

“MARKED DRAFT”

WHEN RECORDED, RETURN TO:

Londi K. Lindell
City Attorney
City of Mercer Island
9611 SE 36th Street
Mercer Island, WA 98040

**FIRST 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:

NE ¼ of NW ¼ and NW ¼ of NW ¼ of Section 18, Township 24 North,
Range 5 East, W.M.

Complete legal description is at Exhibit A (page 9).

Assessor’s Property Tax Parcel Account Numbers:

1824059005 and 1824059006

Reference to Related Document:

No documents are assigned or released herein.

**FIRST AMENDMENT
TO
DEVELOPMENT AGREEMENT**

THIS FIRST 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 (the “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 Project PEAK Project (“Leased Property”).

D. The permitting, design and environmental review of the Project 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 of the Project and the operation of the Project PEAK Project.

G. The parties desire to enter into this Amendment to the Development Agreement in order to set forth the parking development standards consistent with RCW 36.70B.170 through 36.70B.210; 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).

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 Project 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.

J. 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; The Transpo Group, Inc. Parking Study dated September 2006 (“Parking Study”) prepared for the Project concludes that there will be a typical parking demand of between 41 and 92 parking spaces, and a high activity parking demand of up to 152 spaces; and

K. There will be 99 new parking spaces constructed on the Property available for PEAK Project use from 7:00 am until 10:00 pm and 255 parking spaces (comprised of the 99 new parking spaces and 156 shared parking spaces) available from 3:30 pm until 10:00 pm. Parking Study finds that the high activity parking demand in excess of 92 parking spaces will occur only in the evening, occasionally, during peak sports season (basketball or volleyball), at times when existing Mercer Island High School parking stalls are available in the adjacent administrative parking lot for the Project’s shared use; and

L. The Project proposes to provide 99 additional parking spaces, which is sufficient for the Project’s typical parking demand as disclosed in the Parking Study; and

~~_____ M. _____ The Project will also provide, during evenings and weekends, shared parking access to the adjacent Mercer Island administrative parking lot which contains 80 parking spaces, which together with the 99 additional parking spaces, will be sufficient to accommodate events at the Project which result in high activity parking demand, as disclosed in the Parking Study; and~~

N. The City finds that the Project 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

~~P.~~ ~~_____~~ ~~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 Project PEAK Project; and

Q. The effective date of this 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 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 Project 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 ~~three~~ four gyms in the field house. The required parking for typical parking use shall be a maximum of 99 ~~minimum of 97~~ parking spaces.

“High Activity Events” means those events at the Project PEAK Project requiring more than 99 parking spaces ~~generating more parking than typical parking use~~ including a dance or concert in the teen center and use of all ~~three~~ four gyms in the field house. ~~The required parking for high activity events will be a minimum of 152 parking spaces.~~

~~“PEAK Special Event Boys and Girls Club Breakfast”~~ means the required parking for the Project PEAK Project during ~~a special event including~~ the Club’s annual business breakfast with attendance of up to 250 persons. The required parking for Boys and Girls Club Breakfast PEAK Special Events will be a minimum of ~~20~~ 50 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 ~~construct 99 parking spaces~~ on either the Leased Property or within a reasonable distance to the ~~Project~~PEAK Project for to insure use by PEAK ~~Project~~ users:
- 99 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 parties agree that 99 spaces are sufficient to meet the Project's Typical Parking Use of 41 to 92 spaces as required in the Parking Study. During High Activity Events, the Club will provide up to 152 parking spaces as required in the Parking Study, by entering into a shared parking agreement with the District in the form attached as Exhibit D to this Amendment, providing 80 additional shared parking spaces in the adjacent Mercer Island administrative parking lot. The shared parking agreement between the District and the Club shall be in form and content acceptable to the City, including that the shared spaces shall be available for exclusive PEAK use on the weekends, non-school days and after 3:30 pm on school days, (except in the case of a District Special Event) and signed for such exclusive PEAK use. The District and the Club may agree to modify this exclusive PEAK use and/or the actual location of the shared parking stalls shown on Exhibit C for other District events or meetings 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 exclusive PEAK use. 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 SE 42nd streets allowing only short term parking for no more than 2 hours. The intent of this provision is to provide approximately 20 new spaces to be used by PEAK users or neighbors and not by high schools students. Currently, students park in all these available street spaces.

- (iii) Contingencies. The City's consent to this Amendment is subject to the satisfaction of the following conditions precedent:
- ~~(1) — High School Restricted Parking District. The City Council's adoption of Ordinance No. 06C-11 (Ordinance) creating a High School Restricted Parking District (RPD). The Ordinance contains an exception to the RPD for City approved special events. By execution of this Amendment, the City approves the PEAK Special Events and District Special Events contingent upon the operation restrictions contained in subsection (iv) and contingent upon the District and Club providing written notice to all~~

~~property owners within the RPD a minimum of 15 days prior to the event and placing hoods over the RPD signs during the events.~~

~~(21) SEPA Addendum. The District's completion of the 2006 SEPA Addendum process requiring the District to provide 35 additional parking spaces on the Property as more particularly shown in Exhibit E. The City issued a Notice of Decision dated April 12, 1996 regarding the parking required on the Property for the District's use of the site for high school and related purposes (1996 SEPA Decision). The District has now filed an addendum to the 1996 SEPA Decision (2006 Addendum). The 1996 SEPA Decision required the District to construct 200 new parking spaces for a total of 534 parking spaces on the Property. The District is currently only providing 499 spaces. The addition of 35 new parking spaces and implementation of an approved traffic management plan will bring the District into compliance with the 1996 SEPA Decision.~~

- ~~• (32) Maximum Square Footage. The Project PEAK Project shall not exceed the following maximum square footage: 45,000 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 high activity events such as teen center dances shall occur no more than 24 times a year. The Club agrees that the Boys and Girls Club Breakfast shall occur only once and PEAK Special Events shall occur no more than 2 times 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 PEAK Special Events and District Special Events shall be scheduled so as to never overlap, not occur on the same day.~~
- ~~• 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 implemented prior to commencement of PEAK or Project operation in order to coordinate events among the parties, District tenants or the pool in order to insure compliance with theseis 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 a 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 District shall provide the Club with all necessary authority to enforce the restrictions on District property. The Club shall not schedule any event or program that requires more than 99 parking spaces prior to 3:30 pm on school days. The Club shall not schedule any High Activity Event that requires more than 255 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 and the District agree 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
- (v) Traffic Management Programs. All The Traffic Management Program filed in connection with the 1996 SEPA Decision, as amended by the 2006 SEPA Addendum and any future Traffic Impact Analysis and Traffic Management Programs prepared required as part of SEPA, or the CUP or other City review of the Project PEAK Project shall be incorporated by reference into this Amendment (collectively TMPs). The District and 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 (vi).
- (vi) Public Facility Classification. The parties agree that the PEAK project Project shall be classified as a “public facility” under Mercer Island City Code 19.02.010(C)(1).
- ~~(vi)~~(vii) Penalty. In the event the District or Club fails to comply with the prohibition on scheduling High Activity Events or the Boys and Girls Club Breakfast on the same day as a District Special Events or other significant event planned by a District tenant or the Pool, 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 terms or conditions of this Amendment, the Club entity responsible for that non-compliance may be subject to a civil penalty in the amount of \$400250 a day for violation of this Amendment agreement. Each separate day of noncompliance shall be a separate and distinct violation of this Amendment agreement 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.
- cb. 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 First Amendment, the Agreement shall remain in full force and effect.
 3. **Effective Date and Term.** The effective date of this Amendment is April 1 January 1, 2007 or upon issuance of a threshold determination under SEPA for this Development Agreement and the expiration of all SEPA or other appeal periods, whichever comes later. This Amendment and the Agreement shall be recorded against the Property and run with the Property; provided, however, that the City may terminate the Agreement and/or Amendment for any material breach by the District or the Club of the terms and conditions of either the Agreement or Amendment following the District 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.

THE DISTRICT:

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

By _____
Name: _____
Title: _____
Date: _____

CITY:

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

Richard M. Conrad
City Manager
Date: _____

ATTEST:

Allison Spietz, City Clerk

APPROVED AS TO FORM:

Londi K. Lindell, City Attorney

THE CLUB

BOYS AND GIRLS CLUBS OF KING COUNTY

By: _____
Name: _____

Title: _____
Date: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this _____ day of _____, 2007~~6~~, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of THE MERCER ISLAND SCHOOL DISTRICT, a school district of the State of Washington, the school district that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, 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 first above written.

NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____
Print Name _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this _____ day of _____, 2007~~6~~, 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.

NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____
Print Name _____

EXHIBIT A

Description of the Property

The West 240.00 feet of the South 30.00 feet of Tax Lot 9006 described as the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 18, Township 24 North, Range 5 East, W.M., less county roads; TOGETHER WITH the North 250.00 feet of the West 240.00 feet of Tax Lot 9005 described as the S $\frac{1}{2}$ of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ AND ALSO the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 18, Township 24 North, Range 5 East, W.M., 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

**Map of Approximate Location of
99 PEAK Parking Spaces and 156 Shared Parking Spaces**

[See attached To be subsequently provided by the District]

Exhibit D
Shared Parking Agreement

[to be inserted]

~~**Exhibit E**~~
~~**SEPA Addendum**~~
~~**Approximate Location of 35 New Parking Spaces**~~

~~**[See attached]**~~

Exhibit F
Demand Management Agreement

~~[See attached]~~