



201510260323 19 PGS
 10/26/2015 1:13pm \$91.00
 SNOHOMISH COUNTY, WASHINGTON

After recording return to:

Shane Moloney, City Attorney
 City of Mill Creek
 15728 Main Street
 Mill Creek, Washington 98012

Document Title(s)	Development Agreement for BS 15-65 (EGUV)
Reference Number(s) of related documents	
Grantor(s)	City of Mill Creek Vintage at Mill Creek, LLC
Grantees(s)	Vintage at Mill Creek, LLC City of Mill Creek
Abbrev. Legal Description	The Northeast quarter of the Northeast quarter of the Northwest quarter of, Section 33, Township 28N, Range 5 E WM
Assessor's Property Tax Parcel/Account Number	28053300201300

CONTRACT 2015-____
CITY OF MILL CREEK

**DEVELOPMENT AGREEMENT
FOR THE
VINTAGE AT MILL CREEK, LLC
BINDING SITE PLAN (BS 15-65)
IN THE EAST GATEWAY URBAN VILLAGE**

1.0 Parties

1.1 This Development Agreement ("Agreement") is entered into on the Effective Date set forth below between the City of Mill Creek, a Washington municipal corporation having its principal place of business at 15728 Main Street, Mill Creek, Washington 98012 ("City"), and Vintage at Mill Creek, LLC, a Washington limited liability company, having its principal place of business at 369 San Miguel Drive, Suite #135, Newport Beach, California 92660-7813 ("Developer"). The City and Developer may be individually referred to as "Party" and collectively as the "Parties."

1.2 The Parties enter into this Agreement for and in consideration of the mutual benefits and advantages of this Agreement. The Parties agree to comply with all of the terms and conditions of this Agreement.

2.0 Purpose

2.1 Mill Creek Municipal Code ("MCMC") Section 17.19.020 requires every development in the East Gateway Urban Village ("EGUV") zoning district to obtain approval of a detailed master development plan. The detailed master development plan includes a binding site plan and a development agreement with the City. The development agreement is to be approved by the City Council and the binding site plan is to be reviewed and approved by the City's Hearing Examiner. The Hearing Examiner's decision is appealable to the City Council.

2.2 This Agreement serves as the development agreement for the Project (which is described in Section 5 .1). The Agreement is not intended to conflict with or supplant existing state and local regulations that otherwise govern the Project. This Agreement does not serve as an approval of any permit or any specific proposal within Developer's application for the Project. The Agreement sets forth negotiated terms and conditions applicable to future Project approvals and the ongoing obligations and rights of the parties after Project approval. These negotiated terms and conditions supplement the terms and conditions of the MCMC. Developer's proposed BSP (as defined in Section 5.1) remains subject to review and approval by the City's Hearing Examiner. After the BSP is approved, related permits (e.g. building and design review) will be subject to review and approval by those designated to review such permits (e.g. building code official and design review board).

2.3 The Parties acknowledge that this Agreement will benefit the Parties by assuring them of their respective rights, duties, obligations, privileges and commitments with regard to the Property and Project for the duration of this Agreement.

2.4 The terms and conditions of this Agreement apply to the Property and Project as defined and described herein.

3.0 Definitions

3.1 The following terms are initially defined and or described at the indicated sections of this Agreement:

- Binding Site Plan ("BSP") (Section 5.1)
- Commercial Property Use Agreement (Section 9.3)
- Design Guidelines (Section 8.2)
- East Gateway Urban Village ("EGUV") (Section 2.1)
- Effective Date (Section 19.4)
- EGUV Regulations (Section 8.2)
- Engineering Study (Section 8.2.3)
- Master Development Plan ("MDP") (Section 7.3)
- Mill Creek Municipal Code ("MCMC") (Section 2.1)
- Project (Section 5.1)
- Project Approvals (Section 8.3)
- Property (Section 4.1)
- Road Construction (Section 10.4)
- Vested Term (Section 8.4)

4.0 Property Description

4.1 The property which is the subject of this Agreement consists of the parcel legally described in attached **Exhibit A** ("Property"). Developer intends to purchase the Property from its current owner, Robert J. Mollgaard, as his separate estate ("Owner"). In the event that Developer purchases the Property from the Owner, and elects to proceed with the Project, this Agreement shall bind Developer and the Property pursuant to Section 19.5, below. A tax parcel map generally depicting the Property is attached as **Exhibit B**. References to "Property" shall include the Project described in Section 5.1 below.

4.2 The parcels comprising the Property bear Snohomish County tax parcel numbers ("TPN"): 28053300201300.

5.0 Project Description

5.1 Project Description. Developer has submitted a Binding Site Plan (“BSP”) application to develop the Property. The specific application is Binding Site Plan BS 15-65. The “Project” generally consists of subdividing one parcel for the purpose of developing two five-story buildings with commercial uses and parking on the ground floor plus residential units above (“Project”). The residential units will be restricted to residents 55 years of age or older. A map generally depicting the proposed Project is attached as **Exhibit C**.

6.0 Authority

6.1 Authority. This Agreement is a development agreement authorized by and entered into under the authority of MCMC Chapters 14.03 and 17.19, and the Revised Code of Washington (“RCW”) section 36.70B.170 et seq. This Agreement establishes certain terms and conditions pertaining to development of the Project and the Property, and establishes an overall framework for current and future development of the Property, but is not exclusive nor a comprehensive list of development requirements affecting the Property. Other requirements for development of the Property will be established during the review process for specific components of the EGUV Regulations described in Section 8.2 below and under the applicable provisions of the MCMC.

7.0 Development Review Procedures for Project

7.1 Approval of Agreement. This Agreement has been processed in accordance with RCW 36.70B.170 et seq. and MCMC 14.03.030. Approval of this Agreement by the Mill Creek City Council is required before any other development approvals affecting the Property may be heard, decided, or granted. Following execution by the Parties, City shall promptly record this Agreement with the Snohomish County Auditor's Office at Developer's expense. In the event that this Agreement is recorded and Developer does not acquire the Property or proceed with the Project, Developer and the City will execute and record any necessary termination document, and Developer will pay the costs of recording such termination.

7.2 Hearing Examiner Notice. In reviewing subsequent development applications for the Project or Property, the Mill Creek hearing examiner shall take notice of this Agreement and accord it the foregoing status under MCMC 4.34.030.

7.3 Project Review. Subsequent applications, approvals, and development actions for the Project, including the BSP and consistency review required for the Project under MCMC Section 17.19.030, environmental decisions, and all subsequent permits implementing the Project, shall be reviewed pursuant to the MCMC regulations existing on the vesting date for the application for any such action. No development approval shall be granted unless it is consistent with the MCMC, this Agreement and the EGUV Regulations (as defined in Section 8.2 below). This Agreement, any future approved BSP for the Project, and any future approved consistency review for the Project shall collectively comprise the master development plan (“MDP”) described in MCMC Sections 17.19.020 and .030.

8.0 Project Review and Evaluation; Vested Rights

8.1 Project Evaluation. The Project shall be reviewed in accordance with City's regular development review procedures. City shall use this Agreement and the EGUV Regulations specified below during the development review process as additional standards and criteria to evaluate the Project and determine appropriate conditions and requirements of development. Project approval and subsequent build out will require various City permits and approvals.

8.2 EGUV Regulations. The Project will be developed consistent with the following as applied during the development review process: (i) this Agreement; (ii) the version of Titles 16, 17, and 18 of the MCMC in effect on the date the Agreement is approved by the City Council; (iii) EGUV Design Guidelines adopted July 1, 2008 ("Design Guidelines"); (iv) Reid Middleton EGUV Infrastructure Design Report dated December 2012 ("Engineering Study") attached hereto as **Exhibit D**; (v) environmental decisions and documents issued for the Project under the State Environmental Policy Act, RCW Chapter 43.21C, and/or MCMC Chapter 18.04 (collectively "SEPA"); (vi) the version of the Mill Creek Comprehensive Plan in effect on the date the Agreement is approved by the City Council; and (vii) other applicable City, state, or federal regulations as those regulations exist and apply at the time of development or a vested application therefore (e.g. building permits will be subject to the building codes in effect at the time a building permit is applied for). All of the foregoing comprise development regulations within the meaning of RCW 36.70A.030 and shall collectively comprise and be referred to as the "EGUV Regulations." Without limiting foregoing, the following components of the EGUV Regulations are emphasized for clarity:

8.2.1 Applicable Regulations. All applicable regulations in the MCMC on the effective date of this Agreement or the vesting date of any subsequent application pertaining to the Project shall apply to the Project, except as may be changed by this Agreement.

8.2.2 EGUV Design Guidelines. All structures and facilities comprising the Project shall comply with the Design Guidelines as adopted by the City Council on July 1, 2008, in City Council Ordinance No. 2008-684.

8.2.3 Engineering Study. The Engineering Study shall be used as the design guideline for the public roadway alignment, access management, traffic impacts and analysis, regional drainage facilities if coordinating with adjacent property owners, public infrastructure facilities, and utility coordination. All required public infrastructure, facilities and mitigation arising from the Project shall be consistent with the Engineering Study, except the Parties agree the alignment of Road B as depicted on **Exhibit C** is an approved deviation from the alignment of that road as contemplated within the Engineering Study.¹ The City Manager, or designee, in

¹ With the exception of the alignment of Road B, project elements depicted in Exhibit C (e.g. parking, buffers, setbacks, open space, building locations) are provided for conceptual purposes only. The Hearing Examiner shall determine whether such elements comply with applicable EGUV Regulations.

his or her sole discretion may authorize additional deviations from the Engineering Study to the extent such deviations do not prevent the Project from complying with other applicable aspects of the EGUV Regulations and will not materially impact existing or future developments within the EGUV zoning district.

8.3 Compliance with Project Approvals. Once approved, this Agreement, the subsequent associated BSP and MDP, and all other governmental approvals (e.g., SEPA determination, building permits, etc.) required for development of the Project shall collectively comprise the "Project Approvals." The Project shall comply with the Project Approvals in all particulars, and City may take enforcement action in accordance with Section 15 at any time to compel such compliance.

8.4 Binding Nature of Development Agreement; Vested Term; Vested Rights. This Agreement shall constitute a binding development regulation for the Project and Property for purposes of the City's review of Binding Site Plan BS 15-65 and related applications received within 8 years of the effective date of this Agreement ("Vested Term"). During the Vested Term, Developer shall have the right to develop the Project in accordance with the terms of this Agreement and the Project Approvals regardless of intervening changes in the EGUV Regulations or other applicable development regulations. After the Vested Term, this Agreement shall continue to apply to the use of all development approved pursuant to this Agreement. Development applications received after the Vested Term or for different projects shall be subject to review under then applicable development regulations.

9.0 Occupancy of Buildings; Sale of Lots; Uses

9.1 Occupancy and Sale. There shall be no occupancy or use of the Project components, and no sale or lease of any lots, tracts or parcels created by the BSP, until (i) the BSP is recorded in accordance with the MCMC, and (ii) certificates of occupancy have been issued as required by the MCMC and Section 9.2.

9.2 Certificates of Occupancy. In addition to the requirements of the MCMC and the enforcement provisions set forth in Section 15, the City may withhold certificates of occupancy for all or any part of the Project until all building permit requirements and Project conditions of approval have been met to City's satisfaction.

9.3 Commercial Uses. Pursuant MCMC Section 17.19.040, residential uses are prohibited on the Property unless the residential uses are located above commercial uses. Consistent with the City's Comprehensive Plan, this restriction encourages a mix of residential and commercial uses that provide active pedestrian circulation and economic stability within the East Gateway Urban Village.

9.3.1 No Residential Accessory Uses. Except as otherwise expressly agreed in Section 9.3.2, the ground floor commercial space may not be used as an accessory to the Project's residential uses and access to the ground floor uses shall not be limited on the basis of residency within the Project.

9.3.2 Agreement Regarding Specific Commercial Uses Serving the Public and Residents. Notwithstanding the restriction set forth in Subsection 9.3.1 of this Agreement, the Parties recognize that there may be some commercial uses that can fulfill the intent of the EGUV Regulations, while also serving as accessories to the residential aspect of the Project. Specifically, Developer intends to operate a 1,000 square foot leasing office that will serve residents and potential residents (“Leasing Office”), and a 2,500 square foot space that will include a beauty parlor, kitchen, and fitness center for use by the Project’s residents (“Residential Amenity Space”). The Parties agree that the Leasing Office and Residential Amenity Space may be located on the ground floor of the Project, subject to the terms and conditions described in Section 9.3.2.1.

9.3.2.1 Terms of Commercial Property Leases. In exchange for the City allowing the Leasing Office and Residential Amenity Space on the ground floor, Developer will, in good faith, attempt to enter into a lease with a minimum term of 25 years for 2800 square feet of ground floor commercial space with an independent, City approved, non-profit senior center that offers recreational, social, and/or learning activities to community seniors, including residents and non-residents of the Property. Such lease will be on commercially reasonable terms and will provide that Developer will build the initial mutually-agreed upon tenant improvements for the space (including but not limited to walls, flooring, utility outlets, paint, doors, and trim) and lease the space to the senior center for no more than the Developer’s cost of providing utilities to the allocated space; provided that the lease may allocate certain other commercially reasonable costs to the tenant, including the responsibility to pay for any damage caused by the tenant, and customary maintenance and repair, insurance, casualty, condemnation and other provisions. The senior center will be responsible for furnishing the space and operating its own senior oriented activities and programs. The senior center’s members will have access and use of the Residential Amenity Space (if any) operated by the Developer on such terms and conditions as Developer may establish for the use of such space. However, Developer may, in its discretion, exclude other members of the public from accessing the Residential Amenity Space.

In addition, Developer will lease to the City 500 square feet of ground floor commercial space to be used, maintained, and operated by the City as a public facing police satellite office. Such lease will be on commercially-reasonable terms and will provide that, among other things, Developer will build the initial tenant improvements for the space (including but not limited to walls, flooring, outlets, paint, doors) and lease the space to the City for no more than Developer’s cost of providing utilities to the allocated space; provided that the lease may allocate certain other commercially reasonable costs to the tenant, including the responsibility to pay for any damage caused by the tenant, and customary maintenance and repair, insurance, casualty, condemnation and other provisions. The City will be responsible for furnishing the space and all operating and maintenance costs.

9.3.3 Effect of Failure to Lease. Developer will make a good faith effort to lease a portion of the ground floor commercial space to an independent non-profit senior center on terms consistent with those described above. In the event that Developer is not able to locate an interested independent non-profit senior center, the City may locate and provide potential applicants for consideration. In the event that Developer does not enter into a lease on mutually agreeable terms with an independent non-profit senior center, Developer will not be permitted to use the ground floor space for the Leasing Office or Residential Amenity Space, but may lease such space for other commercial uses permitted hereby and by the MCMC. In the event the senior center use commences and discontinues by the senior center terminating the lease as a result of Developer's default thereunder, Developer shall discontinue its use of the ground floor for a Leasing Office and Residential Amenity Space no later than six (6) months from the date the senior center discontinues operations and terminates the lease. The six (6) months may be extended by written agreement of the City if the Developer is actively seeking a replacement senior center tenant. In no event shall a casualty or condemnation or other interruption of use by a senior center tenant for any other reason other than Developer's default under its written lease with such tenant in any way diminish Developer's rights to use the other ground floor commercial space as a Leasing Office or Residential Amenity Space or such other commercial uses as may be permitted hereunder and under the MCMC.

10.0 Transportation and Traffic Requirements

10.1 City and County Traffic System Impact Mitigation Requirements. Traffic impacts and mitigation fees will be analyzed and determined by the Developer, City and Snohomish County through the City's SEPA and development review process and in accordance with the Engineering Study per Section 8.2.

10.2 Construction of 132nd Street SE Improvements. Developer shall construct or pay to construct all 132nd Street SE frontage and related access point improvements required by the Washington State Department of Transportation and the Engineering Study per Section 8.2. The design, construction, and operation of the improvements are subject to the review and approval of the Washington State Department of Transportation.

10.3 Dedication of Road Right-of-Way. In accordance with MCMC Chapter 16.14, Developer shall dedicate or cause to be dedicated to the City the full width of the public Right-of-Way depicted in Exhibit C as "Road A" and "Road B" as such widths and alignments are contemplated in the Engineering Study, except to the extent deviations are permitted by Section 8.2. Dedication shall be completed either by (i) showing the dedication on the face of the BSP for the Project; or (ii) by separate dedication deed or easement approved and accepted by City before the BSP is released for recording. Developer is solely responsible for negotiating all necessary legal interests from underlying property owners of the public Right-of-Way in order to accomplish the required dedication.

10.4 On-Site Road Construction. Developer shall design and construct the full width of the public roadway improvements on the property dedicated pursuant to Section 10.3 ("Road Construction"). The Road Construction shall comply with all applicable EGUV Regulations, including but not limited to MCMC Chapter 16.16, the current version of the Mill Creek Design and Construction Standard Plans, Design Guidelines, and the Engineering Study. The Road Construction shall include the (i) full width of the street and sidewalk cross section; (ii) on-street parking as approved by City; (iii) street and pedestrian lighting; (iv) stormwater and drainage facilities; (v) street trees (grates and lighting conduit), landscaping and street furnishings; and (vi) signage and striping.

11.0 Parking Requirements

11.1 Parking Standards. Parking shall be provided consistent with the requirements established in MCMC Chapter 17.27.

11.2 Reciprocal Parking Covenant for Commercial Space Parking Stalls. The unified and mixed-use nature of the EGUV is designed to encourage pedestrian activity and discourage internal vehicle trips. The Developer shall grant a reciprocal parking covenant approved by City for the parking serving the Project's commercially designated parking stalls to the other commercially developed properties within the EGUV that provide an equivalent reciprocal agreement. The parking covenant shall be shown on the face of the BSP.

11.3 Use of Commercial Parking Facilities. Developer will actively manage the use of parking, as approved by the Hearing Examiner in the Binding Site Plan, to ensure the stalls required to be available for commercial uses will not be used by residents, guests, and staff of the Project's residential units during the operating hours of the Project's commercial businesses. The Hearing Examiner may require as a condition of approval of the BSP a parking management plan that provides an enforceable method of requiring residents, their guests, and employees to park only in areas dedicated to serving the residential portion of the Project. Use of the parking stalls dedicated to support the commercial uses shall be managed to ensure the spaces directly adjacent to commercial uses will be available for customers, and not used by staff and owners of the commercial businesses. Developer will update the parking management plan as necessary to ensure the parking stalls reserved for the customers, invitees and guests of commercial ground floor tenants remain available to such customers, invitees and guests.

12.0 Plazas, Public Gathering Areas, and Public Access

12.1 Required. Plazas and public gathering places shall be provided along the public roadway of the Project pursuant to MCMC Chapter 17.19 and the Design Guidelines. Plazas shall incorporate informal public seating areas, sidewalks, and other public spaces on the Property consistent with the EGUV Illustrative Plan, Design Guidelines, and Comprehensive Plan. Plazas and public gathering spaces are subject to review and approval of the Design Review Board prior to the issuance of a building permit.

12.2 Plazas and Public Gathering Areas Infrastructure and Furnishings. The Developer shall design, obtain and install infrastructure and furnishings in Plazas, subject to provisions of the Design Guidelines and MCMC Chapter 17.34. Plaza design and furnishings are subject to review and approval of the Mill Creek Design Review Board. Maintenance and replacement of infrastructure and furnishings shall be the responsibility of Developer.

12.3 Public Access. Developer shall grant a public access easement allowing public access to, over and across the roadway buffer and perimeter trail as well as through the private drive aisles and sidewalks to allow public access from the public roadway to the perimeter trail as contained on the approved BSP. All public access easements, locations, and types shall be described and shown on the face of the BSP.

13.0 Maintenance Responsibilities

13.1 Developer Responsibilities. Developer and its assigns shall be responsible for the following ongoing maintenance obligations: (i) oversee and coordinate the use and maintenance of, and activities and events held on the privately-owned open spaces within the EGUV; (ii) maintain improvements in the public right-of-way in accordance with MCMC Chapters 12.06 and 17.24, including the public right-of-way area between the street curbs and property lines: sidewalks, plazas and open spaces, canopies, all landscaping including tree grates, trash cans including daily servicing, benches and all outdoor furniture, (iii) maintain the Property; and (iv) maintain all drainage facilities on the Property outside the public right-of-way.

13.1.1 Multiple Owners. To the extent there are multiple owners of the Property (e.g., commercial units are operated under separate ownership from residential uses), the multiple owners shall designate a single contact for the City to address enforcement of Section 13.1 of this Agreement. The multiple owners are encouraged to enter into maintenance and cost sharing agreements that equitably distribute the cost of the obligations in Section 13.1. However, notwithstanding any agreement between the multiple owners, all owners of the Property shall remain jointly and severally responsible to the City for compliance with Section 13.1 of this Agreement.

13.2 City Responsibilities. City shall be responsible for the following ongoing maintenance obligations within the publicly-owned right-of-way except as noted in Section 13.1: streets, pavement, curbs, gutters, structural sidewalk repairs, lighting, on-street parking, raised crosswalks, street signage, channelization, and drainage facilities.

14.0 Transfer of Property

14.1 Authority to Transfer. Developer's right to sell, transfer, mortgage, hypothecate, convey or take any other similar action regarding the title to or financing for the Property shall not be infringed by this Agreement, provided any such transfer, sale, etc. shall be subject to the terms, conditions, rights, duties and obligations of all development approvals pertaining to the Property, and specifically including this Agreement, the MDP, and Project Approvals.

Developer and any subsequent transferor shall give actual notice and copies to the transferee of all development approvals and related documents.

14.2 Obligations of Successors. This Agreement, the MDP, all Project Approvals and Developer obligations shall be binding on all subsequent owners, purchasers, lessees, lessors, tenants, and transferees of every nature of the Property.

15.0 Enforcement Authority; Police Power; Penalties

15.1 Enforcement Authority. City may enforce this Agreement, the BSP, the MDP, the Project Approvals, and all other related approvals for development of the Property, in whole or in part, in any manner allowed by law and this Agreement. Developer and every future property owner shall be fully responsible for compliance with and full and complete performance of the foregoing.

15.2 Police Power. Except to the extent necessary to comply with RCW 36.70B.170 et seq., the limitations of which shall expire at the end of the Vested Term, nothing in this Agreement shall limit, waive or release, or be construed to limit, waive or release, City's municipal duties, responsibilities or enforcement authority of any kind, including its police power authority and its condemnation authority, whether arising under the MCMC, state or federal law, Washington constitution, or any other source of lawful authority.

15.3 Penalties. Without limiting the foregoing subsections, the City may take any or all of the following enforcement actions, and may impose any or all of the following penalties for failure to comply with this Agreement:

15.3.1 Stop action on any pending permits or approvals by Developer or a related entity.

15.3.2 Stop action on any pending permits or approvals pertaining to the Property.

15.3.3 Withhold certificates of occupancy pursuant to Section 9.

15.3.4 Require cash deposits or other security to ensure future performance and compliance.

16.0 Conflicts; Dispute Resolution

16.1 Conflicts. In the event of an internal conflict between any of the terms and conditions of this Agreement or between this Agreement and any Project Approvals, the most restrictive shall apply as determined by City, unless City and Developer agree otherwise.

16.2 Disputes. In the event of a dispute between the Parties about the application or interpretation of this Agreement, principals for City and Developer shall promptly meet and attempt to resolve the issue. If that is not successful, the Parties shall promptly apply for and schedule a mediation using JAMS, WAMS, JDR or a similar mediation service. Each Party shall

pay its own costs and expenses and one-half the mediator's cost. If that is not successful, Developer shall request an official interpretation from the Director of Community and Economic Development pursuant to MCMC Sections 14.09.010(A)(7) or (8). Developer may appeal said interpretation as provided in the MCMC.

17.0 Modification; Termination

17.1 Modification. This Agreement may be modified only upon mutual consent of the Mill Creek City Council and Developer. Either Party may seek a modification by giving written notice thereof to the other Party. No Party is obligated to agree to any modification of this Agreement. Modification may require compliance with the public notice and hearing requirements of RCW 36.70B.200 et seq. or other applicable laws then in effect.

17.2 Termination. This Agreement may not be terminated except upon mutual consent of the Mill Creek City Council and Developer or order of a court having competent jurisdiction.

17.3 Continuation. After the Vested Term, this Agreement shall continue in whole as an applicable development regulation for the Property, provided that City may change, and Developer may request changes in, all or any portion of the Agreement or land use characteristics of the Property in accordance with then-applicable rules for making land use changes.

18.0 Authority to Approve Agreement

18.1 By executing this Agreement, each Party represents and warrants that it has taken all necessary steps under its corporate authority and/or applicable city or state law to authorize such act, and that its execution of this Agreement is knowing, voluntary, made upon consultation with legal counsel, and is valid and binding for all purposes.

18.2 In the case of City, the Mill Creek City Council has found that this Agreement is in the public interest and furthers the public health, safety and welfare, all as set forth in Council Ordinance 2015-798.

19.0 General Terms

19.1 Integration. This Agreement constitutes the entire agreement between the Parties as to the subject matter herein. No prior oral or written agreements respecting same shall be valid, and any such agreements shall be considered to be merged and subsumed herein.

19.2 Consent and Waiver. Developer acknowledges and agrees that construction and dedication of the public ROW, public pedestrian easement dedications, creation of public open space areas (together with furnishings and infrastructure), and other Developer actions listed above (i) constitute lawful and appropriate dedications and/or uses of land under MCMC Titles 14 – 18 and applicable state law, specifically including but not limited to MCMC 18.04.220(B), MCMC 18.04.220(D), RCW Chapter 43.21C, RCW Chapter 58.17, and RCW Chapter 36.70B;

(ii) meet and/or satisfy the requirements, obligations and scope of actions set forth in said laws, and/or have been made by the voluntary act of Developer for its benefit and to enhance the success of the Project; and (iii) are binding on Developer.

19.3 Venue. Venue for all disputes arising under or connected with this Agreement and Project Approvals shall be in the Superior Court for Snohomish County. This Agreement and the Project Approvals shall be governed and interpreted in accordance with Washington law.

19.4 Effective Date. The effective date of this Agreement shall be October 16, 2015 ("Effective Date").

19.5 Covenant Running with Land. From and after the Effective Date, this Agreement shall be a covenant running with the Property and/or an equitable servitude on the Property, and shall be binding on the Parties and their successors and assigns, and on all subsequent owners, purchasers, lessees or lessors, tenants, transferees, and transferors of every nature as set forth herein.

19.6 Authority. The parties each represent and warrant that they have full power and actual authority to enter into this Agreement and carry out all actions required of them by this Agreement. All persons executing this Agreement in their representative capacities represent and warrant that they have full power and authority to bind their respective organizations.

19.7 Responsibility. Developer is responsible for compliance with this Agreement. Any act or omission required of or permitted by Developer hereunder may be taken by Developer's authorized agents, contractors or employees, but Developer shall not thereby be relieved of its responsibility or liability to City under this Agreement.

19.8 Attorneys Fees. In any action arising under or related to this Agreement, the prevailing Party shall be entitled to be paid its reasonable attorney's fees, expenses and costs by the non-prevailing Party, whether in arbitration, at trial, on appeal, bankruptcy proceeding, or other legal action.

19.9 Third Parties. This Agreement is entered into for the sole benefit of the Parties. There are no third party beneficiaries to this Agreement.

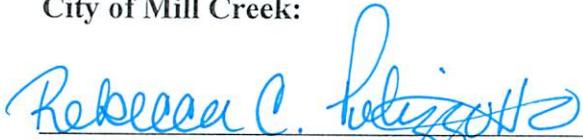
19.10 Severability. If any section, sentence, clause or portion of this Agreement is declared unlawful or unconstitutional for any reason, the Parties intend that the remainder of this Agreement shall continue in full force and effect.

20.0 Exhibits

20.1 The following exhibits are attached and incorporated into this Agreement by this reference as though fully set forth herein:

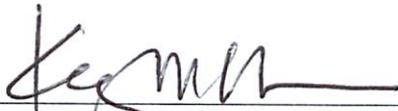
- Exhibit A: Property Legal Descriptions
- Exhibit B: Tax Parcel Map
- Exhibit C: Conceptual Map of Binding Site Plan (BS 15-65)
- Exhibit D: EGUV Engineering Study

City of Mill Creek:



Rebecca Polizzotto, City Manager

ATTEST:



Kelly M. Chelin, City Clerk

APPROVED AS TO FORM:



Shane Moloney City Attorney

Developer: Vintage at Mill Creek, LLC

By: 

Its: President

Michael Gancar

APPROVED AS TO FORM:

Attorney for

Owner:


Robert J. Mollgaard

STATE OF WASHINGTON)
)
COUNTY OF SNOHOMISH)

ss:

I certify that I know or have satisfactory evidence that Rebecca Polizzotto is the person who appeared before me, and he acknowledged that she signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the City Manager, of City of Mill Creek, to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

DATED: October 20, 2015.



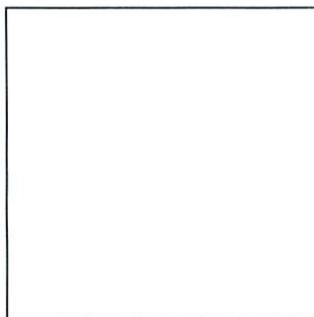
Kelly M Chelin
Print Name: Kelly M Chelin
NOTARY PUBLIC in and for the state of
Washington, residing at:
Silverett, WA
My Appointment Expires: 11-19-17

STATE OF _____)
)
COUNTY OF _____)

ss:

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and s/he acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as the _____, of Vintage at Mill Creek, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

DATED: _____, 2015.



Print Name: _____
NOTARY PUBLIC in and for the state of
Washington, residing at:

My Appointment Expires: _____

STATE OF WASHINGTON)
)
COUNTY OF SNOHOMISH) ss:

On this day personally appeared before me Robert J. Mollgaard, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

DATED: October 20, 2015.



[Signature]
Print Name: Kelly M Chelin
NOTARY PUBLIC in and for the state of
Washington, residing at:
C Everett, WA
My Appointment Expires: 11-19-17

Exhibit A

Property Legal Description

THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 33,
TOWNSHIP 28 NORTH, RANGE 5 EAST, W. M., IN SNOHOMISH COUNTY, WASHINGTON;

EXCEPT THE EASTERLY 389 FEET AS MEASURED ALONG THE NORTHERLY LINE OF SAID NORTHEAST QUARTER
OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER;

EXCEPT THAT PORTION CONVEYED TO SNOHOMISH COUNTY BY QUIT CLAIM DEED RECORDED UNDER
AUDITOR'S FILE NO. 219641;

EXCEPT THAT PORTION CONVEYED TO THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON FOR ROAD
PURPOSE THROUGH DEED RECORDED MARCH 27, 1992 UNDER RECORDING NO. 9203270216, RE RECORDED
BY DEED RECORDED JUNE 3, 1992 UNDER RECORDING NO. 9206030420.

**Exhibit D
EGUV Engineering Study**

The document is available for review on the City's web site at:

<http://cityofmillcreek.com/DocumentCenter/View/77>

If you need a hard copy, please contact the City Clerk.

G:\PLANNING\WP\BINDING SITE PLANS\VINTAGE AT MILL CREEK (PL2015-0008) BS 15-65\DEVELOPMENT AGREEMENT\DEVELOPMENT AGREEMENT (MILL CREEK REVISIONS 10-01-15).DOCX