

City of Olympia
Records & Information Services
Public Works Department
P.O. Box 1967
Olympia, WA 98507-1967

Document Title(s) 1. DEVELOPMENT AGREEMENT
Reference Number(s) of Document (Auditor's number of previously recorded document, if applicable) – on page of attached document
Grantor(s) (last name first, then first name and initials) 1. M-FIVE FAMILY LIMITED PARTNERSHIP by James A. Morris, Managing Member Additional names are on page of attached document
Grantee(s) last name first, then first name and initials) 1. OLYMPIA, CITY OF Additional names are on page of attached document
Legal Description (e.g., lot, block, plat or section, township, range) TRACT B BLA 990629 ^{TC} 3245223 NW SE OF SECTION 7, TOWNSHIP 18N, RANGE 2W IN THURSTON COUNTY, WASHINGTON. Additional legal is on page 2 of attached document
Assessor's Property Tax Parcel Number 12817420900

3952894

08/23/2007 01:08 PM Agreement
Thurston County Washington
CITY OF OLYMPIA , P W RECORDS (OLY1)

Page 1 of 15



**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF OLYMPIA
AND MPH HOLDINGS, LLC, FOR THE
DEVELOPMENT OF CERTAIN PROPERTY**

THIS DEVELOPMENT AGREEMENT is made and entered into this 10 day of July, 2007, by and between the City of Olympia, an optional code Washington municipal corporation, hereinafter the "City," and MPH HOLDINGS, LLC, a limited liability company organized under the laws of the State of Washington, hereinafter " MPH" or "Developer."

RECITALS

1. The Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction pursuant to RCW 36.70B.170(1)).
2. Under that same law, local governments may also enter into a development agreement for real property outside its boundaries as part of a proposed annexation or service agreement. MPH and the City have discussed the commencement of annexation proceedings for the subject property.
3. A development agreement made pursuant to that authority must set forth the development standards and other provisions that shall apply to, govern, and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement.
4. For the purposes of this development agreement, "development standards" includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3), except as further provided herein.
5. The City and MPH recognize development agreements must be consistent with the applicable development regulations



adopted by a local government planning under chapter 36.70A RCW.

6. This Development Agreement will be by and between the City of Olympia and the Developer (hereinafter the WEST OLYMPIA OFFICE PARK), which is located on Mud Bay Road/Harrison Avenue (hereinafter the "Property") with the Developer.

Now, therefore, the parties hereto agree as follows:

General Provisions

Section 1: *The Project.* The Project is the development and use of the Property, consisting of approximately 19 acres adjoining the City of Olympia. The proposal describes the Project as a multi-use commercial project. It is anticipated that MPH will be seeking approval of a Binding Site Plan upon the annexation of the property.

Section 2: *The Subject Property.* The Project site is legally described in Exhibit A, attached hereto and incorporated herein by this reference.

Section 3: *Definitions.* As used in this Development Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section.

"Adopting Ordinance" means the Ordinance which approves this Development Agreement, as required by RCW 36.70B.200.

"Certificate of occupancy" means either a certificate issued after inspections by the City authorizing a person(s) in possession of property to dwell or otherwise use a specified building or dwelling unit, or the final inspection if a formal certificate is not issued.

"Council" means the duly elected legislative body governing the City of Olympia.

"Director" means the City's Community Development Director.

"Effective Date" means the effective date of the Adopting Ordinance.



"EDDS" means the Engineering Design and Development Standards" adopted by the City of Olympia. See OMC 12.02.020.

"Existing Land Use Regulations" means the ordinances adopted by the City Council of Olympia in effect on the Effective Date, including the adopting ordinances that govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards, and specifications applicable to the development of the Subject Property, including, but not limited to the Comprehensive Plan, the City's Official Zoning Map and development standards, SEPA, Concurrency Ordinance, and all other ordinances, codes, rules, and regulations of the City establishing standards in relation to the division of land, whether through the subdivision process, the EDDS, the binding site plan process, or otherwise, and building standards. This does not include any building or fire code that is state-mandated (See RCW 19.27.031), impact fees, mitigation fees, or any other fees or charges.

"Landowner" is the party who has acquired any portion of the Subject Property from the Developer who, unless otherwise released as provided in this Agreement, shall be subject to the applicable provisions of this Agreement. The "Developer" is MPH Holdings, LLC.

"Project" means the anticipated development of the Subject Property, as specified in Section 1 and as provided for in all associated permits/approvals, and all incorporated exhibits.

Section 4: Exhibits. Exhibits to this Agreement are as follows:

Exhibit A - legal description of the Subject Property.

Exhibit B - Map showing Development Phases, including design of improvements consistent with current requirements of the City. This development agreement does not certify or pre-approve exhibit B as a binding site plan or for any other land use review or permits.

Section 5: Parties to Development Agreement. The parties to this Agreement are:

3952894

08/23/2007 01:08 PM Agreement
Thurston County Washington
CITY OF OLYMPIA : P W RECORDS (OLY1)

Page 4 of 15



The "City" is the City of Olympia, the mailing address of which is P. O. Box 1967, Olympia, Washington 98507.

As indicated above, the "Developer" or Owner is a private enterprise which owns the Subject Property, and whose mailing address is Post Office Box 11221, Olympia, Washington 98508.

The "Landowner." From time to time, as provided in this Agreement, the Developer may sell or otherwise lawfully dispose of a portion of the Subject Property to a Landowner who, unless otherwise released, shall be subject to the applicable provisions of this Agreement related to such portion of the Subject Property.

Section 6: *Project is a Private Undertaking.* It is agreed among the parties that the Project is a private development and that the City has no interest therein except as authorized in the exercise of its governmental functions.

Section 7: *Term of Agreement.* This Agreement shall commence upon the effective date of the Adopting Ordinance approving this Agreement, and shall continue in force for a period of 6 years from the date of permit issuance not to exceed 8 years in total, unless extended or terminated as provided herein. Following the expiration of the term or any extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject however, to post-termination obligations of the Developer or Landowner.

Section 8: *Vested Rights of Developer.* During the term of this Agreement, unless sooner terminated in accordance with the terms hereof, in developing the Subject Property consistent with the Project described herein, Developer is assured, and the City agrees, that the development rights, obligations, terms and conditions specified in this Agreement, are fully vested in the Developer under the existing land use regulations and may not be changed or modified by the City, except as may be expressly permitted by, and in accordance with, the terms and conditions of this Agreement, including the Exhibits hereto, or as expressly consented thereto by the Developer. This does not include any building or fire code that is state-mandated (See RCW 19.27.031), impact fees, mitigation fees, or any other fees or charges.



Section 9: *Permitted Uses, Development Standards, & Phasing.* Whether developed in one phase or a series of phases as anticipated by Section 13, (a) the permitted uses, (b) the density and intensity of use, (c) the maximum height and size of proposed buildings, (d) provisions for reservation and dedication of land, (e) as noted above, the existing Land Use Regulations relating to among other items, the construction, installation and extension of public improvements, (f) the EDDS, and (G) development guidelines and standards for and applicable to the development of the Subject Property shall be those in effect as of the date of this Agreement, whether set forth in this Agreement, or in the permits and approvals, if any, identified herein, and all exhibits incorporated herein. This does not include any building or fire code that is state-mandated (See RCW 19.27.031), impact fees, mitigation fees, or any other fees or charges.

In addition, Developer hereby covenants and agrees that the development area shall not be used for single family or multifamily, except that mixed used buildings that have a residential component (rental, condo or other type of residential) are allowed. Such covenant shall run with the land and be binding on Developer's successors and assigns for the term of this agreement.

Section 10: *Modifications.* Any modifications from the approved permits or the exhibits attached hereto requested by MPH may be approved in accordance with the provisions of the City's code and under the existing Land Use Regulations, and shall not require an amendment to this Agreement.

Section 11: *Financing of Public Facilities.*

11.1. Developer acknowledges and agrees that it shall participate in the funding of its pro-rata share of the costs of public improvements to be financed thereby, in accordance with the provisions of this Agreement and SEPA. At the request of the Developer, the City shall consider the use of a local improvement district and other similar project-related public financing mechanisms for financing the construction, improvement, or acquisition of public infrastructure, facilities, lands and improvements to serve the Subject Property, whether located within or outside the Subject Property.



11.2. The City shall consider a latecomer's agreement when proposed by the Developer.

Section 12: *Existing Land Use Fees and Impact Fees.* Land use fees and impact fees adopted by the City by ordinance as of the Effective Date of this Agreement may be increased by the City, and applicable to permits and approvals for the Subject Property, as long as such fees apply to similar applications and projects in the City.

All impact fees shall be paid as set forth in the approved permit or approval, or as addressed in the Olympia Municipal Code.

Section 13: *Phasing of Development.* The parties acknowledge that the most efficient and economic development of the Subject Property depends upon numerous factors, such as market orientation and demand, interest rates, competition and similar factors, and that generally it will be most economically beneficial to the ultimate purchasers of the Subject Property to have the rate of development determined by the Developer. However, the parties also acknowledge that, because the Development will be phased, certain amenities associated with the Project must be available to all phases of the Project, in order to address health, safety and welfare of the residents. Therefore, the parties agree that the improvements associated with the Project shall be constructed and developed according to the design guidelines set forth upon Exhibit B, whether the development and construction is carried out in one phase or a series of phases as anticipated by Section 4 and this section.

Section 14: *Dedication of Public Lands.* Except as otherwise provided herein, the Developer shall dedicate all public lands required in the permits/approvals. Rights-Of-Way shall be dedicated to the City concurrently with final plat approval by the City for any phase of the development. As to such dedications, the Developer agrees to dedicate any or all road rights-of-way without expense to the City.

Section 15: *Default.* Subject to extensions of time by mutual consent in writing, failure or delay by either party or Landowner not released from this Agreement, to perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any



terms or conditions of this Agreement, the party alleging such default or breach shall give the other party or Landowner not less than thirty (30) days notice in writing, specifying the nature of the alleged default and the manner in which said default may be cured. During this thirty (30) day period, the party or Landowner charged shall not be considered in default for purposes of termination or institution of legal proceedings.

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 manner set forth in the notice, the other party or Landowner to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement. In addition, the City may decide to file an action to enforce the City's Codes, and to obtain penalties and costs as provided in the Olympia Municipal Code or state law for violations of this Development Agreement and the Code.

Section 16: Termination. This Agreement shall expire and/or terminate as provided below:

16.1. This Agreement shall expire and be of no further force and effect if the development contemplated in this Agreement and all of the permits and/or approvals issued by the City for such development are not substantially underway prior to expiration of such permits and/or approvals. Nothing in this Agreement shall extend the expiration date of any permit or approval issued by the City for any development.

16.2. This Agreement shall expire and be of no further force and effect if the Developer does not construct the Project substantially as contemplated by the design documents identified in this Agreement, and submits applications for development of the Property that are inconsistent with such permits, approvals and with this agreement.

16.3. This Agreement shall terminate upon the expiration of the term identified in Section 7 or when the Subject Property has been fully developed, whichever first occurs, and all of the Developer's obligations in connection therewith are satisfied as determined by the City. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City Attorney that the Agreement has been terminated.

3952894

08/23/2007 01:08 PM Agreement
Thurston County Washington
CITY OF OLYMPIA , P W RECORDS (OLY1)

Page 8 of 15



16.4. At the Option of the Developer, this Agreement shall terminate in the event that the property covered by the Agreement is not annexed into the City of Olympia by the 31 day of DECEMBER, 2008, upon the Developer giving the City written notice of its desire to so terminate.

16.5. If not earlier terminated, it shall terminate as provided upon the passage of the time periods set forth in §16.

Section 17: *Annexation & "Preferred Lease Zone" Provisions*

17.1. Pursuant to City sponsorship, the process to annex the area of which the property is a part has been commenced. The City agrees that it shall timely carry forth the procedures in relation to the consideration of the annexation of the property covered by this Agreement.

17.2. The City shall review the matter of recommending to Division of Real Estate Services of the State Department of General Administration that the property be included within the "Preferred Lease Zone" area maintained by the Division.

17.3. In the event that the Developer submits a request to annex the property, the City agrees that it shall process such request in a timely manner.

Section 18: *Effect upon Termination on Developer Obligations.* Termination of this Agreement as to the Developer of the Subject Property or any portion thereof shall not affect any of the Developer's obligations to comply with the City 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 Subject 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.

Section 19: *Effects of Termination on City.* Upon any termination of this Agreement as to the Developer of the Subject Property, or any portion thereof, 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 affected by such termination.

Section 20: *Assignment and Assumption.* The Developer shall have the right to sell, assign, or transfer this Agreement with all their rights, title, and interests therein to any person, firm or corporation at any time during the term of this Agreement.

Section 21: *Covenants Running with the Land.* The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties. The Developer, Landowner and every purchaser, assignee or transferee of an interest in the Subject Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Subject Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of a Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Subject Property sold, assigned or transferred to it.

Section 22: *Amendment to Agreement; Effect of Agreement on Future Actions.*

22.1. This Agreement may be amended by mutual consent of all of the parties, provided that any such amendment shall follow the process established by law for the adoption of a development agreement.

22.2. Nothing in this Agreement shall prevent the City Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations affecting the Subject Property during term of this agreement to the extent required by a serious threat to public health and safety.

22.3. So long as mutually agreed upon, nothing in this Development Agreement shall prevent the City Council from making any amendments of any type to the Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations



relating to the Subject Property upon bases other than those set out in 22.2. In the absence of such mutual agreement by the Parties, any such amendment may not become effective earlier than the termination date of this agreement.

Section 23: *Releases.* Developer, and any subsequent Landowner, may free itself from further obligations relating to the sold, assigned, or transferred property, provided that the buyer, assignee or transferee expressly assumes the obligations under this Agreement as provided herein.

Section 24: *Notices.* Notices, demands, correspondence to the City and Developer shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated in Section 5. Notice to the City shall be to the attention of both the City Manager and the Director of Community Planning and Development. Notices to subsequent Landowners shall be required to be given by the City only for those Landowners who have given the City written notice of their address for such notice. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

Section 25: *Applicable Law and Attorneys' Fees.* This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. Venue for any action shall lie in Thurston Superior Court or the U.S. District Court for Western Washington.

Section 26: *Third Party Legal Challenge.* In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner 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 Developer and/or Landowner(s). In such event, Developer and/or such Landowners 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, attorneys' fees and expenses of litigation, and damages awarded to the prevailing party or parties in such litigation. The Developer and/or Landowner 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.



Section 27: Specific Performance. 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 Development Agreement by any party in default hereof.

Section 28: Severability. If any phrase, provision or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the effective date of the ordinance adopting this Development Agreement, and either party in good faith determines that such provision or provisions are material to its entering into this Agreement, that party may elect to terminate this Agreement as to all of its obligations remaining unperformed.

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed as of the dates set forth below:

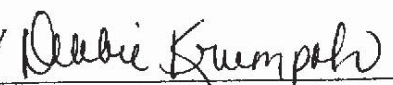
MPH HOLDINGS, LLC:

By  M.M.
Its Managing Member

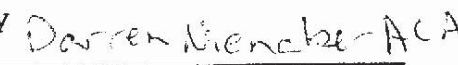
CITY OF OLYMPIA:

By 
Its Mayor

ATTEST:

By 
City Clerk

APPROVED AS TO FORM:

By  Darren Nienaber - ACA
City Attorney

3952894

08/23/2007 01:08 PM Agreement
Thurston County Washington
CITY OF OLYMPIA ; P W RECORDS (OLY1)

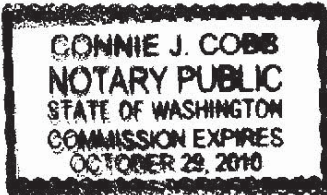
Page 12 of 15



COUNTY OF THURSTON) : ss.

I certify that I know or have satisfactory evidence that Mark Foutch ~~and~~ _____ signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the Mayor ~~and Clerk-treasurer, respectively,~~ of the City of Olympia, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: July 11, 2007



Connie J. Cobb
NOTARY PUBLIC IN AND FOR THE STATE
OF WASHINGTON, Residing at: Olympia
My appointment expires: 10/29/10

STATE OF WASHINGTON)
: ss.
COUNTY OF THURSTON)

I certify that I know or have satisfactory evidence that James A. Morris signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Managing Member of MPH Holdings, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: July 16, 2007



Nancy E. Lenzi
NOTARY PUBLIC IN AND FOR THE STATE
OF WASHINGTON, Residing at: Rochester
My appointment expires: 6-9-08

EXHIBIT "A"

WESTCAP OFFICE PARK-

Site Plan SP1.0 (April 2007)

This exhibit does not meet Thurston County's recording requirements for legibility.

To view or request a copy, please contact the
City of Olympia, City Clerk's Office at
360-753-8325, 900 Plum St, SE, Olympia, WA.

3952894

08/23/2007 01:08 PM Agreement
Thurston County Washington
CITY OF OLYMPIA, P W RECORDS (OLY1)

Page 14 of 15



EXHIBIT "B"

WESTCAP OFFICE PARK-

Phasing Plan SP2.0 (April 2007)

This exhibit does not meet Thurston County's recording requirements for legibility.

To view or request a copy, please contact the
City of Olympia, City Clerk's Office at
360-753-8325, 900 Plum St, SE, Olympia, WA.

3952894

08/23/2007 01:08 PM Agreement
Thurston County Washington
CITY OF OLYMPIA ; P W RECORDS (OLY1)

Page 15 of 15

