

## **McCORMICK URBAN VILLAGE**

### **DEVELOPMENT AGREEMENT FOR OPEN SPACE, PARKS and RECREATION**

THIS AGREEMENT is entered into between Kitsap County, a Washington municipal corporation (“the County”), and GEM I LLC, a Washington corporation (“GEM 1”).

#### **RECITALS**

WHEREAS, GEM 1 is the owner of the undeveloped lands in the South Kitsap UGA/ULID#6 Sub-Area Plan ("Plan") known as "McCormick Urban Village" ; and

WHEREAS, the South Kitsap UGA/ULID#6 Sub-Area Plan for the McCormick Urban Village establishes, as a goal, the creation of a comprehensive, integrated plan for open space, parks and recreation (Plan, p. 25, Goal 5); and

WHEREAS, Kitsap County has adopted KCC Chapter 17.428, “Master Planning Requirements for the South Kitsap UGA/ULID #6 Sub-Area” to implement the Plan; and

WHEREAS, KCC 17.428.020 and 17.428.070(B)(6) state that a comprehensive plan for open space, parks and recreational areas shall be planned for the area subject to master planning and include a coordinated plan for the provision of a comprehensive, interconnected and integrated network of parks, open space and recreational areas, showing connections, as appropriate, to adjacent areas within the sub-area and, as appropriate, outside the sub-area, and meeting certain minimum standards; and

WHEREAS, GEM 1 has applied for a Master Plan Approval under Application No 0418788 pursuant to the requirements of Kitsap County Code Chapter 17.428 for the development of portions of the McCormick Urban Village north of Old Clifton Road designated Urban Cluster Residential (UCR); and

WHEREAS, the Department of Community Development ("DCD") has requested that the Master Plan for the UCR zoned portions of McCormick North be expanded to include a comprehensive open space/recreational plan for McCormick Urban Village; and

WHEREAS, GEM 1 has submitted, as part of the Master Plan application, an Open Space, Parks and Recreation Plan for the entirety of the McCormick Urban Village; and

WHEREAS, Kitsap County has adopted the *Kitsap Open Space Plan (2000)* and the *Kitsap Parks Study (2003)*, which establish standards for open space, parks and recreation; and

WHEREAS, Kitsap County has adopted additional standards for McCormick Urban Village Parks and Recreation in the UGA/ULID#6 Sub-Area Plan at Section 7.2.4; and

WHEREAS, Kitsap County has adopted additional standards for open space, parks and recreation for McCormick Urban Village in the Kitsap County Code Sections 17.428.070(B)(6)(a) and (b); and

WHEREAS, Kitsap County has reviewed the McCormick Urban Village Open Space, Parks and Recreation Plan for compliance with all adopted standards and requirements; and

WHEREAS, the parties anticipate that development of McCormick Urban Village will occur over a period of years and that they wish to provide for a system for funding and constructing the regional open space, parks and recreation system improvements identified in the McCormick Urban Village Open Space, Parks and Recreation Plan at such time as impacts occur and improvements are warranted; and

WHEREAS, GEM 1 wishes assurance that it will receive, as appropriate, credits and/or reimbursements from Kitsap County if and when GEM 1 constructs regional system open space, parks and recreation improvements for McCormick Urban Village that are listed in Kitsap County's Capital Facilities Plan, the value of which exceed GEM 1's proportional share of the cost of those improvements; and

WHEREAS, RCW 36.70B.170, *et. seq.*, authorizes counties to enter into mitigation agreements providing for, among other things, "development standards and other provisions that shall apply to and govern . . . the development."

## AGREEMENT

NOW, THEREFORE, the County and GEM 1 agree as follows:

1. **Approval of McCormick Urban Village Open Space, Parks and Recreation Plan.** Kitsap County hereby approves the McCormick Urban Village Open Space, Parks and Recreation Plan, a copy of which is attached as Exhibit A.
2. **County Inclusion of Projects in Capital Facilities Plan.** Kitsap County will include, when appropriate, the McCormick Urban Village regional system projects in the County's Capital Facilities Plan consistent with the Phasing Plan which is included as an element of the McCormick Urban Village Open Space, Parks and Recreation Plan.
3. **County Construction of Improvements.** If and when funding allows, Kitsap County shall construct the open space, parks and recreation regional system improvements identified in the McCormick Urban Village Open Space, Parks and Recreation Plan according to the Phasing Plan, provided the Phasing Plan may be modified at the time of specific land use approvals for development within McCormick Urban Village in order to

assure that the open space, parks and recreation regional system improvements anticipated for various portions of the McCormick Urban Village are developed concurrently with the residential and other uses which generate the need for such improvements.

4. **Construction of Certain Open Space, Parks and Recreation Improvements.** GEM 1 or its assignee may construct certain improvements identified in the Open Space, Parks and Recreation Plan and the Phasing Plan therein, as part of the development of certain portions of the McCormick Urban Village pursuant to approved land use permits. Certain of these projects, which shall be considered regional system projects once they are included in the County's Capital Facilities Plan, can be used to apply for credits and/or reimbursements, as described in Section 6, below. In the event that GEM 1 constructs regional system projects pursuant to this Section, the design and construction thereof shall be coordinated with the Kitsap County Parks Department and shall be subject to Kitsap County permit requirements in effect at the date of application for construction permits.
5. **Credits and/or Reimbursements for Construction by GEM 1.** In accordance with RCW 82.02.060(3) and KCC 4.110.040, a developer is allowed to request credit and/or reimbursement in the event that the developer constructs open space, parks and recreation improvements that would otherwise be constructed by Kitsap County. Upon completion of an improvement identified in the Open Space, Parks and Recreation Plan and listed in the Capital Facilities Plan, GEM 1 may make a written request for a credit/reimbursement to the Director of the Department of Community Development and such request will be processed pursuant to KCC 4.110.040 in consultation with the Director of the Facilities, Parks and Recreation Department. The timing and amount of any reimbursement will be dependent upon the availability of fees collected and any prior funding commitments.
6. **Annexation.** As provided by RCW 36.70B.190, while this Agreement is in effect, "the agreement is binding on . . . a city that assumes jurisdiction through incorporation or annexation of the area covering the property covered by the development agreement." In the event McCormick Urban Village is annexed or incorporated into a municipality, and the municipality agrees that it is bound by this agreement, all funds that represent the proportional share of the costs for system improvements reasonably related to the McCormick Urban Village regional projects that are listed in the Capital Facilities Plan and that are available at the time of annexation shall be conveyed to the municipality for use in funding construction of the necessary open space, parks and recreation system improvements which are the subject of this Agreement.
7. **Vesting Rules.** This Agreement shall remain in effect for all development within the McCormick Urban Village. Kitsap County shall not require the payment of additional fees related to open space, parks and recreation impacts and projects that are duplicative of the park impact fees already paid.

8. **Amendments.** Except as otherwise provided in this Section, no change or modification of this Agreement shall be valid unless the same is in writing and is signed by the authorized representatives of Kitsap County and GEM 1. 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.
9. **Serious Threat to Public Health and Safety.** Pursuant to RCW 36.70B.170(4), the County reserves the authority to impose new or different regulations to the extent required by a serious threat to public health and safety.
10. **Binding Effect:** This Development Agreement shall be recorded with the Kitsap County Auditor and shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties hereto. Any city that assumes jurisdiction through incorporation or annexation of the area subject to this Agreement shall also be bound to this Agreement, pursuant to RCW 36.70B.190.
11. **Relationship of the Parties:** Notwithstanding any other provision of this Development Agreement, or any other agreements, contracts, or obligations which may derive herefrom, nothing herein shall be construed to make the County 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 Development Agreement merely to create the agreements set forth herein with regard to open space, parks and recreation improvements to mitigate the open space, parks and recreation impacts of the McCormick Urban Village.
12. **Applicable Law and Venue:** This Development 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.
13. **Multiple Originals.** This Development Agreement may be executed in multiple copies, each of which shall be deemed an original.
14. **Construction.** The captions throughout this Development 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 Development 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 Attorney's Fees. In the event that any party to this Development Agreement brings a lawsuit against any other party in order to enforce any provision of this Development 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.

15. **Attorney's Fees.** 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.

EXECUTED by the parties on the dates hereinafter indicated.

DATED: \_\_\_\_\_ KITSAP COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
CHRIS ENDRESEN, Chair

ATTEST: \_\_\_\_\_  
JAN ANGEL, Commissioner

Opal Robertson  
Clerk of the Board

\_\_\_\_\_  
PATTY LENT, Commissioner

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Deputy Prosecuting Attorney

Date: \_\_\_\_\_

GEM 1, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

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 \_\_\_\_\_2005.

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Attorney for GEM 1, LLC

Date: \_\_\_\_\_