SECOND AMENDMENT TO
DEVELOPMENT AGREEMENT

Grantor: The Mercer Island School District, a school district of the State of Washington
The Boys and Girls Clubs of King County, a Washington non-profit corporation

Grantee: City of Mercer Island, Washington, a Washington municipal corporation

Abbreviated Legal Description:

A portion of the NE ¼ of NW ¼ of NW ¼, a portion of the NE ¼ of the NW ¼, a portion of the SE ¼ of NW ¼ of NW ¼, a portion of the NW ¼ of NE ¼ of NW ¼ of Section 18, Township 24 North, Range 5 East, W.M.

Complete legal description is at Exhibit A (page 11)

Assessor's Property Tax Lot Numbers:

1824059005, 1824059006, 1824059043 and 1824059045

Reference to Related Document:

No documents are assigned or released herein.
SEE ALSO: Documents with recording numbers: 2006106002526, 20080409001088, 20080409001195, and 20080409001196
SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (this "Amendment") is entered into, as of the effective date described below, by and between MERCER ISLAND SCHOOL DISTRICT, a school district of the State of Washington ("District"), the BOYS & GIRLS CLUBS OF KING COUNTY ("Club"), a Washington nonprofit corporation and the CITY OF MERCER ISLAND, a Washington municipal corporation (the "City"). to establish development standards for certain real property owned by the District and subject to development as provided herein.

RECITALS

A. The District is the owner of certain real property legally described on Exhibit A attached hereto ("Property") located generally at 4160 86th Ave. SE within the City of Mercer Island, King County, Washington; and

B. The District desires to enter into an agreement with the Club whereby the Club will construct and install upon and within a portion of the Property a multi-purpose facility, known as PEAK, to meet the youth development, sports and recreation needs of Mercer Island youth to be operated by the Boys and Girls Club (the "PEAK Project") and both the District and the Club have agreed that the PEAK Project will be a local club and not a regional facility; and

C. The Club will lease a portion of the Property for the PEAK Project ("Leased Property"); and

D. The permitting, design and environmental review of the PEAK Project will require subsequent approval under all applicable City codes, rules and regulations and the State Environmental Policy Act, RCW Chapter 43.21C; and

E. The City and the District entered into a Development Agreement, as approved by the City Council on June 5, 2006 pursuant to Resolution No. 1374 (Development Agreement), covering impervious surfaces development regulations consistent with RCW 36.70B.170 through 36.70B.210; and

F. The Club was not a party to the Development Agreement but is a required party to this Amendment because of the commitments contained in this Amendment regarding the development and operation of the PEAK Project. The Club was a signatory to the First Amendment to Development Agreement and the Club was added as a signatory in light of the fact that the District and Club entered into a lease agreement. The Club was added as a party to the Development Agreement in the Correction to Development Agreement approved by Council on February 19, 2008; and
G. The parties desire to enter into this Second Amendment in order to set forth the parking development standards consistent with RCW 36.70B.170 through 36.70B.210 and the June 21, 2008 Settlement Agreement; and

H. The Mercer Island City Code (MICC) 19.02.010(C)(1)(b) provides that public facilities located in residential zones shall provide off street parking at a minimum ratio of one parking space for each 200 square feet of gross floor area and City staff have classified the PEAK Project as a "public facility" under MICC 19.02.010(C)(1); and

I. The District and Club believe the Club should be considered a private club and further believe the MICC has no clear parking code for a private clubs operated on public land. The District and Club believe the nearest category to the Club is a non-commercial recreational area designation, and as such, the Code Official should determine the parking necessary for the PEAK Project. The District and Club now concur with the City that the PEAK Project is a "public facility" under MICC 19.02.010(C)(1) and have agreed not to further contest that designation; and

J. The City Council authorized the City Manager to execute the First Amendment at an open public hearing on May 15, 2007 designating parking requirements; and

K. The District, City and Club entered into a Settlement Agreement on June 21, 2008 agreeing that the eight parking spaces closest to 86th Avenue SE in the adjacent parking lot immediately south of the building will be eliminated and enough of the vacated space as is necessary will be used to extend the landscape buffer so as to screen the parking lot. See Settlement Agreement attached as Exhibit D to this Amendment. As a result of that Settlement Agreement, the Development Agreement requires amending to acknowledge the accommodations made in the Parties' Settlement Agreement of June 21, 2008; and

L. The Peak at Mercer Island Transportation Impact Analysis dated November 2006, as amended by Peak Facility Program Information and Parking Demand dated February 8, 2007 prepared by The Transpo Group ("TIA") concludes that 99 or fewer spaces will be required for the PEAK Project from 7:00 am until 4:00 pm on school days and 247 or fewer spaces will be required at all other times; and

M. There will be at least 91 new parking spaces constructed on the Property available for PEAK Project use from 7:00 am until 10:00 pm and 247 parking spaces (comprised of the 91 new parking spaces and 156 shared parking spaces) available from 3:30 pm until 10:00 pm.; and

N. The City finds that the PEAK Project promotes the public health, safety and welfare of the City and the Code Official finds that the parking required by this Amendment sufficient for the PEAK Project use on the Property; and

O. The City desires to encourage the timely and orderly development of the Property and avoid unnecessary litigation costs to taxpayers surrounding staff's interpretation of the MICC; and

City-District-Club Development Agreement – Second Amendment
P. The parties desire to make this Amendment to the Development Agreement under the authority granted by the Laws of the State of Washington, RCW 36.70B.170, as amended, regarding the development and use of the Property, in order to facilitate the timely and orderly completion of the PEAK Project; and

Q. The effective date of this Second Amendment will be delayed and be subject to completion of all necessary SEPA review and all SEPA conditions for the PEAK Project shall be incorporated by reference into this Amendment; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Section 1. Section 1 of the Development Agreement entitled “Establishment of Development Standards” shall be amended to add a new subsection (b) and amend subsection (c), as follows:

b. Required Parking.
   (i) Definitions. For purposes of this Amendment, the following terms shall have the following meanings:

   “Typical Parking Use” means typical use of the PEAK Project, including up to 60 kids before school and up to 90 kids after school enrolled in the childcare program; early morning teen programming; drop in activity at the teen center (excluding dances); high school use of the facility such as for the wrestling program; and use of two out of the four gyms in the field house. The required parking for typical parking use shall be a maximum of 91 parking spaces.

   “High Activity Events” means those events at the PEAK Project requiring more than 91 parking spaces including a dance or concert in the teen center and use of all four gyms in the field house.

   “Boys and Girls Club Breakfast” means the required parking for the PEAK Project during the Club’s annual business breakfast with attendance of up to 250 persons. The required parking for Boys and Girls Club Breakfast will be a minimum of 247 parking spaces.

   “District Special Event” means a special event or events occurring at the District that will require use of all or part of the 156 shared parking stalls referred to below, including football or sporting events, dances, and those events more specifically described in Exhibit B to this Amendment.

   (ii) Number of Parking Spaces. The Club shall provide the following parking spaces on either the Leased Property or within a reasonable distance to the PEAK Project for use by PEAK Project users:
At least 91 new parking stalls, as approximately shown in the map attached as Exhibit C. The Club shall sign these spaces for exclusive PEAK use and provide other parking restrictions (e.g. 2 hour maximum) consistent with the TIA;

156 shared parking stalls, as approximately shown in the map attached as Exhibit C. The shared parking agreement between the District and the Club shall be in form and content acceptable to the City (except that Exhibit C shall not be subject to City review so long as it includes the required number of parking stalls), including the shared spaces shall be available, except in the case of a District Special Event, for (i) priority PEAK use between 3:30 pm and 5:00 pm on school days, and (ii) exclusive PEAK use on the weekends, non-school days and after 5:00 pm on school days and signed for such exclusive PEAK use. The term "priority PEAK use" means that the District must ensure that the shared parking stalls are actually available for PEAK use if they are needed for PEAK use. The District and the Club may agree to modify this priority or exclusive PEAK use and/or the actual location of the shared parking stalls shown on Exhibit C for other District events or meetings at Administration Building that are not District Special Events if the District provides other parking on the Property for Club use to satisfy the requirement for 156 shared parking stalls for priority or exclusive PEAK use. If the location of the parking stalls is modified, the new parking spaces shall be within a reasonable proximity from the PEAK Project. All relocated spaces must have adequate lighting, way-finding signage and pedestrian trails to the PEAK Project. By execution of this Agreement, the District consents to the Club's shared use of such parking spaces.

The City will post signs on the east side of 86th Ave. SE between SE 40th and 42nd street allowing only restricted parking. The intent of this provision is to provide approximately 20 new spaces to be used by PEAK users, neighbors or childcare facility staff and not by high schools students. Currently, students park in some of these available street spaces.

(iii) Contingencies. The City's consent to this Amendment is subject to the satisfaction of the following conditions precedent:

- Maximum Square Footage. The PEAK Project shall not exceed the following maximum square footage: 41,300 total gross square feet within the building and 27,000 square feet for the building footprint based upon the roof area of the building.

- Environmental and Conditional Use Permit. The PEAK Project shall complete all required permitting, design and environmental review and comply with all applicable City and State codes, rules and regulations, including the State Environmental Policy Act, RCW Chapter 43. The SEPA threshold determination and all conditions associated with any Determination of Significance or Mitigated Determination of Significance shall be incorporated by reference into this Amendment.
(iv) **Restrictions on Operations.**

- The Club agrees that the Boys and Girls Club Breakfast shall occur only once a calendar year. The Club agrees that High Activity Events and the Boys and Girls Club Breakfast shall not occur during school days between the hours of 7:00 am and 4:00 pm.
- The District agrees that District Special Events shall occur no more than 30 times a school year (September 1 through August 31 of each year).
- The District and Club agree that High Activity Events, the Boys and Girls Club Breakfast and District Special Events shall be scheduled so the events will not overlap.
- The parties agree that commencing on or before the date when the PEAK Project becomes operational and continuing thereafter, a unified scheduling system shall be used in order to coordinate events among the parties and District tenants to insure compliance with these operational restrictions. The unified scheduling system shall be required to be used by the District as to District Special Events, the Club and by District tenants as to events that will utilize more parking than normally available for the tenant’s use. Nothing contained in this Agreement will entitle the City to schedule space in the facilities of the District, the Club or of District tenants. During the period starting with the execution of this Agreement and continuing until six months prior to the expected opening date for the PEAK Project, the City and District will work in good faith to agree upon mutually acceptable unified scheduling system software. If the City and District are unable to reach agreement during that period, the City shall resolve the impasse by designating the unified scheduling system to be used and so notify the District. If the District objects to the system designated by the City, the unified scheduling system to be used shall instead be the CLASS software now being used by the City or such later version of that software as may be used by the City from time to time. If the CLASS software or any other software designated by the City is no longer being updated or maintained by the licensor, then the City shall designate the replacement unified scheduling system software after first consulting with the District. With respect to the unified scheduling system software only, the City shall pay for the required software licenses; this obligation does not extend to any licenses for other software or for any other costs that a party may occur incident to using the unified scheduling system software.
- The Club agrees to assign a minimum of one employee to manage the unified scheduling system for PEAK and the employee will be instructed not to schedule activities if parking is not available due to already scheduled activities on the Property. The Club shall not schedule any event or program that requires more than 91 parking spaces prior to 3:30 pm on school days. The Club shall not schedule any High Activity Event that requires more than 247 parking spaces. The Club shall provide
written parking demand estimates to the City for all High Activity Events at least one week prior to the scheduled event.

- The Club agrees to provide adequate staff to aggressively enforce all signed parking restrictions to insure parking stalls are available for PEAK users and not being used by high school students or other non PEAK users. The District shall provide the Club with all necessary authority to enforce the restrictions on District property. The Club agrees to provide staff to manage parking lot supervision and direction (including lot-to-lot wayfinding assistance) as described in the Traffic and Parking Management Programs described in subsection (v). High Activity Events may not be scheduled if such staff assistance is not provided.

- The District agrees that it shall provide a minimum of 5 days written notice to all property owners residing on a street having a “no parking during school days” sign posted, to advise them (i) a District Special Event has been scheduled; (ii) parking signs prohibiting parking during school days will be covered during the District Special Event; and (iii) spillover parking may occur in the neighborhood. On the day of the District Special Event and prior to the commencement of such event, the District will be responsible for placing covers over each “no parking during school hours” sign.

- The Club agrees to operate the PEAK Project as a local club and not as a regional facility.

- The Club, City and District shall meet annually to review parking and traffic impacts and to make any program or operation adjustments necessary in order to avoid adverse impacts to the neighborhoods and/or spillover parking in the neighborhoods surrounding the Property.

- The District shall ensure that the designation of the shared parking stalls for PEAK use does not result in there being insufficient parking stalls for childcare operators and other tenants on the Property.

- The District shall implement and enforce a program among its tenants to avoid parking conflicts.

(v) Traffic Management Programs. All Traffic Impact Analysis and Traffic Management Programs prepared as part of SEPA, the CUP or other City review of the PEAK Project shall be incorporated by reference into this Amendment (collectively TMPs). The Club shall pay all costs and perform all actions necessary to insure compliance with the TMPs and failure to do so may result in termination of the Development Agreement or imposition of the penalty set forth in subsection (vii).

(vi) Public Facility Classification. The parties agree that the PEAK Project shall be classified as a “public facility” under Mercer Island City Code 19.02.010(C)(1).

(vii) Penalty. In the event the Club fails to comply with the prohibition on scheduling High Activity Events or the Boys and Girls Club Breakfast so they do not overlap with a District Special Events or other significant event planned by a District tenant, the Club may be subject to a civil penalty in the amount of $500 a day for
violation of this operational restriction. In the event the Club fails to comply with any other material term or condition of this Amendment, the Club may be subject to a civil penalty in the amount of $250 a day for violation of this Amendment. Each separate day of noncompliance shall be a separate and distinct violation of this Amendment and subject to the civil penalty. The penalty imposed by this subsection shall be collected by notice of civil infraction as authorized by Chapter 7.80 RCW and MICC 19.15.030.

c. All Other Development Regulations. The development regulations set forth in all other provisions of the MICC as of the date a completed building permit application is submitted to the City (collectively, "Development Standards").

2. **Full Force and Effect.** Except as otherwise amended by this Second Amendment, the Development Agreement shall remain in full force and effect.

3. **Effective Date and Term.** The effective date of this Second Amendment is the date it is signed by the City. This Second Amendment shall be recorded against the Property and run with the Property; provided, however, that the City may terminate the Development Agreement for any material breach by the District or the Club of the terms and conditions of the Development Agreement, the First Amendment to Development Agreement or this Second Amendment following the District’s and/or Club’s failure to cure such breach within a reasonable time period following the City’s notice of the same.

EFFECTIVE as of the date set forth above.

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**THE DISTRICT:**

THE MERCER ISLAND SCHOOL DISTRICT, a school district of the State of Washington

By

Name: Gary Plano

Title: Superintendent

Date: FEB 11, 2009

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**CITY:**

CITY OF MERCER ISLAND, a political subdivision of the State of Washington

Richard M. Conrad
City Manager
Date: JANUARY 14, 2009

City-District-Club Development Agreement – Second Amendment
ATTEST:

[Signature]

Allison Spietz, City Clerk

APPROVED AS TO FORM:

[Signature]

Katie H. Knight City Attorney

BOYS AND GIRLS CLUBS OF KING COUNTY

By: [Signature]

Name: Daniel Johnson
Title: President/CEO
Date: 2-05-2009
STATE OF WASHINGTON

COUNTY OF KING

On this 14th day of January, 2009, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Richard M. Conrad to me known to be the City Manager of the CITY OF MERCER ISLAND, Washington, the city that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said city, for the uses and purposes therein mentioned, and on oath stated that he or she was authorized to execute the said instrument.

WITNESS MY HAND AND OFFICIAL SEAL hereto affixed the day and year first above written.

Eileen Robinson
NOTARY PUBLIC in and for the State of Washington, residing at Federal Way
My commission expires 1-29-2010
Print Name Eileen Robinson
STATE OF WASHINGTON
COUNTY OF KING

On this 9th day of February, 2008, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Daniel Johnson to me known to be the Chief Executive Officer of the BOYS AND GIRLS CLUB OF KING COUNTY, a Washington nonprofit corporation, that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said Boys and Girls Club for the uses and purposes therein mentioned and on oath stated that he was authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Notary Public in and for the State of Washington
residing at Seattle WA
My commission expires 12-15-2010

EXHIBITS:
A - Description of the Property
B - District Special Events
C - Map of approximate location of 91 PEAK parking spaces and 156 shared parking spaces
D - Settlement Agreement

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City-District-Club Development Agreement – Second Amendment
Exhibit A

Description of the Property
(Mercer Island School District Legal Descriptions)

Tax Parcel Number 182405-9043

The North 345 feet of the East 135 feet of the West one-half of the Northwest quarter of the Northeast quarter of the Northwest quarter of Section 18, Township 24 North, Range 5 East, W.M., in King County, Washington; LESS county road.

Tax Parcel Number 182405-9045

The West one-half of the Northwest quarter of the Northeast quarter of the Northwest quarter of Section 18, Township 24 North, Range 5 East, W.M., records in King County, Washington; except the North 345 feet of the East 135 feet;

together with the south 415 feet of the West 80 feet of the East one-half of the Northwest quarter of the Northeast quarter of the Northwest quarter of said Section 18, LESS county road.

Tax Parcel Number 182405-9006

The Northeast quarter of the Northwest quarter of the Northwest quarter of Section 18, Township 24 North, Range 5 East, W.M., records in King County, Washington; LESS county roads.

Tax Parcel Number 182405-9005

The South one-half of the Northeast quarter of the Northwest quarter; together with the Southeast quarter of the Northeast quarter of the Northwest quarter of Section 18, Township 24 North, Range 5 East, W.M. records in King County, Washington; LESS county roads.
Exhibit B

District Special Events

The following events shall constitute District Special Events

PTSA Welcome Coffee
Fall Assembly
Homecoming Assembly
General Elections
Winter Sports Assembly
Martin Luther King Assembly
Spring Assembly
Mercer Island School Foundation Breakfast
ASB elections
Day of Respect
Senior Assembly
Senior Breakfast and Rehearsal
Football games and other sporting events
Dances
Exhibit C
Second Amendment to Development Agreement
Map of Approximate Location of 91 Shared
PEAK Parking Spaces and 156 Shared Parking Spaces

PARKING STALLS

SHARED 9

PEAK 16

SHARED 11

SHARED 92

SHARED 39

SHARED 6

TOTAL = 247

City-District-Club Development Agreement - Second Amendment
Exhibit D

Settlement Agreement