Official Zoning Map, or development regulations, to the extent required by a serious threat to public health and safety.

13. Recording; Binding Effect; Assignment.

This Agreement and any subsequent amendments thereto shall be recorded with the Kitsap County Auditor. GEM 1 shall be responsible for the cost of recording this Agreement and any subsequent amendments thereto. The rights, obligations, conditions and interests set forth in this Agreement shall run with the land and shall inure to the benefit of and be binding upon GEM 1, and its heirs, personal representatives, successors and assigns and shall benefit the properties described in Appendix B. GEM 1 shall have the right to convey, assign, apportion or otherwise transfer any and all of its rights, obligations, conditions, and interests under this Agreement. Provided, however, thirty (30) days in advance of the effective date of GEM 1’s conveyance, assignment, apportionment, or other transfer of its rights under this Agreement, GEM 1 must provide notice to the City of the same.

14. Relationship of the Parties.

Notwithstanding any other provision of this Agreement, or any other agreements, contracts, or obligations which may derive herefrom, nothing herein shall be construed to make the City or GEM 1 partners or joint venturers, or to render any other parties liable for any of the debts or obligations of the other parties, it being the intention of this Agreement merely to create the agreements set forth herein.

15. Third Party Legal Challenge.

In the event any legal action or special proceeding is commenced by any person or entity other than a party to this Agreement, and a party’s successor or assigns, 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 GEM 1 and its successors or assigns. In such event, GEM 1 and its successors or assigns 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 attorney’s fees and expenses of litigation, and damages awarded to the prevailing
party or parties in such litigation. GEM 1 and its successors or assigns 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.


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 thereof.

17. No Third Party Beneficiaries.

This Agreement is made and entered into for the sole protection and benefit of the parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

18. Applicable Law and Venue.

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Any action with respect to this Development Agreement shall be brought in Kitsap County Superior Court, Port Orchard, Washington.

19. Multiple Originals.

This Agreement may be executed in multiple copies, each of which shall be deemed an original.

20. Entire Agreement; Construction.

This Agreement constitutes the entire agreement of the parties and incorporates all prior discussions and agreements. The captions throughout this Agreement are for convenience and reference only and the words contained in them shall not be held to expand, modify, amplify or aid in the interpretation, construction or meaning of this Agreement. All parties hereto have been represented by legal counsel and accordingly hereby waive the general rule of construction that an agreement shall be construed against its drafter.


In the event that any party to this Agreement brings a lawsuit against any other party in order to enforce any provision of this Agreement or to redress any breach thereof, the prevailing party in any such lawsuit shall be entitled to recover its costs and reasonable attorney’s fees in addition to any other available remedy.
IN WITNESS WHEREOF, this Agreement was executed by the parties on the dates hereinafter indicated.

CITY OF PORT ORCHARD

By __________________________
Tim Matthes, Mayor

ATTEST:

By __________________________
City Clerk

GEM 1, LLC

By __________________________
Its __________________________

APPROVED AS TO FORM:

By __________________________
Gregory A. Jacoby, City Attorney

STATE OF WASHINGTON )
 ) ss.
COUNTY OF KITSAP )

I certify that I know of have satisfactory evidence that __________________ 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 acknowledge it as the __________________ of GEM 1, LLC to be the fee and voluntary act of such party for the purposes mentioned in the instrument.

SUBSCRIBED AND SWORN to before me this _____ day of ________ 20__.

___________________________________
NOTARY PUBLIC in and for the State of
Washington, residing at ________________.
My appointment expires: ________________.

STATE OF WASHINGTON )

Page 11 of 12
COUNTY OF KITSAP

) ss.

I certify that I know of have satisfactory evidence that Tim Matthes 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 acknowledge it as the Mayor of the City of Port Orchard to be the fee and voluntary act of such party for the purposes mentioned in the instrument.

SUBSCRIBED AND SWORN to before me this 27 day of August 2013.

[Signature]

JENINE FLOYD

NOTARY PUBLIC in and for the State of Washington, residing at Port Orchard.
APPENDIX B

April 24, 2013

LEGAL DESCRIPTION
FOR
GEM1, L.L.C.

AMENDMENT TO MCCORMICK WOODS PHASES III, IV, & V PRELIMINARY PLATS

Those portions of the South half of the Southeast quarter and the South half of the Southwest quarter of Section 4, and the Northwest quarter, the Northeast quarter, the Southeast quarter and the East half of the Southwest quarter of Section 9, and the West half of the Northeast quarter of Section 16, all in Township 23 North, Range 1 East, Willamette Meridian, described as follows:

Parcel A of Boundary Line Adjustment Recorded under Auditor's File Number 200512300304, Records of Kitsap County, Washington.

EXCEPT that portion of the South half of the Southwest quarter of Section 4 and the North half of the Northwest quarter of Section 9, Township 23 North, Range 1 East, W.M., and of Tract "D" Second Amended Plat of McCormick Woods, according to the plat thereof, recorded in Volume 26 of Plats, Pages 189 through 198, inclusive, records of Kitsap County, Washington described as follows:

Beginning at the most Northerly corner of said Tract "D", Second Amended Plat of McCormick Woods, according to Plat thereof, recorded in Volume 26 of Plats, Pages 189 through 198, inclusive, Records of Kitsap County, Washington:
Thence S 10°53'18" W, along the West line of said Tract, a distance of 80.02 feet to a point on the Northerly right of way margin of the McCormick Woods Loop Road per deed recorded under Auditors File No. 9407220144, said point being on the arc of a curve, the center of which bears S 79°06'42" E;
Thence Southeasterly along said Northerly right-of-way margin, along the arc of a curve to the left said curve having a radius of 25.00 feet, though a central angle of 90°00'00" a distance of 39.27 feet;
Thence S 79°06'42" E continuing along said Northerly right-of-way margin a distance of 13.79 feet to a point of curve;
Thence continuing along said Northerly right-of-way margin, along the arc of a curve to the left said curve having a radius of 445.00 feet, through a central angle of 13°52'14," a distance of 107.73 feet to a point of compound curve, said point being on the Northerly right of way margin of the McCormick Woods Loop Road per deed recorded under Auditors File No. 3204706;
Thence Easterly along said Northerly margin, and along the arc of a curve to the left, said
curve having a radius of 783.23 feet, through a central angle of 33°52'14" a distance of 463.01 feet to an angle point of said margin and of the Northerly right of way margin of the McCormick Woods Loop Road per deed recorded under Auditor's File No. 2006080700089;  
Thence N 53°08'50" E along said Northerly margin a distance of 92.02 feet;  
Thence N 10°58'28" W, departing said Northerly margin, a distance of 69.04 feet;  
Thence N 02°59'52" W a distance of 118.74 feet;  
Thence N 19°38'00" E a distance of 66.08 feet;  
Thence N 39°04'54" E a distance of 80.98 feet;  
Thence N 23°46'00" E a distance of 174.74 feet;  
Thence S 84°52'10" E a distance of 236.10 feet to a point on the boundary of a parcel of land conveyed to the City of Port Orchard under Auditor's File No. 3135714, and a point on the arc of a curve, the center of which bears S 70°33'02" E;  
Thence Northeasterly, along the Westerly line of said parcel, along the arc of a curve to the right, said curve having a radius of 100.00 feet, through a central angle of 23°23'55" a distance of 40.84 feet to a point on the West line of Parcel "B" of Kitsap County Declaration of Boundary Line Adjustment as recorded under Recording Number 200506170388;  
Thence N 59°39'52" W, along said West line, a distance of 183.98 feet;  
Thence N 05°41'16" W continuing along said West line a distance of 187.66 feet;  
Thence N 47°55'36" W continuing along said West line a distance of 26.83 feet;  
Thence N 86°37'44" W continuing along said West line a distance of 25.13 feet;  
Thence N 06°47'23" W continuing along said West line a distance of 392.67 feet to the Southerly right-of-way margin of Old Clifton Road;  
Thence S 63°08'19" W, along said margin, a distance of 584.37 feet to the Easterly right-of-way margin of McCormick Woods Dr. S.W. as established by said Second Amended Plat of McCormick Woods;  
Thence continuing along said Easterly margin the following courses and distances:  
S 58°28'57" W a distance of 262.29 feet to a point of curve;  
Southerly along the arc of a curve to the left, said curve having a radius of 50.00 feet, through a central angle of 77°48'57" a distance of 67.91 feet;  
S 19°20'00" E a distance of 12.82 feet to a point of curve;  
Southerly along the arc of a curve to the right, said curve having a radius of 890.00 feet, through a central angle of 01°21'20" a distance of 21.06 feet;  
S 09°07'39" E on a non-tangent bearing a distance of 104.53 feet to a point of curve, the center of which bears S 78°45'46" W;  
Southerly along the arc of a curve to the right, said curve having a radius of 880.00 feet, through a central angle of 07°28'50" a distance of 114.89 feet;  
S 03°45'24" E a distance of 269.44 feet to a point of curve;  
Southerly along the arc of a curve to the right, said curve having a radius of 880.00 feet, through a central angle of 14°38'42" a distance of 224.93 feet;  
S 10°59'18" W a distance of 85.78 feet to the Point of Beginning.  

AND EXCEPT that portion thereof granted to Kitsap County for Right-of-Way by Deed Recorded under Auditor's File Number 2006080700089, Records of Kitsap County, Washington.  

AND TOGETHER WITH Lot A of Boundary Line Adjustment Recorded under Auditor's File Number 200711060175, Records of Kitsap County, Washington.
AND TOGETHER WITH Parcel 1, Parcel 2, Parcel 3, Parcel 4, Parcel 6, Parcel 7, Parcel 8 and Parcel 10 all of the 20 Acre Land Segregation Recorded under Auditor's File Number 200612270418, Records of Kitsap County, Washington.

AND TOGETHER WITH Parcel 5, of the 20 Acre Land Segregation Recorded under Auditor's File Number 200612270418, Records of Kitsap County, Washington.

EXCEPT that portion thereof granted to Kitsap County for Detention Pond Recorded under Auditor's File Number 200610090200, Records of Kitsap County, Washington.

AND TOGETHER WITH Lot B of Boundary Line Adjustment Recorded under Auditor's File Number 200611100041, Records of Kitsap County, Washington.
### APPENDIX C

**MCCORMICK WOODS PHASES III, IV, AND V PRELIMINARY PLATS**

**Stormwater Management Control Plan Facilities Matrix**

August 19, 2013

<table>
<thead>
<tr>
<th>Parcel ID</th>
<th>Number of Lots</th>
<th>Parcel Size</th>
<th>Stormwater Management Control Plan Facilities</th>
</tr>
</thead>
</table>
| C         | 48            | 13.58 Ac    | • Stormwater Control Facility #40 - Existing Master Drainage Plan Facility  
• Water Quality standards in effect on Plat Amendment Application Date applied to two (2) proposed facilities Parcel C- East Pond and C-West Pond. |
| D         | 172           | 72.65 Ac    | • Currently Approved Stormwater Control Facility RC-8 and Phase V Division 1 Pond. |
| E         | 55            | 28.08 Ac    | • Currently Approved Stormwater Control and Water Quality Control Facility for Parcel E Pond. |
| F         | 45            | 21.15 Ac    | • Currently Approved Stormwater Control Facility RC-3N |
| H         | 42            | 27.56 Ac    | • Currently Approved Stormwater Control Facility for a portion of the site - Facility RC-3N |
| J         | 30            | 50.45 Ac    | • Currently Approved Stormwater Control Facility RC-3N |
| K         | 7             | 11.24 Ac    | • Existing Stormwater Control Facility – Existing Master Drainage Plan Facility RC-3 |
| L         | 34            | 50.12 Ac    | • Currently Approved Stormwater Control Facility RC-5 and Existing Pond A and Pond B (associated with the McCormick Woods Drive SW extension connector road / constructed facilities). |
| M         | Soils Management Site & Future Open Space | 13.94 Ac | • Existing Stormwater Control Facilities Pond A and Pond B |
| M         | 92            | 71.86 Ac    | • Water Quality and Water Quantity Standards in effect on Plat Amendment Application Date and Existing Stormwater Control Facility Pond A. |

**TOTAL LOTS = 525**

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Appendix C Stormwater Control Plan Facilities matrix Updated 081913.doc
LEGEND
STORMWATER CONTROL FACILITY

APPROVED / CONSTRUCTED
FLOW CONTROL DESIGNED PER MCCORMICK WOODS MASTER DRAINAGE PLAN.
WATER QUALITY TREATMENT DESIGNED TO THE 2000 DOE SWMP FOR WESTERN
WASHINGTON AS ADOPTED BY THE CORP.
FLOW CONTROL AND WATER QUALITY TREATMENT DESIGNED TO
THE 2000 DOE SWMP FOR WESTERN WASHINGTON AS ADOPTED BY
THE CORP.

GOLDSMITH
LAND MANAGEMENT SERVICES

STORMWATER MANAGEMENT CONTROL FACILITIES PLAN
FOR
McCORMICK WOODS PHASES III, IV AND V PRELIMINARY
PLATS  C-1
Chapter 17.385
LANDSCAPING

Sections:
17.385.010 Purpose.
17.385.020 Landscape plans.
17.385.025 Landscaping requirements.
17.385.027 Buffer types – When required.
17.385.030 Installation and maintenance.
17.385.040 Drought-tolerant landscaping.
17.385.050 (Repealed)
17.385.060 Building facade plantings.
17.385.070 Slope plantings.
17.385.080 Community themes.

17.385.010 Purpose.

This section shall establish landscaping standards for all development subject to the requirements for permitted, conditional use or performance based development. Single-family plats shall be exempt, except that landscaping required as a condition of plat approval shall be installed to specifications contained herein.


17.385.020 Landscape plans.

Landscape plans required for an application shall be prepared as set forth in this section.
A. Landscape plans are to be neatly and accurately drawn, at a scale that will enable ready identification and recognition of information presented.

B. The landscape plan shall show how all disturbed areas are to be replanted (where landscaping is required) including the location and variety of all trees, shrubs and ground cover.

C. The plan shall be accompanied by a plant schedule (list of plant materials used) which depicts the botanical name, common name, size at installation and spacing between individual plants shown on the plan.

D. All plans shall include the following notations:

1. Plant quantities to be determined by required spacing.

2. All planting beds are to receive ground cover throughout except as noted.

E. The landscape plan shall depict areas to be retained in natural vegetation and marked with the words “Native Growth Protection Easement, Existing Native Vegetation to Remain” and refer to the following notation, which is to be included on the landscape and site plans, or in the case of subdivisions, the final plat document.

The “Native Growth Protection Easement Note” is intended to protect a sensitive area or provide and preserve a vegetated buffer by means of restricting activities which affect the vegetation existing in that area. The statement, “Existing Native Vegetation to Remain” is intended to differentiate between native vegetation and naturalized, non-native vegetation which naturally occurs through reseeding. Native vegetation is that which has existed in the region and was not introduced to the area by people. Examples include; Douglas fir, Salal and Alder. Naturalized vegetation is a species that was introduced to the area and has spread to the extent that it occurs and propagates itself without being directly planted by people. Examples include: Scotch Broom, Himalaya Blackberry and Purple Loosestrife.


**17.385.025 Landscaping requirements.**

In all cases where landscaping is required, a minimum of fifteen percent of the total site area shall be landscaped to the standards set forth in Chapter 17.385.


**17.385.027 Buffer types – When required.**

The director may require different buffer types depending on the proposed use of the site and adjacent zones and/or uses. These types shall include:

A. Landscaping Buffer.
1. Required along existing or planned roads within urban growth areas. The planting area shall encompass the required front setback area and consist of:

   a. Evergreen and/or deciduous trees;
   
   b. Evergreen shrubs planted to screen parking areas, in an amount and configuration to screen parked cars;
   
   c. Ground covers as required;
   
   d. Bioswales and other drainage features are allowed, only when in a configuration that preserves the integrity of the roadside planting; and
   
   e. Retention of natural vegetation, where feasible.

2. Required along the perimeters of multi-family residential (ten dwelling units an acre or more), commercial, and industrial/business center development which abut like zones or uses. Installation shall vary in numbers and types of vegetation and structures depending on the proposed use and surrounding zones. Trees, shrubs, ground covers and/or fencing are to be provided as required.

B. Screening Buffer.

1. Required along the perimeters of multi-family residential (ten dwelling units an acre or more), commercial, and industrial/business center development abutting different uses and/or zones. The buffer shall provide sight-obscuring screening between different uses or zones and shall consist of:

   a. Two offset rows of evergreen trees planted ten feet on center and ground cover; or
   
   b. A six-foot screening fence and a single row of evergreen trees planted ten feet on center, and ground cover.

2. Required for residential subdivisions or commercial development abutting a rural zone, a buffer of twenty-five to fifty feet of sight-obscuring, screening vegetation shall be provided. The director may modify this requirement after evaluating the effects of wind-throw or other safety concerns. In the event that the buffer will only contain high-branching trees which allow visibility through the buffer, a row of evergreen trees planted ten feet on center may be required along the highest point of the buffer.

3. Required around the perimeter of storm drainage facilities to provide sight-obscuring screening from adjacent properties and/or roadways, and consist of:

   a. A row of large shrubs and ground cover;
   
   b. A row of evergreen trees planted ten feet on center and ground cover; and/or
   
   c. An evergreen vegetation buffer sufficient to provide screening.
4. Retention of screening vegetation, where feasible.

5. Other vegetation types and/or configurations that meet the intent of this screening buffer may be approved by the director.


17.385.030 Installation and maintenance.

Installation and maintenance of landscaping of developments shall be in accordance with the American Nursery Landscaping Association standards.

A. Plant materials shall be nursery stock or the equivalent quality and installed to industry standards or better.

B. Landscape plant materials shall be staked to current industry standards or better. Stakes and guy wires shall not interfere with vehicular or pedestrian traffic.

C. Minimum Sizes at Installation.

1. Two-inch caliper street trees and other deciduous trees;

2. Eight feet minimum height multi-stemmed trees (e.g., Vine Maple);

3. Six feet minimum height coniferous trees;

4. Eighteen to twenty-four inches height for large and medium shrubs (over six feet at maturity);

5. Twelve to eighteen inches minimum height for small shrubs (three to six feet at maturity); and

6. Drought-tolerant landscape areas shall be subject to the size requirements in Section 17.385.040.

D. Maximum spacing:

1. Street trees and other deciduous trees shall be spaced appropriate to their pattern, generally twenty-five to thirty feet on center for large trees.

2. Coniferous trees shall be spaced fifteen feet apart, unless they are within a screening buffer, where the maximum spacing shall be ten feet on center.

3. Large shrubs shall be spaced five feet on center.

4. Medium shrubs shall be spaced four feet on center.

5. Small shrubs shall be spaced three feet on center.
E. Ground covers (bark and mulch shall not be considered as ground cover) are required in all planting areas, unless the entire bed is planted with shrubs that branch out so that they cover the surface of the ground. Spacing shall be as follows:

1. One-gallon pots, twenty-four inches on center;
2. Four-inch pots, eighteen inches on center;
3. Two-and-one-quarter-inch pots, twelve inches on center; and
4. Grass and sod areas to be one hundred percent.

F. Vegetation removal in native growth protection easements is limited to the following cases:

1. Hand removal of naturalized species. No machinery is to be used, except for hand-held implements which do not disturb the native vegetation or soil;
2. Falling of trees which may present a danger to life or property. Removal of said trees is to be done only with written approval from the county. To solicit said approval, a letter and photograph or detailed plot plan of the area, with all trees to be removed marked on the photo or plan, shall be submitted to the department of community development; and
3. Other activities expressly allowed as a condition of approval.

G. Slopes in landscape areas shall not exceed 3:1 unless specifically approved by the director. Erosion control netting or alternative procedure may be required for slopes exceeding 3:1.

H. Automatic irrigation systems shall be required for all landscape areas except for those designed and approved as drought-tolerant plantings. In unique circumstances alternative methods of irrigation may be approved if specifically proposed as part of the landscape plan.

I. All planting beds shall receive topsoil or soil amendments as needed to maintain the plants in a thriving condition.

J. All planting beds shall receive a minimum of two inches of bark mulch, or approved substitute.

K. Landscaping required under the provisions of this title shall be maintained in a healthy growing condition.

L. Landscaping lost due to violations of this title or unforeseen natural events shall be replaced immediately with vegetation that is sufficient in size and spacing as required by this title.
M. All landscaping required by this title shall be installed prior to the issuance of any final certificate of occupancy permit, unless specifically approved by the director and installation is bonded (or other method), for a period not to exceed six months, in an amount equal to one hundred fifty percent of the cost of material and labor.

N. Wetland mitigation plantings are not considered to be a part of the landscaping requirements.


17.385.040 Drought-tolerant landscaping.

Drought-tolerant landscaping (xeriscaping) is encouraged as a means of reducing the amount of water use. Xeriscaping reduces maintenance costs by reducing the amount of water used and by avoiding long-term maintenance of an irrigation system. Xeriscaping is especially encouraged on large sites and in those parts of a site separated from public streets and walkways. Drought-tolerant landscaping shall be installed and maintained as set forth in this section.

A. There shall be provisions made for irrigation in the first two years following planting. This may include a temporary sprinkler system, or an approved means of manual irrigation. Manual irrigation methods shall be detailed in a written plan, included as a note on the landscape plan and accompanied by a maintenance bond in an amount determined by the director.

B. Minimum sizes at installation:

1. One-and-one-half-inch caliper deciduous trees;

2. Four-foot minimum height multi-stem trees;

3. Four-foot minimum height coniferous trees;

4. Twelve inches minimum height for medium and large shrubs; and

5. One-gallon pot size for small shrubs.

C. Ground cover is required as in Section 17.385.030(B).

D. All plants selected shall be species generally accepted as drought-tolerant in the industry as drought-tolerant varieties.*


* Editor’s Note: The list of drought-tolerant plants for landscaping may be obtained from the department of community development.

17.385.050 (Repealed)*
* Editor's Note: Former Section 17.385.050, “Landscape-buffer types,” was repealed by § 164 of Ord. 415 (2008). Section 4 (part) of Ord. 216 (1998) was formerly codified in this section.

17.385.060 Building facade plantings.

Building facade plantings are intended to provide visual relief for buildings and shall be required adjacent to all building walls except those adjacent to service areas or unless specifically exempted by the director. Building facade plantings shall be provided over two thirds (or greater) of the horizontal distance of the wall and consist of:

A. A minimum four-foot-wide planting area containing shrubs and ground cover; and

B. Trees within the planting area, or within tree gates set into a walkway, when determined necessary.


17.385.070 Slope plantings.

Slope plantings are intended to re-vegetate slopes (which do not require planting as any other required buffer) and shall consist of a mixture of plantings and seedling trees planted at an average spacing of ten feet on center. This shall not reduce the need for hydro-seeding required for erosion control or other purposes.


17.385.080 Community themes.

Certain areas may have preferred planting schemes due to a community plan or other adopted design theme. Required landscape areas shall utilize plant materials and design concepts consistent with the local plan.

# APPENDIX E

**MCCORMICK WOODS**
**PHASES III, IV, AND V PRELIMINARY PLATS**
Road Names and Associated Road Sections
August 19, 2013

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## APPENDIX F

### DEVELOPMENT AGREEMENT FOR MCCORMICK WOODS

**August 20, 2013**

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*The acreage of the underlying tax lots is greater than the overall acreage for Phases III, IV and V McCormick Woods Preliminary Plats. Portions of these tax lots are not included within the plat boundaries.