

SETTLEMENT AGREEMENT

Village at Harbor Hill

This Settlement Agreement (“**Agreement**”) is made and entered into by and between Harbor Hill, LLC, a Washington limited liability company with its principal place of business at 19950 7th Ave. NE, Suite 200, Poulsbo, WA 98370 (“**Harbor Hill**”) and the City of Gig Harbor, a Washington municipal corporation with its principal place of business at 3510 Grandview Street, Gig Harbor, WA 98335 (“**City**”). Harbor Hill and the City are referred to collectively herein as the “**Parties**” and each individually as a “**Party**.”

RECITALS

A. **WHEREAS**, Harbor Hill is in the process of developing a mixed-use project known as the Village at Harbor Hill (the “**Project**”) on a tract of real property it owns in the City of Gig Harbor (the “**Project Site**”). The Project Site is generally depicted on the Preliminary Site Plan attached to this Agreement as Exhibit A.

B. **WHEREAS**, to address the phased buildout of the Project, as well as other matters, Harbor Hill and the City have executed that certain Development Agreement dated November 28, 2017, which has been recorded under Pierce County Auditor’s File No. 201712010740 (the “**Development Agreement**”).

C. **WHEREAS**, the City issued a decision approving Harbor Hill’s applications for Major Site Plan Review (Permit No. PL-SPR-17-0007), Design Review (Permit No. PL-DR-16-0226), Binding Site Plan (PL-BSP-17-0002) and Alternative Landscaping Plan (PL-ALP-18-004) on August 14, 2018 (each, a “**Project Approval**” and, collectively, the “**Project Approvals**”).

D. **WHEREAS**, on December 10, 2018, the City Council passed Gig Harbor Municipal Ordinance 1401 (“**Ordinance 1401**”) and the Mayor of the City signed Ordinance 1401 as adopted by the City.

E. **WHEREAS**, a dispute arose between Harbor Hill and the City regarding the validity of Ordinance 1401 (the “**Dispute**”). Harbor Hill believes that Ordinance 1401 would impose a cost increase of over \$2,000,000 on the Project. Harbor Hill further claims that Ordinance 1401 is invalid because it resulted from an arbitrary process, and because its adoption and terms violate RCW 36.70A, *et seq.* (the “**Growth Management Act**”) and related statutory mandates regarding impact fees, including RCW 82.02.050-.090; the State Environmental Policy Act (“**SEPA**”); and Gig Harbor Municipal Code (referred to herein as the “**Code**” or “**GHMC**”) ch. 19.12, *et seq.*

F. **WHEREAS**, Harbor Hill commenced a lawsuit seeking invalidation of Ordinance 1401 and other relief, which is currently pending in in Pierce County Superior Court as *Harbor Hill, LLC v. City of Gig Harbor*, No. 19-2-04520-1 (the “**Lawsuit**”).

G. **WHEREAS**, the City has responded to the Lawsuit, and claims that Ordinance 1401 is a valid and enforceable traffic impact fee ordinance because it is consistent with State and local impact fee statutes and codes. The City also claims that the process used by the City to adopt

Ordinance 1401 was well-reasoned and not arbitrary, and that the ordinance complies with the Growth Management Act and was exempt from SEPA review.

H. **WHEREAS**, the Parties wish to resolve the Dispute and all claims between them without further litigation or costs to either side; and provide for the full and final dismissal of the Lawsuit, subject to the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties mutually agree, represent, and warrant as follows:

1. Incorporation of Recitals. The Recitals set forth above are expressly incorporated into this Agreement by this reference.

2. Amendments to Project Conditions and Requirements. As soon as practicable after the Parties' mutual execution of this Agreement, and as a condition precedent to Harbor Hill's obligation to dismiss the Lawsuit, the City shall diligently process and approve amendments to both the Development Agreement and the Project Approvals, as well as any SEPA determination or other associated City actions or approvals (collectively, the "**Project Amendments**") to ensure their consistency with the additional terms and conditions outlined in Subsection 2.a through 2.d, below (collectively, as the "**Modified Project Conditions**"). The form of the Project Amendments (i) shall be reviewed and agreed upon by the Parties and their respective legal counsel prior to their proposal; and (ii) shall expressly state that the Modified Project Conditions supersede, replace, and control over any inconsistent condition or requirement of the current Development Agreement or Project Approvals. Nothing in this Section 2 shall prevent further, future modifications to the Development Agreement or the Project Approvals so long as the Modified Project Conditions apply for the life of the Project.

a. Streetlights:

1. Harbor Hill will replace any City streetlight removed as a result of Project construction with a streetlight meeting the City's streetlight standards existing on the date of execution of this Agreement.
2. Harbor Hill will make a one-time cash payment to the City of \$60,000, which the City may use in its discretion to re-lamp, repair, or replace any other streetlights in or near the Project Site at the City's sole cost and expense. With the exception of the work expressly described in Subsection 2.a.1, above, Harbor Hill shall have no further responsibility to install streetlights in or near the Project Site during its buildout of the Project. Payment will be made at the time of the City's final issuance of a building permit for the first building to be constructed on the Project Site pursuant to the Project Approvals.

b. Rectangular Rapid Flash Beacons ("RRFBs"):

1. Harbor Hill will install RRFBs on the two new roundabout legs to be constructed at the entrance / exit point of the Project Site, as shown on Exhibit B hereto.
 2. Harbor Hill will make a one-time cash payment to the City of \$470,000, which the City may use in its discretion to install RRFBs and make ADA improvements in or near the Project Site, or for other City purposes, at the City's sole cost and expense. With the exception of the work expressly described in Subsection 2.b.1, above, Harbor Hill shall have no further responsibility to install RRFBs in or near the Project Site during its buildout of the Project. Payment will be made at the time of the City's final issuance of a building permit for the first building to be constructed on the Project Site pursuant to the Project Approvals.
- c. Impact Fee Calculation/Trip Generation Rates. So long as the Project is developed in substantial conformity with the currently-approved Master Site Plan, including a grocery store, a shopping center, and any residential uses developed pursuant to this Agreement, the general "Shopping Center" trip generation rate (ITE Land Use Code 820) shall be used to calculate total trips for all buildings and uses developed within the Project Site, instead of the actual uses proposed for each individual building. Notwithstanding the foregoing, the standard ITE trip generation rate for any restaurant, coffee shop, or residential use developed in the Project shall be used to calculate trips for any such use developed within the Project Site. The actual number of net new trips shall be calculated consistent with most current ITE Methodology at the time the Project Site owner applies for permits pursuant to GHMC 19.12.110, with standard pass-by rate deductions applied to the uses developed within the Project Site. The internal capture rate reduction shall be set at 30% and will be applied to the total trips for the applicable uses developed within the Project Site. The \$5,071 per-trip impact fee rate established by Ordinance 1401 will apply to the total number of trips, once calculated consistent with this Subsection 2.c. This Subsection 2.c shall not affect any other City charges or fees that may apply to the Project pursuant to the City's Code.
- d. Residential Uses.
1. The Project Amendments shall remove the prohibition on residential uses on the portions of the Project Site that are currently zoned PCD-NB (referred to herein as the "**Residential Use Tract**"). The general location of the Residential Use Tract is depicted, and highlighted for reference, in the Preliminary Site Plan attached to this Agreement as Exhibit A. The precise location of the Residential Use Tract shall be determined as provided in GHMC 17.12.050. The effect of the Project Amendments will be to allow Harbor Hill to apply for land use approvals for residential development on the Residential Use Tract as permitted under the existing PCD-NB zoning. No permit shall be issued

for construction of any residential structure until Phase 1 of the Project as depicted on the modified Construction Phasing Plan approved by the City on September 25, 2018 is complete.

2. Should Harbor Hill elect to develop residential uses on the Residential Use Tract in the future, the City shall consider and decide on any associated land use applications and/or proposals in good faith as long as the applications meet the requirements of the PCD-NB zoning in effect at the time of this Agreement. At least ten percent (10%) of any residential units developed on the Residential Use Tract will be affordable to households with incomes at or below seventy percent (70%) of the average median income for Pierce County, as adjusted periodically. The parties agree to jointly seek to find a governmental entity, such as the Pierce County Housing Authority, to help oversee the development and ongoing use of any such units as affordable.

3. Dismissal. Harbor Hill shall be obligated to dismiss the Lawsuit when, and only when, the Project Amendments have been formally adopted by the City, and any associated appeal period has lapsed without any appeal being filed; or, in the event that any such appeal is filed, the issuance of a final order by a court or tribunal of competent jurisdiction upholding the Project Amendments which is not subject to further appeal (referred to herein as the “**Final Amendment Date**”). If the condition precedent stated in this Section 3 is not fulfilled on or before December 31, 2020, and the Parties have not agreed in writing to an extension of this date, this Agreement shall terminate automatically and the Parties may proceed to litigate the Lawsuit or discuss alternate means of resolving the Dispute. Otherwise, within fifteen (15) business days of the Final Amendment Date, Harbor Hill shall file with the applicable court a dismissal of the Lawsuit with prejudice.

4. Successors, Assigns. This Agreement shall be binding upon the Parties and their respective successors and assigns. The parties agree to record a copy of this Agreement, or a Memorandum thereof, in the records of Pierce County in order to provide notice and ensure its binding effect on subsequent owners of the Project Site. After the Lawsuit is dismissed, in the event that Harbor Hill or any future owner of the Project Site (a) commits, and fails to promptly cure upon written notice, a material breach of any of the terms of this Agreement, or (b) obtains approval from the City for amendments to any of the Modified Project Conditions set forth in Subsections 2(a), 2(b), or 2(d), above, or (c) obtains approval from the City for any change in land uses or development on the Project Site that does not include a mixed use shopping center with a grocery store; this Agreement shall terminate, and the full amount of the TIF under the currently applicable city ordinances and codes shall be paid for all future development on the Project Site.

5. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision of this Agreement shall be deemed invalid or prohibited thereunder, such provision shall be ineffective to the extent of such prohibition without invalidating the remainder of such provision or the remaining provisions of this Agreement.

6. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes all prior or contemporaneous oral or written understandings, statements, representations, or promises with respect to its subject matter. This Agreement was the subject of negotiation between the Parties and the Parties agree that any rule of construction requiring that the Agreement be construed against the drafter shall not apply to the interpretation of this Agreement.

7. **Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington.

8. **No Admission of Fault, Liability, or Merits of Claims.** It is understood and agreed that this Agreement is made as part of a compromise and settlement of the Dispute, and that no action taken by any Party, either previously or in connection with said compromise and settlement, shall be deemed or construed to be an admission of said Party of any fault or liability whatsoever.

9. **Fees, Costs, and Expenses.** In the event of any suit, action, or arbitration to interpret or enforce this Agreement, the prevailing Party shall be entitled to its attorneys' fees (including paralegal fees), costs (including the costs of experts), and expenses, at any trial or arbitration, and on appeal.

10. **No Assignment.** Each Party represents and warrants that it is the sole and rightful owner of all rights, title, and interest in every claim, right, and cause of action that it releases and/or discharges herein. Each Party hereby represents, warrants, and agrees that it has not assigned or otherwise transferred its interest in the claim, rights, and/or causes of action that are released and/or discharged pursuant to the terms of this Agreement.

11. **Amendment.** This Agreement shall not be modified without the written consent of all Parties.

12. **Authority.** Each person executing this Agreement, by their execution hereof, represents, covenants, and warrants to the other Parties hereto that they have full right, power, and authority to bind the Party on whose behalf they are executing this Agreement to the obligations herein.

13. **Counterparts.** This Agreement is not effective until it is signed by authorized representatives of all Parties. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one instrument. The Parties agree that a scanned or electronically reproduced copy of image of this Agreement bearing the signatures of the Parties hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms, and existence of this Agreement notwithstanding the failure or inability to produce or tender an original, executed, counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this Agreement first be proven.

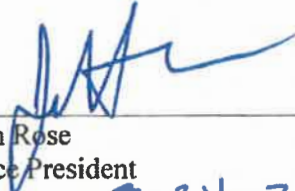
14. **Joint Statement.** Upon execution of this Agreement, the parties shall agree upon and issue a joint statement. The joint statement shall indicate (a) that parties have settled the litigation, (b) that both parties are satisfied with the settlement, (c) that the settlement provides the


City with satisfactory mitigation for the traffic impacts of the Project, and (d) that Harbor Hill is satisfied that the settlement improves the economic feasibility for the Project, including the proposed grocery store.

The Parties have executed this Agreement and agreed to the terms above on the last date set forth below.

HARBOR HILL LLC,
a Washington limited liability company

CITY OF GIG HARBOR,
a Washington municipal corporation

By: 
Name: Jon Rose
Its: Vice President
Date: 8-24-20

By: 
Name: Kit Kuhn
Its: Mayor
Date: 8-25-20

ATTEST:


~~City Clerk~~ Administrator

APPROVED AS TO FORM:

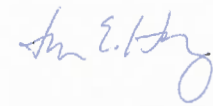
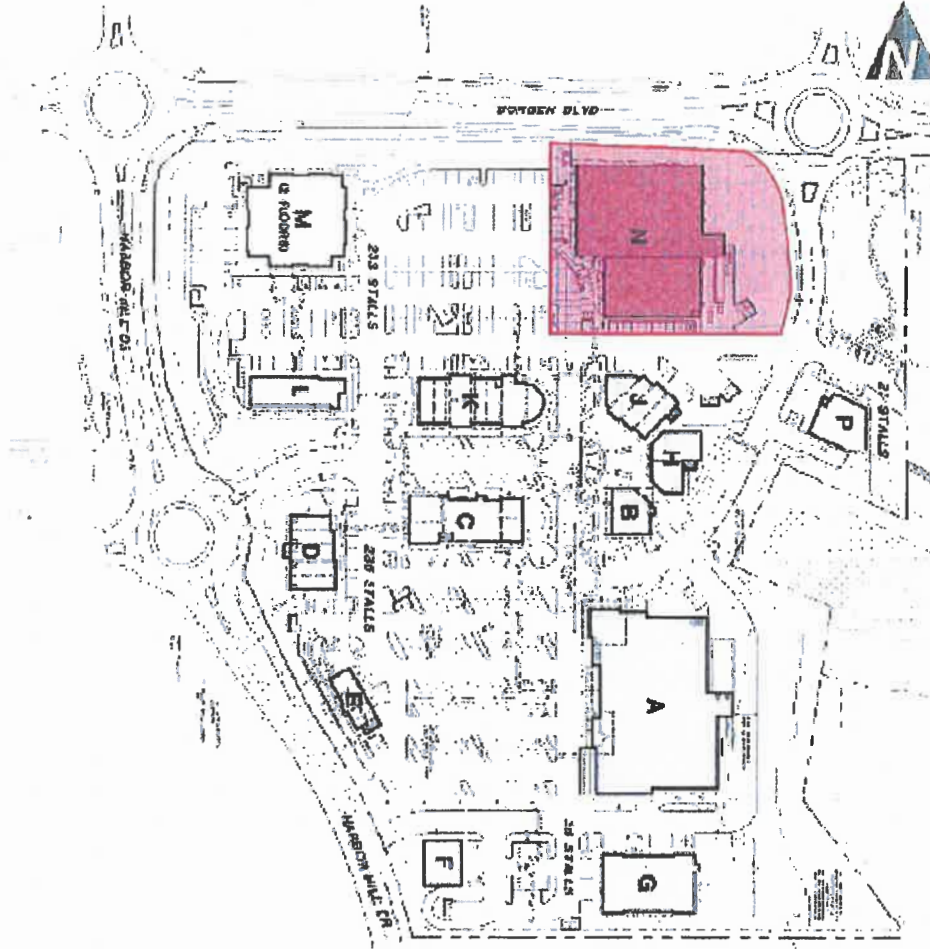

Jim Haney, Attorney for the City

EXHIBIT A

Preliminary Site Plan (with Building N Highlighted)



Preliminary Site Plan

Village at Harbor Hill

EXHIBIT B

RRFB Locations

