

After recording return to:

City Clerk
City of Mill Creek
15728 Main Street
Mill Creek, Washington 98012

Recording Number 201904170566

Document Title(s)	Development Agreement for BSP PL2018-0004 (EGUV)
Reference Number(s) of related documents	
Grantor(s)	City of Mill Creek The Farm by Vintage, LP
Grantees(s)	The Farm by Vintage, LP City of Mill Creek
Abbrev. Legal Description	Portion Parcels 1 & 2 per BLA No. 00-101711, Rec. 200007140347
Assessor's Property Tax Parcel/Account Numbers	28053300200200; 28053300200300
Assessor's Off-Site Mitigation Site Parcel/Account Numbers	28053300206800; 28053300206900; and 28053300300200

**CONTRACT 2019-1493
CITY OF MILL CREEK

DEVELOPMENT AGREEMENT
FOR THE
THE FARM BY VINTAGE, LP
BINDING SITE PLAN (PL2018-0004)
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 The Farm by Vintage, LP, 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") zone district to obtain approval of a detailed master development plan ("MDP"). The detailed MDP requires a binding site plan, a development agreement with the City, and a consistency analysis. The development agreement is subject to approval by the City Council and the binding site plan together with the development agreement is subject to review and approval by the City Hearing Examiner ("Hearing Examiner"). The Hearing Examiner's decision is appealable to the City Council as a closed record appeal.

2.2 Developer has submitted a binding site plan application under file number PL2018-0004 ("BSP") to develop the project described in Section 5.1 ("Project"). This Agreement comprises the development agreement for the Project and is required by MCMC 17.19.030.C to be in accord with RCW 36.70B.170. The property to be developed in accordance with this Agreement is vested to the development regulations in effect on the effective date of this Agreement unless different development standards are set forth herein. This 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, which permits or proposal shall be reviewed pursuant to the City's procedures. 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 remains subject to review and approval by the Hearing

Examiner. If 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.

3.0 Definitions

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

- Agreement (Section 1.1)
- Binding Site Plan ("BSP") (Section 2.2)
- City (Section 1.1)
- Commercial Property Use Agreement (Section 9.3)
- Developer (Section 1.1)
- Design Guidelines (Section 8.2.)
- East Gateway Urban Village ("EGUV") (Section 2.1)
- Effective Date (Section 20.4)
- EGUV Regulations (Section 8.2)
- Engineering Study (Section 8.2)
- Leasing Office (Section 9.5)
- Hearing Examiner (Section 2.1)
- Live-Work Units (Section 9.5)
- Master Development Plan ("MDP") (Section 2.1)
- Mill Creek Municipal Code ("MCMC") (Section 2.1)
- Mitigation Plan (Section 11.1)
- Municipal Space (Section 9.6)
- Notice (Section 11.2.3)
- Off-Site Mitigation Site (Section 4.2)
- Project (Section 5.1)
- Project Approvals (Section 8.3)
- Property (Section 4.1)
- Successors (Section 15.2)
- Residential Amenity Space (Section 9.5)
- Road Construction (Section 10.4)
- SEPA (Section 8.2)
- Vested Term (Section 8.4)

4.0 Property and Parcel Descriptions

4.1 Property Sites. The property which is the subject of this Agreement and is to be developed with the proposed binding site plan consists of the land legally described as Parcels A and B in attached **Exhibit A** (collectively, the "Property"). The parcels comprising the Property bear Snohomish County tax parcel numbers 28053300200300 (Parcel A) and 28053300200200

(Parcel B). This Agreement shall bind Developer and the Property pursuant to Section 20.5. A tax parcel map generally depicting the Property (Project Site) is attached as **Exhibit B**. References to "Property" shall include the Project described in Section 5.1 below.

4.2 **Off-Site Mitigation Site.** The property which is proposed to provide off-site wetland mitigation for the development of the Property Site consists of the land legally described as parcels C, D and E in attached **Exhibit A** ("Off-Site Mitigation Site"). This Agreement does not regulate the development of the Off-Site Mitigation Site, however it does regulate the use of the OSMS (e.g. Section 11). The parcels comprising the Off-Site Mitigation Site bear the Snohomish County tax parcel numbers 28053300206800; 28053300206900; and 28053300300200. A tax parcel map generally depicting the Off-Site Mitigation Site is attached as **Exhibit B**.

5.0 Project Description

5.1 **Project Description.** The Project generally consists of subdividing Property for the purposes of developing nine (9) buildings. Buildings A1 through F will have commercial uses (approximately 100,000 square feet). Buildings A1, A2, A3, A4, B and C will be commercial uses and will be one story in height with the option for the Developer to add a mezzanine or a second story. Buildings D, E and F will have five stories with a total of 355 residential apartment units above the ground floor. One hundred percent of the proposed residential units (above ground floor) will be workforce housing targeting households at 60% of the area median income (AMI) for Snohomish County. The live/work units will be market rate. Building F will include a residential parking structure. Building E will include two levels of below-ground residential parking. The project will also include commercial and residential surface parking. The preliminary BSP depicting the 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 14.03 and 17.19, and the Revised Code of Washington ("RCW") at 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 application and review process for specific components of the Project under the EGUV Regulations (defined in Section 8.2) and the MCMC.

7.0 Development Review Procedures for Project

7.1 **Review Process.** This Agreement has been processed in accordance with MCMC 14.03 and 17.19, and RCW 36.70B.170 et seq. Approval of this Agreement by the Mill Creek City Council is required before any other development approvals affecting the Property may be heard or decided. Following the Parties' execution of the Agreement, the Agreement shall be recorded in accordance with Section 15.3. In the event that the Agreement is recorded and the Project does not receive further approvals or Developer does not proceed with the Project,

Developer and City will timely execute and record any necessary termination document, and Developer will pay the costs of recording such document and providing a conformed copy to City.

7.2 Hearing Examiner Notice. In reviewing subsequent development applications for the Project or Property, the Hearing Examiner shall take notice of this Agreement in accordance with MCMC 4.34, 14.03, and 17.19.

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 17.19.030, environmental decisions, and all subsequent permits implementing the Project, shall be reviewed pursuant to the applicable development and MCMC regulations existing on the effective date of the Agreement. No development approval shall be granted unless it is consistent with the MCMC, this Agreement and the EGUV Regulations. This Agreement, any future approved BSP for the Project, and any future approved consistency review for the Project shall collectively comprise the MDP for the Project described in MCMC 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 development review procedures and the requirements of RCW 36.70B.170 et seq. City shall use this Agreement and the EGUV Regulations 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. Following initial approval of the Project, the Project and its component parts 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 as adopted by the City Council on July 1, 2008, in City Council Ordinance No. 2008-684 ("Design Guidelines"); (iv) Reid Middleton EGUV Infrastructure Design Report dated December 2012 ("Engineering Study") attached and incorporated 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 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; (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 the foregoing, the following components of the EGUV Regulations are emphasized for clarity:

8.2.1 Applicable Regulations. The Project shall comply with all applicable regulations in the MCMC (i) in effect on the effective date of this Agreement except as modified herein, and (ii) to the extent not vested hereunder upon the vesting date of any subsequent application pertaining to the Project.

8.2.2 EGUV Design Guidelines. All structures and facilities comprising the Project shall comply with the Design Guidelines.

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. The Parties agree the alignment of 39th Avenue SE and 133rd Street SE 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 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 zone district.

8.3 Compliance with Project Approvals. Once approved, this Agreement, the subsequent associated BSP and MDP, and all other related 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 File PL2018-0004 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 (but excluding, for example, changes in building code regulations and mitigation assessments not set forth with the Project terms). Upon the expiration of the Vested Term, this Agreement shall continue to apply to the use of all Property and development approved pursuant to this Agreement. Development applications received after the Vested Term or for different projects shall be subject to review under all 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.

¹ With the exception of the alignment of 39th Ave SE and 133rd Street SE, 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.

9.2 Certificates of Occupancy. In addition to the requirements of the MCMC and the enforcement provisions set forth in Section 16, 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. Sale or lease of commercial buildings or commercial spaces (e.g. stand-alone pads) will be allowed provided that not less than 75% of the overall commercial square footage has first received certificates of occupancy. Certificates of occupancy for commercial spaces will be issuable upon completion of the building shell for that building.

9.2.1 Phasing of Residential Buildings/Spaces. 75% of the freestanding commercial buildings (Buildings A1-A4, B and C) and the ground floor commercial spaces in the mixed-use buildings (Buildings D, E and F) must be completed and the commercial spaces listed for lease and/or sale prior to the City issuing the first Certificate of Occupancy for a residential living unit.

9.3 Commercial Uses. Pursuant to MCMC 17.19.040(D)(1), residential uses are prohibited on the Property unless the residential uses are located above commercial uses. This requirement is intended to encourage a mix of residential and commercial uses that provide active pedestrian circulation and economic stability within the East Gateway Urban Village in compliance with the City's Comprehensive Plan.

9.4 No Residential Accessory Uses. Except as otherwise expressly allowed under Section 9.5: (i) the ground floor commercial space may not be used as or for residential use or units or as an accessory to the Project's residential uses; (ii) the live-work units shall have a minimum 12-foot exterior soffit height and a minimum 14-foot interior ceiling height, and (iii) access to or use of ground floor uses shall not be limited on the basis of residency within the Project.

9.5 Limitation on Section 9.4. Notwithstanding the restriction set forth in Section 9.4, 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 develop and operate (i) 25 live-work units on the ground floor of Building F ("Live-Work Units"); (ii) a leasing office of up to 1,600 square feet that will serve residents and potential residents ("Leasing Office"); and (iii) an amenity space of up to 3,600 square feet that will include a beauty parlor, kitchen, fitness center or other amenities for use by Project residents ("Residential Amenity Space"). The Live-Work Units, 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 9.4.

9.6 Municipal Space Allowance. In exchange for the provisions of this Agreement the Developer shall enter into a 50-year lease with the City for a municipal space ("Municipal Space") in the Project at no cost to the City. The lease shall be negotiated and executed prior to issuance of the first certificate of occupancy for the Project and contain the following terms: The Municipal Space shall be not less than 500 rentable square feet of ground floor commercial space at a Project location satisfactory to the City in Building D, E or F. Developer shall build out the following initial interior improvements for the Municipal Space: walls, windows, ceiling, floors, doors, utilities, electrical, cabling and security, paint and trim, and interior fixtures. Materials and finishes

shall be consistent with the other commercial spaces in those buildings. The space layout shall be approved by the City. The City shall be responsible for any further tenant improvements. The Municipal Space shall be used, maintained, and operated by the City for any public purpose for the duration of this Agreement. Upon completion of the 8-year duration of the Agreement, the City may continue such use under the provisions stated herein for the remaining term of the lease, or the City may at its discretion assign or sublease all or any portion of the Municipal Space to any other governmental or non-profit entity by providing not less than 60 days written notice to Developer. In the event the City receives rent for such assignment or sublease exceeding the cost of utilities, the City shall pay one-half of such amount to Developer as it is received for the term of the assignment or sublease. The City shall pay utilities for the Municipal Space but shall not pay rent or common area expenses.

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 City 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 S.E. 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 16.14, Developer shall dedicate or cause to be dedicated to the City the full width of the public Right-of-Way for 39th Avenue SE and 133rd Street SE and the remaining the width of the public Right-of-Way for 41st Avenue SE. as depicted in **Exhibit C** 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 to City specifications the full width of the public roadway improvements on the property dedicated pursuant to Section 10.3 ("Road Construction"). Road Construction shall comply with all applicable EGUV Regulations, including but not limited to MCMC 16.16, the current version of the Mill Creek Design and Construction Standard Plans, Design Guidelines, and the Engineering Study. Road Construction shall include (i) the full width of the street and sidewalk cross section; (ii) on-street parking as approved by City; (iii) street and pedestrian lighting; (iv) storm water and drainage facilities; (v) street trees (grates and lighting conduit), landscaping and street furnishings; and (vi) signage and striping.

11.0 Critical Areas Mitigation Plan

11.1 Mitigation Plan. Developer is proposing a critical areas mitigation plan (“Mitigation Plan”) that provides local and regional benefits in exchange for a reduced critical area buffer on the Project site. The Mitigation Plan encompasses two sites, one on-site and one off-site.

11.2 Off-Site Mitigation Site. Developer will comply with MCMC 18.06 requirements via a combination of actions, including (i) preservation and dedication of approximately 61 acres of undeveloped land to the City (“Off-Site Mitigation Site”); (ii) enhancement and extension of an integrated trail system of more than a mile in length comprised of gravel paths, boardwalks, and elevated pathways within and providing access to the Off-Site Mitigation Site; (iii) inclusion of environmental education signage and kiosks on the Off-Site Mitigation Site; (iv) a combination of habitat and vegetation enhancement and restoration; and (v) parking area, and information kiosk to allow for public recreational and educational opportunities.

11.2.1 Off-Site Mitigation Site Concept. The foundation of the Mitigation Plan for the Off-Site Mitigation Site is the Developer’s acquisition, restoration, enhancement, and donation of approximately 61 acres of undeveloped land located to the south of the Project site to the City. See “Off-Site Mitigation Site” map attached and incorporated as **Exhibit E**. The Off-Site Mitigation Site consists of both wetlands and uplands. A clear value is associated with the land acquisition and donation of the Mitigation Site that establishes the regional benefit to the City in terms of the value of the habitat and value of the land. The dedication of the Off-Site Mitigation Site to the City will provide additional open space, providing more trails for local residents, additional areas of land for stormwater/floodwater management, and the protection, restoration, and enhancement of a high-quality wetland that currently has been degraded by past land use practices. Large open space areas are generally lacking in this area due to the required infill and encouraged high-density development based on the local comprehensive plan. This land preservation, enhancement, and dedication stemming from the Off-Site Mitigation Site will help fill a need for passive recreational areas for the community.

11.2.2 Maintenance, Restoration and Enhancement. Developer will maintain, restore and enhance the Off-Site Mitigation Site as required under the MCMC 18.06 and as described in the Mitigation Plan.

11.2.3 Transfer of Title to City. At any time during development approval for the Project and up to 5 years following issuance of all Project Approvals, the City may elect to take fee simple ownership of the Off-Site Mitigation Site at no cost to the City by giving written notice (“Notice”) to Developer. In that event and until completion of title transfer to City, Developer shall continue to maintain and monitor and shall promptly complete all remaining maintenance on the Off-Site Mitigation Site, and shall repair or replace all amenities on the Off-Site Mitigation Site, all to City’s satisfaction and the approved final Mitigation Plan at Developer’s cost. Developer shall provide a title commitment for the Site acceptable to City within 30 days of the City’s Notice and shall remove all financial encumbrances on the Site prior to title transfer. Developer shall transfer title to City by

statutory warranty deed within 60 days of the City's Notice. On the effective date of title transfer Developer will be relieved of all further obligations relating to the Off-Site Mitigation Site. Should the City elect to reject dedication of the Off-Site Mitigation Site, the area shall be maintained and owned by the Developer consistent with MCMC 18.06.

11.2.4 Mid-Block Crossing Analysis. Upon receipt of notice that the City elects dedication of the Off-Site Mitigation Site, the Developer shall engage a consultant to provide the City with a mid-block crossing analysis to determine if a mid-block crossing is warranted on 35th Avenue SE between the west and east sides. Said analysis shall be provided to the City prior to the transfer to the City.

11.2.5 Public Access. Public access to and within the Off-Site Mitigation Site within designated parking areas and/or trails shall be permitted during the initial 5 years following issuance of all Project Approvals. Should the City elect to reject dedication of the Off-Site Mitigation Site, the Developer may elect to not provide access to the public. While under the ownership of the Developer, and open to public access, the Developer may reasonably control/limit the hours that the public has access to and within the site, akin to setting hours of operation to provide security to the public and the property.

11.3 On-Site Mitigation Site. Developer will comply with MCMC 18.06 requirements via a combination of habitat and vegetation enhancement and restoration, **Exhibit F**.

11.4 Native Growth Protection Area. Under the proposed BSP, approximately 12.6 acres of the approximate 17.43 acre Project site will be developed. The remaining approximate 5 acres will be retained as a Native Growth Protection Area within Tract 999, **Exhibit F**.

11.5 Critical Areas Buffer Reduction. In exchange for the Developer's actions described in this Section 11, critical areas buffer requirements will be allowed to vary from 2 feet to 108 feet with an average width of 54 feet.

12.0 Parking Requirements

12.1 Parking Standards. Parking shall be provided consistent with the requirements of MCMC 17.27.

12.2 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. Developer shall grant a reciprocal parking covenant approved by City for commercially designated surface parking stalls in the Project to the other commercially developed properties within the EGUV that provide an equivalent reciprocal parking agreement. The parking covenant shall be shown on the face of the BSP.

12.3 Use of Commercial Parking Facilities. Developer will actively manage the use of approved parking in the Project to ensure that stalls required to be available for commercial uses will not be used by residents, guests, and staff of the Project's residential units during operating hours of the Project's commercial businesses. The City is requiring a parking management plan as a condition of approval for the BSP to provide 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 parking stalls dedicated to support 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/or owners of the commercial businesses. Developer will update the parking management plan as necessary or requested by City to ensure parking stalls reserved for customers, invitees and guests of commercial ground floor tenants remain available to such users during normal business hours.

13.0 Plazas, Public Gathering Areas, Art Work, and Public Access

13.1 Required. Plazas and public gathering places shall be provided along 39th Avenue SE and 133rd Street SE of the Project as shown on the BSP pursuant to MCMC 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, Comprehensive Plan, and as agreed through approval of the MDP. Plazas and public gathering spaces are subject to review and approval of the Design Review Board prior to the issuance of a building permit. The private parking lot west of Building F shall be designated and designed to be utilized as public gathering areas for families, markets, festivals, concerts, and the like produced, promoted or held by the Developer. Nothing in this Section 13.1 shall allow the City or any other person to use private property without the permission of Developer, consistent with MCMC 12.08, Special Event Permits.

13.2 Plazas and Public Gathering Areas; Infrastructure and Furnishings. Developer shall design, obtain and install infrastructure and furnishings in plazas and other gathering areas in accordance with the Design Guidelines and MCMC 17.34. Plaza design and furnishings are subject to review and approval of the Design Review Board. Maintenance and replacement of infrastructure and furnishings shall be the responsibility of Developer. This may include, but is not limited to, public access to commercial restrooms, water fountains, flush curbs to allow for vehicular access, electrical conduits for vendors, providing seating, extra trash cans, and festival lighting.

13.3 Public Access. Developer shall grant an easement to City allowing public pedestrian access over and across the roadway buffer, perimeter trail, and Wetland Park as well as through the private drive aisles and sidewalks to enable public access from the public roadways to the perimeter trail as shown on the approved BSP. All public access easements, locations, and types shall be described and shown on the face of the BSP.

14.0 Maintenance Responsibilities

14.1 Developer Responsibilities. In addition to any other requirement stated in this Agreement, Developer shall be responsible for the following ongoing maintenance obligations, which shall be timely performed at Developer's expense: (i) oversee and coordinate the use and maintenance of, and activities and events held on, privately-owned open spaces within the subject properties (ii) maintain improvements in the public rights-of-way in accordance with MCMC 12.06 and 17.24, including public right-of-way areas between the street curbs and property lines, including but not limited to sidewalks, plazas and open spaces, canopies, all landscaping including tree grates, trash cans including daily servicing, and benches and all outdoor furniture; (iii)

maintain the Property; and (iv) maintain all drainage facilities on the Property outside the public rights-of-way.

14.2 Multiple Owners. To the extent there are multiple owners of the Property (e.g., commercial units operated under separate ownership from residential uses and owners of multifamily residential buildings), said multiple owners shall manage and maintain the common areas and shall remain jointly and severally responsible to the City for compliance with Section 14.1. This Section 14.2 shall not apply to the City.

14.3 City Responsibilities. City shall be responsible for the following ongoing maintenance obligations within the publicly-owned rights-of-way except as noted in Section 14.1: streets, pavement, curbs, gutters, structural sidewalk repairs, lighting, on-street parking and meters, raised crosswalks, street signage, channelization, and drainage facilities, per MCMC 12.06.

15.0 Transfer of Property; Notice

15.1 Authority to Transfer. Developer's right to sell, transfer, assign, mortgage, hypothecate, convey or take any other similar action regarding the title to or financing for the Project and Property shall not be infringed by this Agreement, provided any such transfer, assignment, sale, etc. shall be subject to all the terms, conditions, rights, duties and obligations of all development approvals pertaining to the Project and Property, specifically including without limitation this Agreement, the MDP, and Project Approvals.

15.2 Obligations of Successors. This Agreement, the MDP, all Project Approvals and all Developer obligations shall be binding on all subsequent owners, assigns, purchasers, lessees, lessors, tenants, and transferees of every kind and nature ("Successors") of the Project and Property. Any reference to Developer herein shall be construed to apply to any Successor. All Successors are hereby advised to make inquiries with the City as to all applicable Project Approvals and their terms and conditions.

15.3 Recording. The City shall promptly record this Agreement and any other Project documents required by City in the Snohomish County Recorder's Office and provide conformed copies to Developer. The City shall invoice the direct recording costs to the Developer as part of the BSP application.

16.0 Enforcement Authority; Police Power; Penalties

16.1 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 Successor shall be fully responsible for compliance with and full and complete performance of this Agreement, the BSP, the MDP, the Project Approvals, and all other related approvals for development of the Property.

16.2 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

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condemnation authority, whether arising under the MCMC, state or federal law, Washington constitution, or any other source of lawful authority.

16.3 Penalties. Without limiting the foregoing sections, the City may take any or all of the following enforcement actions, in any order and without limitation, and may impose any or all of the following penalties for failure to comply with this Agreement, against Developer and any Successors:

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

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

16.3.3 Withhold certificates of occupancy pursuant to Section 9.

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

16.3.5 Fines and penalties authorized under the MCMC.

17.0 Conflicts; Dispute Resolution

17.1 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.

17.2 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 prior to commencing any judicial proceedings. Each Party shall pay its own costs and expenses and one-half the mediator's cost.

18.0 Modification; Termination

18.1 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.

18.2 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.

18.3 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 or Project in accordance with then-applicable rules for making such changes.

19.0 Authority to Approve Agreement

19.1 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.

19.2 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.

20.0 General Terms

20.1 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.

20.2 Consent and Waiver. Developer acknowledges and agrees that construction and dedication of the public right-of-way, public pedestrian easement dedications, creation of public open space areas (together with furnishings and infrastructure), and other Developer actions listed in this Agreement shall: (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 43.21C, RCW 58.17, and RCW 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.

20.3 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.

20.4 Effective Date. The effective date of this Agreement shall be April 5, 2019 ("Effective Date").

20.5 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, their Successors, their assigns, and on all subsequent owners, purchasers, assigns, lessees or lessors, tenants, transferees, and transferors of every nature as set forth herein.

20.6 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.

20.7 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.

ATTACHMENT 1

20.8 Attorney's Fees. In any action arising under or related to this Agreement, the substantially 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.

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


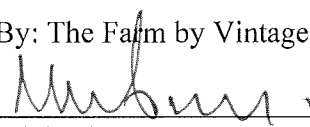
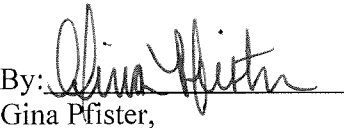
20.10 Severability. If any section, sentence, clause or portion of this Agreement is declared unlawful or unconstitutional for any reason, the Parties intend that the remainder of this Agreement shall continue in full force and effect.

21.0 Exhibits


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

- Exhibit A:** Property Legal Descriptions (Section 4)
- Exhibit B:** Tax Parcel Map (Section 4)
- Exhibit C:** Conceptual Map of Binding Site Plan (PL2018-0004) (Section 5)
- Exhibit D:** EGUV Engineering Study (Section 8.2)
- Exhibit E:** Off-Site Mitigation Site (Section 11.4)
- Exhibit F:** On-Site Mitigation Site

WHEREFORE, the Parties have signed and executed this Agreement on the dates set forth below.

City of Mill Creek: By:  4-11-19 Robert S. Stowe, Date Interim City Manager	The Farm by Vintage LP: By: The Farm by Vintage Partners, LLC  4/3/19 Michael Gancar Date Manager
ATTEST: By:  4/9/19 Gina Pfister, Date Acting City Clerk	

ATTACHMENT 1

<p>APPROVED AS TO FORM:</p> <p>By:  4.15.19 Scott M. Missall, Date City Attorney</p>	
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ATTACHMENT 1

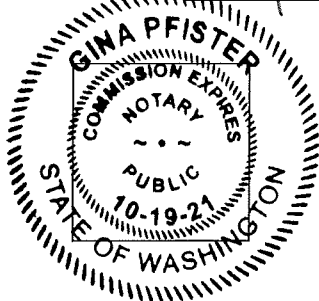
STATE OF WASHINGTON)

COUNTY OF SNOHOMISH)

ss:

I certify that I know or have satisfactory evidence that **Robert S. Stowe** is the person who appeared before me, and he acknowledged that he 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: April 9, 2019.



Gina Pfister
 Print Name: Gina Pfister
 NOTARY PUBLIC in and for the state of
 Washington, residing at:
Monroe, WA
 My Appointment Expires: 10/19/21

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On April 3, 2019 before me, Debra Lyn Scharf, Notary Public, personally appeared Michael K. Gancar, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their-authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Debra Lyn Scharf

NOTARY PUBLIC in and for the State of California,
residing at Newport Beach, Ca.
My Commission Expires 12/09/2020



EXHIBIT A

Legal Description of Parcel A

Section 33 Township 28 Range 05 Quarter NW - PAR 2 OF SNO CO BLA 00-101711 REC
UND AFN 200007140347 DAF - NW1/4 NE1/4 NW1/4 SD SEC 33

EXC STRIP 20FT WIDE ON S SIDE C/L COM NW COR SD SEC 33 RUN THS89*50 40E
1997.80FT AS CONVD TO SNO CO FOR RD BY DEED REC UND AFN 219641;

EXC TH PTNS THOF CONVD TO SNO CO FOR RD BY INST REC UND AFN
8310200114;

EXC W 0.22FT THOF & EXC ADDL NWLY R/W TO CITY OF MILL CR PER SWD REC
UND AFN 201004190475.

Parcel A Identification Number: 28053300200200

Legal Description of Parcel B

Section 33 Township 28 Range 05 Quarter NW - PAR 1 OF SNO CO BLA 00-101711 REC
UND AFN 200007140347 DAF - N1/2 NW1/4 NW1/4 SD SEC 33 & W 0.22FT W1/2 NW1/4
NE1/4 NW1/4 SD SEC 33;

EXC STRIP 20FT WIDE ON S SIDE C/L COM NW COR SD SEC 33 RUN TH S89*50 40E
1997.80FT AS CONVD TO SNO CO FOR RD BY DEED REC UND AFN 219641;

EXC TH PTNS THOF CONVD TO SNO CO FOR RD BY INST REC UND AF NOS
8310200114 & 9201230590

EXC TH PTN CONDMD FOR RD IN SNO CO SCC NO 98-2-08976-6;

EXC ADDL NELY R/W TO CITY OF MILL CR PER SWD REC UND AFN 201004190474.

Parcel B Identification Number : 28053300200300

Legal Description of Parcel C

Section 33 Township 28 Range 5 Quarter NW A PTN OF FOL DESC REAL PRY SW1/4
NW1/4 SD SEC 33 TGW BEG AT SW COR NW1/4 SD SEC 33 TH N 1320FT TO TPB TH E
990FT TH N330FT TH W 990FT TH S 330FT TO TPB

ATTACHMENT 1

EXC ANY PTN THOF LY WHN THOMAS LK RD & EXC ANY PTN THOF CONVD TO SNO CO BY DEEDS REC AFN 1730042 & 200012280181 40FT WIDE STRIP TH PTN SD REAL PRTY DAF COM AT NW COR SD REAL PRTY TH S88*19 22E(DEED EAST) ALG N LN THOF 279.23FT TH S04*16 23E 43.17FT TH S02*59 48E 48.94FT TH S03*17 04E 65.87FT TH S01*29 54E 62.61FT TH S00*54 20E 65.21FT TH S01*40 38W 25FT TAP TH IS 20FT NLY OF WHEN MEAS ATR/A TO N LN SW1/4 NW1/4 SD SEC 33 TH N88*19 22W 49.11FT ALG A LN TH IS PLW & 20FT NLY OF SD N LN TO POB TH N01*23 38E 20FT TH N88*19 22W 40FT TH S01*23 38W 390.26FT TH N88*19 22W 202.21FT M/L TO E MGN 35TH AVE SE TH S00*38 45W ALG SD E MGN 40.01FT TH S88*19 22E 241.69FT TAP TH BEARS S01*23 38W FR POB TH N01*23 38E 410.26FT M/L TO POB AKA 40FT WIDE STRIP OF CITY OF MILL CR SP 11-12 REC AFN 201206075002

Legal Description of Parcel D

Section 33 Township 28 Range 5 Quarter NW A PTN OF FOL DESC REAL PRTY SW1/4 NW1/4 SD SEC 33 TGW BEG SW COR NW1/4 SD SEC 33 TH N1320FT TO TPB TH E 990FT TH N 330FT TH W 990FT TH S 330FT TO TPB

EXC ANY PTN LY WHN THOMAS LK RD & EXC ANY PTN THOF CONVD TO SNO CO BY DEEDS REC AFN 1730042 & 200012280181 DAF ALL OF SD REAL PRTY

EXC FOL 3 PAR 1 TH PTN SD RAL PRTY LY NLY & WLY OF FDL BEG ATNW COR SD REAL PRTY TH S88*19 22E (DEED EAST) ALG N LN THOF 279.23FT TO POB TH S04*16 23E 43.17FT TH S02*59 48E 48.94FT TH S03*17 04E 65.87FT TH S01*29 54E 62.61FT TH S00*54 20E 65.21FT TH S01*40 38W 25FT TAP THAT IS 20FT NLY OF WHEN MEASE AT R/A TO N LN SW1/4 NW1/4 SD SEC 33 TH N88*19 22W 49.11FT ALG A LN THAT IS PLW & 20FT NLY OF SD N LN TH N01*23 38E 20FT TH N88*19 22W 40FT TH S01*23 38W 390.26FT TH N88*19 22W 202.21FT M/L TO E MGN 35TH AVE SE & TERM OF THIS LN DESC PAR 2 COM AT NW COR SD REAL PRTY TH S88*19 22E (DEED EAST) ALG N LN SD PAR 549.23FT TO POB TH CONT S88*19 22E (DEEDEAST) ALG SD N LN 320.25FT TH S01*40 38W 310FT TAP THAT IS 20FT NLY OF WHEN MEAS AT R/A TO N LN OF SW1/4 NW1/4 SD SEC 33 TH N88*19 22W 299.67FT ALG A LN THAT IS PLW & 20FT NLY OF SD N LN TH N01*40 38E 25FT TAP THAT BEARS S02*27 15E FR POB TH N02*27 15W 285.74FT TO POB PAR 3 TH PTN SD REAL PRTY DAF COM AT NW COR SD REAL PRTY TH S88*19 22E (DEED EAST) ALG N LN THOF 279.23FT TH S04*16 23E 43.17FT TH S02*59 48E 48.94FT TH S03*17 04E 65.87FT TH S01*29 54E 62.61FT TH S00*54 20E 65.21FT TH S01*40 38W 25FT TAP THAT IS 20FT NLY OF WHEN MEAS AT R/A TO N LN SW1/4 NW1/4 SD SEC 33 TH N88*19 22W 49.11FT ALG A LN THAT IS PLW & 20FT NLY OF SD N LN TO POB TH N01*23 38E 20FT TH N88*19 22W 40FT TH S01*23 38W 390.26FT TH N88*19 22W 202.21FT M/L TO E MGN 35TH AVE SE TH S00*38 45W ALG SD E MGN 40.01FT TH S88*19 22E 241.69FT TAP THAT BEARS S01*23 38W FR POB TH N01*23 38E 410.26FT M/L TO POB AKA LOT 3 CITY OF MILL CR SP 11-12 REC AFN 201206075002

Legal Description of Parcel E

SEC 33 TWP 28 RGE 05. N1/2 NW1/4 SW1/4

EXC ANY PTN LY WITH THOMAS LAKE RD & EXC RD R/W PER DEED REC AFN
1730042 & ADDL R/W TO SNO CO PER REC AFN 200012280181.

EXHIBIT B

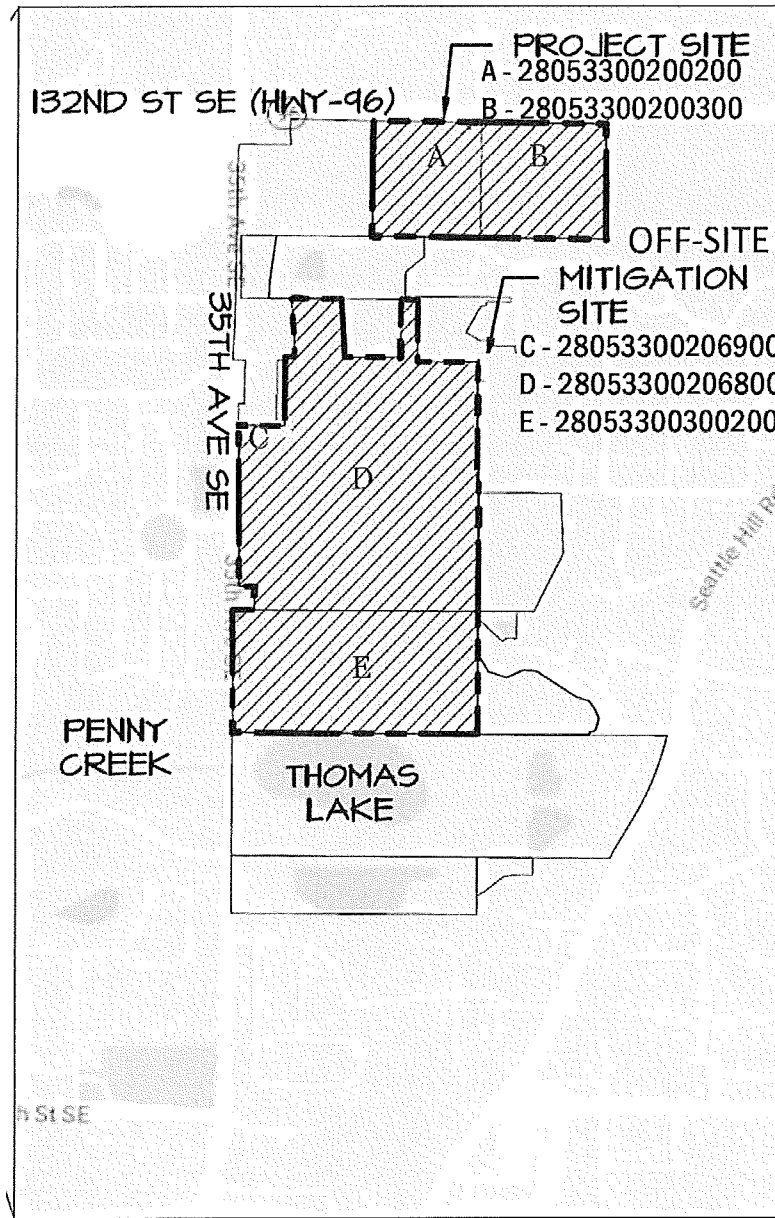


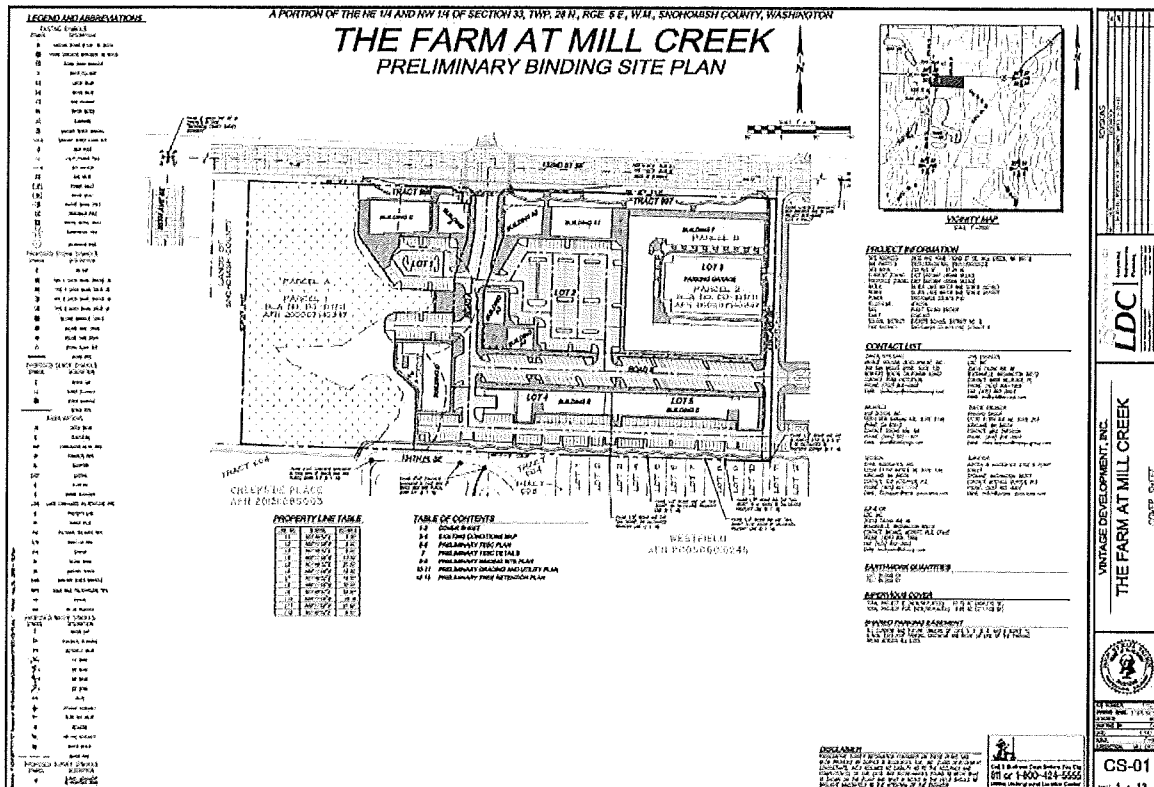
EXHIBIT C**A map generally depicting the proposed Project**

EXHIBIT D

EGUV Engineering Study

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

[https://www.cityofmillcreek.com/UserFiles/Servers/Server_9100852/File/City%20Government/Public%20Works%20&%20Development%20Services/Planning%20and%20Development/East%20Gateway%20Urban%20Village/Design%20Study.p
df_201306261445561817-1.pdf](https://www.cityofmillcreek.com/UserFiles/Servers/Server_9100852/File/City%20Government/Public%20Works%20&%20Development%20Services/Planning%20and%20Development/East%20Gateway%20Urban%20Village/Design%20Study.pdf_201306261445561817-1.pdf)

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

EXHIBIT E

A map depicting the Off-Site Mitigation Site

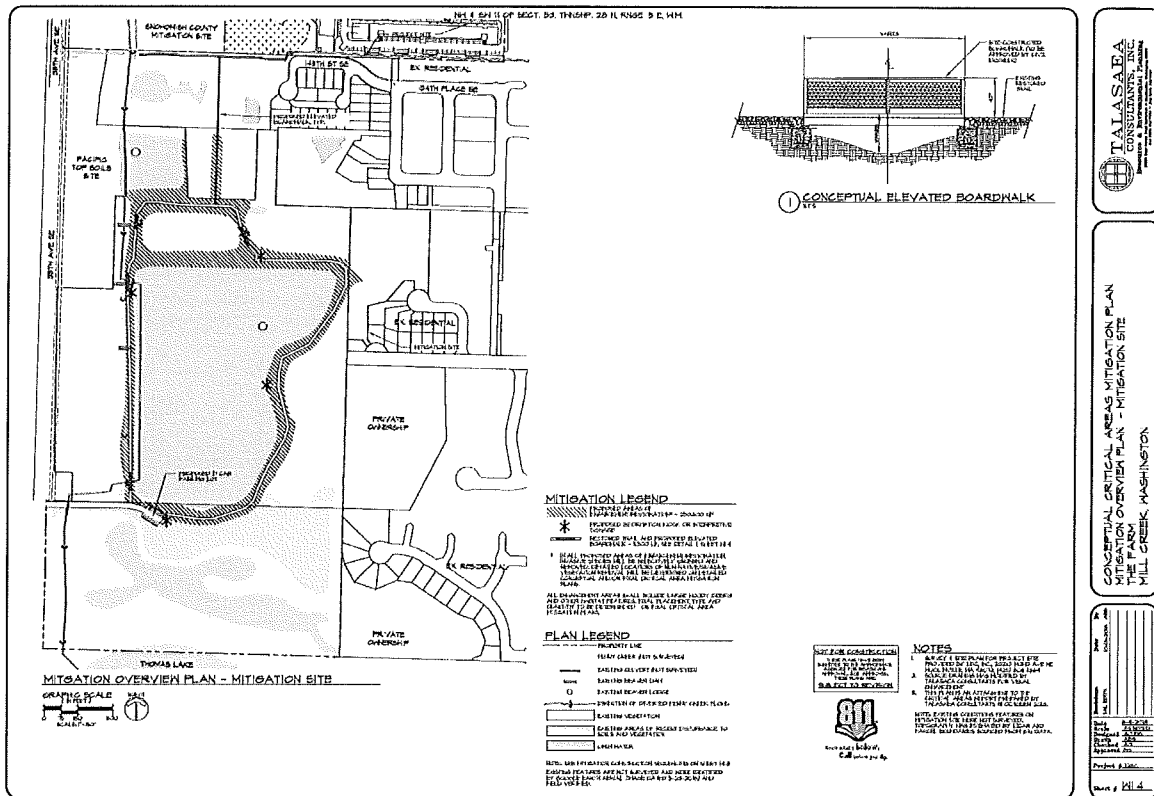


EXHIBIT F**A map depicting the On-Site Mitigation Site**