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6 **BEFORE THE HEARING EXAMINER FOR THE CITY OF MILL CREEK**

7 **RE: The Farm by Vintage**
8 **Binding Site Plan**
9 **File No. PL2018-0004**
10
11

FINAL DECISION

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14 **SUMMARY**

15 The Applicant has requested approval of a binding site plan (“BSP”) for a five lot mixed use
16 development comprised of fourteen buildings involving 354 residential apartment units and 100,000
17 square feet of commercial space on 17 acres at 4008 132nd Street SE. The application is approved
subject to conditions.

18 All recommended staff conditions are adopted by this decision, except for two based upon Chapter
19 17.34 MCMC (Design Review). Chapter 17.34 Design Review standards are applied by the City’s
Design Review Board and are beyond the jurisdiction of hearing examiner review.

20 **TESTIMONY**

21
22 *[This summary is only provided for the convenience of the reader to provide an understanding of the*
23 *testimony presented at the hearing. The summary of testimony is not to be construed as containing*
24 *any findings of fact or conclusions of law or as indicating what information was considered significant*
25 *to the decision. No assurances are made as to accuracy.]*

26 **Staff Testimony**

Christi Schmidt, City of Mill Creek senior planner, summarized the staff report.

1
2 Brian Patterson, Applicant, stated he's in agreement with the staff recommendations.

3 Mark Kenny, neighbor in the adjoining Westfield neighborhood to the south, wanted to know how
4 close the project was to his neighborhood.

5 Ms. Schmidt acknowledged that Westfield would be visually impacted by the height limit of the
6 project. Ms. Schmidt referenced Slide 32 of her PowerPoint, which depicted an elevation showing the
7 grade changes between the project site and the adjoining Westfield development. Ms. Schmidt noted
8 that a six foot high fence would be placed on top of a rockery wall along the property lines of the back
9 of the Westfield homes. The rockery wall would range in height from one to ten feet. On the project
10 side of the fence the Applicant will place single-story 12 foot high garages that will look like single-
11 family homes. 40 feet beyond that is Building E that is approximately 50 feet in height. There will be
12 a total of four garages proposed along the Westfield homes with breaks in between. There will be 20
13 feet between the garages and the property line. There will be landscaping along the property line on
14 the project side as well. Building E is one of the mixed use buildings. The top three stories will have
15 sight lines into the backyards of the Westfield homes. There are 15 homes from the Westfield
16 neighborhood bordering the project site and Lots 1-8 or 9 will be most visually impacted. There are
17 no homes adjoining the project site on any other project boundary line. Loading docks will be located
18 along Main Street and the private area and not near any residences.

19 Mr. Patterson clarified that all loading docks will be front loaded so there won't be any loading in the
20 rear. Also, no usable balconies will be built in the rear of Building E facing the Westfield homes.

21 Mr. Anane, neighbor, questioned whether the six foot fence would go all the way to the trail. Ms.
22 Schmidt responded that it would not.

23 EXHIBITS

24 Exhibits 1-38 identified in Attachment 1(d) to the staff report were admitted during the hearing.

25 FINDINGS OF FACT

26 Procedural:

- 27 1. Applicant. The Applicant is The Farm by Vintage, LP, contact: Ryan Patterson, 369 San
28 Miguel Drive, Suite 135, Newport Beach, CA 92660.
- 29 2. Hearing. A hearing was held on the subject application on May 23, 2019 at 6:00 pm in the
30 City of Mill Creek Council Chambers.
- 31 3. Project Description. The Applicant has requested approval of a binding site plan for a five lot
32 mixed use development comprised of fourteen buildings involving 354 residential apartment units and
33 100,000 square feet of commercial space on 17 acres at 4008 132nd Street SE. Six of the buildings are

1 one story and are for commercial use. Three of the buildings have commercial use on the ground floor
2 with four stories of residential use above. In addition to the primary structures, four single-story garage
3 buildings are proposed adjacent to the single-family homes along the southern property boundary and
one five-story parking garage is proposed to be used for residential parking.

4 The development includes associated parking, stormwater facilities, public plazas and open space with
5 landscaping and walking paths that connect to the existing trails on adjacent properties. A wetland is
6 located on the western portion of the site. A wetland buffer reduction is proposed. The reduction is
offset with on- and off-site mitigation that results in a regional benefit.

7 In accordance with MCMC Chapter 17.19, East Gateway Urban Village (EGUV), development in the
8 EGUV requires approval of a detailed master plan that includes a development agreement, BSP and a
consistency assessment. The Mill Creek City Council approved a development agreement for the
9 project in 2019.

10 4. Conformity to Development Standards¹. The project is found to be in conformance with all
applicable development standards for the reasons outlined below:

11
12 A. Drainage. Stormwater facility design and treatment measures are regulated by the 2014
13 Stormwater Manual for Western Washington as adopted by Chapter 15.14 MCMC. AN
important objective of the Stormwater Manual is to ensure that off-site stormwater flows
14 do not exceed the flows and velocities in pre-development, forested conditions. For this
project staff have found that the developed discharge rate will be less than the existing flows
15 and staff have determined these flows will have no adverse downstream impacts. Water
quality will also be improved, as existing stormwater runoff is not currently treated.

16 The flow control and water quality treatment for the proposed development will be
17 accomplished with a detention vault facility. An analysis for the implementation of Low
Impact Development (LID) facilities was also done as part of the Ex. 14 drainage report and
18 it was determined that the project site is not suited for LID practices due to a low infiltration
rate.

19
20 During construction, site runoff will be routed to a temporary on-site stormwater detention
21 pond on the western property boundary. Once the temporary pond is constructed, another
existing temporary stormwater pond located on the eastern portion of site will be routed to
22 the new temporary pond. At build-out, a permanent stormwater detention vault will be
located under the private parking lot west of Building F. The detention vault will discharge

23 ¹ Conformity to development standards is usually assessed via conclusions of law. However, site plan review standards
24 are highly detailed and technical. In the absence of any disagreement over the application or any indication in the
25 record of a code compliance issue, the examiner will rely upon assurances made by staff that standards are met based
26 upon the staff's exercise of professional judgment. Since these determinations of conformity are based upon staff
expertise instead of application of law to fact, the determinations regarding conformance to development standards
are treated as findings of fact.

1 stormwater to a biofiltration system, a modular wetland, for enhanced treatment. The
2 modular wetland will discharge flow into a level spreader located along the western
3 developed property boundary and discharge along the edge of the wetland buffer, where
4 stormwater will sheet flow into the wetland and downstream wetland system south of the
5 property through the off-site mitigation site and then enter Penny Creek, which drains into
Thomas Lake. In lieu of discharging along the edge of the wetland buffer, the Applicant
may discharge into the wetland upland area.

- 6 B. Transportation. Access to the proposed development will be from 132nd Street SE via 39th
7 Ave. SE, 133rd St. SE and 41st Ave. SE. As required by the Development Agreement and
8 City standards, the Applicant is required to construct several transportation improvements
9 to accommodate the traffic generated by the proposal as outlined in Exhibit 29 - Perteet
10 Drainage, Grading and Transportation Compliance memos 1-13-19 and 5-8-19. The
11 transportation trip analysis and resulting transportation improvement requirements has been
12 reviewed extensively and found to meet City standards under third party review by Perteet
13 Engineers. The required transportation improvements are made conditions of approval of
14 this decision.

15 In addition to transportation improvements that are directly necessitated by the
16 development, the Applicant is also required to pay its proportionate share of transportation
17 system-wide improvements. To this end the City's established transportation mitigation
18 impact fee is \$3,000 per weekday PM peak hour trip. According to the analysis prepared
19 by Transpo Group, the project is anticipated to generate 6,112 gross daily trips with 392
20 during the morning peak commute hour and 565 during the evening peak commute hour.
21 When accounting for the trips between EGUV land uses and pass-by trips of the retail use,
22 the new trips associated with the project total 3,620 daily, 238 AM peak hour, and 332 PM
23 peak hour trips. Based on the development's 332 estimated new weekday PM peak hour
24 off-site trips, a total payment of traffic mitigation fees in the amount of \$1,098,000 is
25 required. These monies will be used for transportation improvements that the City has
26 identified in its Transportation Improvement Plan (TIP). Payment of traffic impact
mitigation fees is required prior to the issuance of the first building permit.

- 20 C. Parking. Per MCMC Section 17.27.020, the two tables below illustrate the parking required
21 and proposed for commercial and residential uses in the development. The developer is
22 proposing to utilize the on-street parking on public streets provision of the EGUV Design
23 Guidelines, Parking Areas, page 22, item 2. A total of 1,197 stalls are proposed: of these
24 414 are for commercial uses and 783 are for residential uses. The proposed parking exceeds
25 parking requirements for the project by 51 stalls. Because of the parking demand associated
26 with the Mill Creek branch of the Northshore Senior Center (Senior Center) located east of
the subject site at Vintage at Mill Creek, 33 of the extra on-street stalls are to be allocated
to the Senior Center along 133rd Street SE. The developer owns both sites and the shared
parking is consistent with the City's EGUV regulations and Design Guidelines.

Commercial parking is provided with 414 surface stalls and residential parking (783 stalls) is distributed throughout the site with 630 stalls in the parking garage by Building F, 115 stalls in underground parking (under Building E), 20 stalls in the four one-story garages, and 18 surface stalls, see Exhibit 21 - Parking Management Plan for a visual allocation of parking stalls.

PARKING SUMMARY FOR COMMERCIAL SPACE

LOT #	AREA	BUILDING	BUILDING FOOTPRINT	BUILDING USE	COMMERCIAL USE AREA	PARKING SPACES RATIO REQUIRED PER MCMC 17.27.020	PARKING SPACES REQUIRED	COMMERCIAL PARKING SPACES PROPOSED ¹	PARKING RATIO FOR LOT
1	53,094 SF	B	4,272 SF	RESTAURANT	4,272 SF	20 SPACES + 1/100 SF IN EXCESS OF 4,000 SF	23	23	5.4/1000
		C	10,513 SF	DAYCARE	10,513 SF	1 SPACE/300 SF	36	36	3.4/1000
2	98,012 SF	A1	10,024 SF	RESTAURANT	5,088 SF	20 SPACES + 1/100 SF IN EXCESS OF 4,000 SF	31	31	6.1/1000
				RETAIL SHOPS	4,936 SF	1 SPACE/250 SF	20	20	4.1/1000
		A2	6,079 SF	RETAIL SHOPS	6,079 SF	1 SPACE/250 SF	25	25	4.1/1000
		A3	3,742 SF	WINERY	3,742 SF	1 SPACE/250 SF	15	15	4.0/1000
		A4	3,277 SF	WINERY	3,277 SF	1 SPACE/250 SF	14	14	4.3/1000
3	118,428 SF	F	51,797 SF	MEDICAL OFFICES	15,590 SF	1 SPACE/200 SF	78	78	5.0/1000
				LEASING OFFICE	0 SF	1 SPACE/400 SF	0	0	0/1000
4	48,738 SF	D	10,292 SF	GROCERY	6,130 SF	1 SPACE/250 SF	25	25	4.1/1000
				RETAIL SHOPS	1,286 SF	1 SPACE/250 SF	6	6	4.7/1000
5	91,235 SF	E	28,763 SF	RETAIL SHOPS	22,351 SF	1 SPACE/250 SF	90	90	4.0/1000
PHASE 1		OVERFLOW					0	51	
TOTAL	--	--	--	--	95,764 SF ²	--	363	414	5.0/1000

1. A PARKING MANAGEMENT PLAN REGULATES THE USE AND MANAGEMENT OF PARKING PER THE APPROVED BINDING SITE PLAN.
2. 12,500 SF OF COMMERCIAL SPACE IS INCLUDED FOR 25 LIVE WORK UNITS (500 SF/UNIT). PARKING FOR THESE IS ACCOUNTED FOR WITHIN THE RESIDENTIAL TABLE.

PARKING SUMMARY FOR RESIDENTIAL LIVING SPACE

LOT	BUILDING	UNIT TYPE	NUMBER OF UNITS	TOTAL AREA	PARKING SPACES RATIO REQUIRED PER MCMC 17.27.020 (C)	PARKING SPACES REQUIRED	PARKING SPACES PROPOSED ¹
4	D	1 BED	8	5,371 SF	1.5 SPACES/UNIT	12	12
		2 BED	24	24,124 SF	2.5 SPACES/UNIT	60	60
		3 BED	0	0	2.5 SPACES/UNIT	0	0
5	E	1 BED	20	11,236 SF	1.5 SPACES/UNIT	30	30
		2 BED	48	48,291 SF	2.5 SPACES/UNIT	120	120
		3 BED	48	55,232 SF	2.5 SPACES/UNIT	120	120
3	F	1 BED	74	53,389 SF	1.5 SPACES/UNIT	111	111
		2 BED	92	93,101 SF	2.5 SPACES/UNIT	230	230
		3 BED	40	46,069 SF	2.5 SPACES/UNIT	100	100
	TOTAL	--	354 ³	336,813 SF	--	783	783 ²

1. A PARKING MANAGEMENT PLAN REGULATES THE USE AND MANAGEMENT OF PARKING PER THE APPROVED BINDING SITE PLAN.
2. INCLUDES 630 STALLS IN RESIDENTIAL PARKING GARAGE, 115 STALLS IN UNDERGROUND PARKING, 20 STALLS IN SURFACE GARAGES, AND 18 SURFACE STALLS.
3. 25 LIVE WORK UNITS ARE PROPOSED AND INCLUDED WITHIN THE UNIT COUNT. SEE PARKING MANAGEMENT PLAN.

As required by the Development Agreement, the developer has proposed a Parking Management Plan (see **Exhibit 21**). Commercial parking stalls are to be signed for "Retail Use Only" and staff parking will be signed "Staff Parking Only." In addition, load and unload areas will be designated.

1 Residential and guest parking is primarily located in the five-story, private, secured, parking
2 garage located by Building F. In addition, Building E has below grade and tuck under
3 parking for residents and guests. The developer is also required to grant a reciprocal parking
4 covenant for the parking serving the commercially designated stalls to other commercially
5 developed properties within the EGUV. The requirement is included in the Conditions of
6 Approval.

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D. Landscaping. The proposal is consistent with applicable landscaping standards.

A 35-foot wide landscaped Roadway Buffer tract is required along the 132nd Street SE (SR 96) frontage. The existing Crimson King Norway Maple street trees are located under the power lines and have been repeatedly topped and will be required to be removed and replaced as a Condition of Approval. A Condition of Approval requires a minimum of a six-foot wide concrete meandering sidewalk be installed within the 35-foot roadway buffer and the street trees shall be consistent with the Exhibit 17 – Landscape Plan (Sheets L1, L1.0 and L1.10-L1.14).

A 20-foot landscape buffer is required along the southern property line (adjacent to the Creekside Place, Creekside West, and Westfield Park neighborhoods). Along this southern boundary a rockery wall is proposed (1-10' high) with a fence on top of the rockery. The rockery will sit above the existing grade of the single-family homes. The perimeter buffer will be enhanced with additional landscaping for screening. A public access easement is required to be recorded on the face of the Binding Site Plan to allow for public use of the trail in the 20-foot perimeter buffer and maintenance will be provided by the property owner. A section showing the view from the adjacent neighborhoods to the south. See Exhibit 31 - Neighborhood Cross Section at 134th Place SE and 39th Drive SE.

E. Critical Areas. The only critical area at the project site is a wetland. One Category II wetland (Wetland A) was identified on the western portion of the site. Wetland A is part of a large wetland complex that continues off site to the west and flows to the south into Penny Creek and its associated wetland complex and eventually south to Thomas Lake. Beaver activity within Penny Creek has led to inundation across most of the wetland complex. Mill Creek Municipal Code (MCMC) Section 18.06.930 requires a 200-foot buffer for Category II wetlands. The Applicant is proposing a reduced buffer width that averages approximately 54 feet but is as little as five feet in some areas.

As authorized by the City's critical area wetlands, the Applicant is proposing to treat the reduction of the Wetland A buffer as "wetland as buffer" and will therefore, mitigate for the reduced buffer as if it were direct wetland impact. Approximately 12.6 acres of the 17.43 acre project site will be developed, with the remaining approximately 5 acres retained as a Native Growth Protection Area within Tract 999.

1 To compensate for the “conversion” of 106,099 square feet of wetland to buffer, the
2 Applicant is proposing both on- and off-site mitigation, including the preservation of a
3 58-acre site (Off-Site Mitigation Site) located south of the project site. The Applicant
4 is proposing 250,000 square feet of habitat and vegetative enhancements at the Off-Site
5 Mitigation Site, as well as creating 5,500 linear feet of trail with interpretative signage.
211,008 square feet of habitat and vegetative enhancements are also proposed at the
onsite portion of Wetland A.

6 The City’s wetland consultant, ESA, and the Department of Ecology have reviewed the
7 the Critical Areas Report and Conceptual Mitigation Plan for the Applicant’s proposed
8 wetland buffers and have determined that the proposal as conditioned is consistent with
9 the City’s environmental regulations, including its critical areas ordinance. See Exhibit
25 - City Critical Areas Compliance Letter and Exhibit 24 - Department of Ecology
Regional Benefit Approval Letter. As a Condition of Approval, the developer is
required to submit a final critical areas report for review and approval.

10
11 F. Fire Services. Fire prevention requirements are governed by the International Fire
12 Code, adopted and amended by MCMC 15.04.120. Fire Code requirements are
13 administered for the Snohomish County Fire District No. 7 pursuant to interlocal
14 agreement. Fire District No. 7 has reviewed the proposed site plan and has determined
15 that fire access and vehicle turn around requirements have been met and Fire District
No. 7 has recommended conditions of approval and issued a compliance letter dated
January 15, 2019. See Exhibit 27. The recommended conditions of approval have been
adopted by this decision.

16 G. School Mitigation Fees. The City of Mill Creek and the Everett School District have
17 executed an Interlocal Agreement for mitigation of development impacts on district
18 facilities. Mitigation fees are calculated per the Interlocal Agreement between the City
and the Everett School District.

19 As a condition of approval, the developer is required to enter into a voluntary mitigation
20 agreement with the Everett School District and pay mitigation fees for \$1,677 per two
21 or more bedroom units. Assuming 227 two or more bedroom units, \$380,679.00 will
be required. Proof of payment of mitigation fees is required prior to issuance of the
first residential building permit.

22 H. Utilities. Water and service will be provided by the Silver Lake Water and Sewer
23 District, which issued a letter of water sewer availability dated February 9, 2018. See
Ex. 5.

24 I. Building and Fire Code. Building and additional fire code compliance will be
25 addressed during building permit review.
26

CONCLUSIONS OF LAW

1. Authority. MCMC 14.03.080(2) provides that the hearing examiner shall review and make final decisions on binding site plan applications. Jurisdiction of the examiner does not extend to the design review guidelines of Chapter 17.34 MCMC and for this reason the conclusions regarding that chapter from the staff report are not adopted or addressed by this decision. The MCMC is not entirely clear as to what decision maker is to apply East Gateway Planned Urban Village Design Guidelines, adopted by City of Mill Creek Ordinance No. 684. Unlike Chapter 17.34 MCMC provisions that expressly assign Chapter 17.34 review to the Design Review Board, there is no provision expressly assigning application of the EGUV design guidelines to the Design Review Board. However, MCMC 4.18.020 generally gives the Design Review Board authority to review project design and the staff report appears to conclude that the Design Review Board has the requisite authority to apply EGUV design guidelines as well. For these reasons, it is concluded that application of the EGUV design guidelines is beyond the jurisdiction of BSP review as well.

2. Zoning/Comprehensive Plan Designations. The Comprehensive Plan Designation is Town/Village Center and the Zoning District is EGUV.

3. Review Criteria. As determined in the Examiner's Autozone Binding Site Plan Final Decision (BS 15-66), the following are the criteria for site plan approval: (1) conformance to the City's development standards excluding Chapter 17.34 Design Review; and (2) conformance to the comprehensive plan.

5. Conformance to Development Standards. The proposal complies with all of the City's development standards. The Applicant proposes mixed-use development, which is consistent with the uses allowed in the EGUV zoning district by MCMC 17.19.040. The proposal conforms to the rest of the City's development standards as determined in Finding of Fact No. 4 and as assessed in the Development Standards matrix in the staff report, excluding findings and conclusions based upon Chapter 17.34 Design Review (Exhibit 1, pages 16-25).

6. Conformity to Comprehensive Plan. The proposal is consistent with the comprehensive plan for the reasons identified at pages 19 of the staff report (under heading MCMC 17.22.120).

DECISION

The proposed BSP as described in this decision and depicted in Ex. 1b meets all applicable review criteria for the reasons identified in the conclusions of law and for that reason is approved subject to the following conditions:

Binding Site Plan:

1. Development shall occur as portrayed on the Binding Site Plan map.
2. All utility, stormwater, drainage, maintenance, and landscaping buffers/easements,

1 together with attendant restrictions and conditions, and dedication of the spine road shall
2 be portrayed on the face of the site plan or recorded on a separate page along with the
3 Binding Site Plan.

- 4 3. The final Binding Site Plan shall be recorded with the Snohomish County Auditor and a
5 copy provided to the City prior to issuance of the first Certificate of Occupancy.
- 6 4. The Developer may assign its rights and obligations under this development approval
7 upon prior written notice to the City identifying the new entity and evidencing the
8 transfer of obligations to the new entity.
- 9 5. The terms and conditions contained within the Developer Agreement as recorded under
10 Snohomish County Recording Number 201904170566 shall apply to the Binding Site
11 Plan and the Recording Number shall be noted on the face of the Binding Site Plan.
- 12 6. Certificates of Occupancy. In addition to the requirements of the MCMC and the
13 enforcement provisions set forth in the Development Agreement, the City may withhold
14 certificates of occupancy for all or any part of the Project until all building permit
15 requirements and Project Conditions of Approval have been met to the City's satisfaction.
- 16 7. A reciprocal parking convent to The Vintage at Mill Creek and all the lots in the project
17 shall be provided on the face of the Binding Site Plan.

18 **Landscaping/Building Design:**

- 19 8. The Director of Public Works and Development Services or designee shall determine the
20 trees to be retained based upon the existing trees' compatibility with future improvements
21 to be constructed in the vicinity. This determination shall be made in the field prior to the
22 commencement of clearing and grading activities.
- 23 9. Trees to be retained shall be shown on the Clearing and Grading Plans. Barrier fencing
24 shall be placed by the developer around the driplines of the trees to be retained prior to
25 commencing clearing and grading, and shall be maintained until construction is completed.
- 26 10. In accordance with MCMC Section 15.10.075.B, where trees designated to be retained are
damaged, destroyed or removed during the construction of the proposed improvements, a
penalty in the amount of \$1,000 may be assessed for each tree, and each tree shall be
replaced at a 3:1 ratio.
11. All private landscaped areas are to be maintained by the owner/property management and
shall be shown on the face of the Binding Site Plan.
12. In the 35-foot roadway buffer, the existing street trees shall be removed and the existing
sidewalk shall be removed and replaced with a 6-foot wide concrete meandering sidewalk

1 along the SR 96 frontage. Proposed street trees shall be consistent with the street trees
2 installed on the frontage of The Vintage at Mill Creek, located to the east of the site.

3 13. The 20-foot perimeter landscape buffer shall contain a rockery wall, 6-foot wide paved
4 (concrete) trail and pedestrian amenities along with perimeter landscaping. The landscape
5 plans shall include a mix of evergreen and deciduous trees to be planted around the
6 perimeter of the site to enhance any retained vegetation and to provide a visual buffer
between the existing residential uses and the proposed residential buildings. A fence will
be installed on top of the wall for safety and privacy.

7
8 14. The buildings, signage, lighting, streetscape landscaping & furnishings, and pedestrian
amenities, along with all site landscaping shall be designed in accordance with the
9 Development Agreement, Section 17.34.040, MCMC, the EGUV Design Guidelines and
10 reviewed and approved by the City's Design Review Board prior to installation.
Landscaping may be installed in phases but must be in place prior to the issuance of a
11 Certificate of Occupancy for buildings adjacent to said landscaping.

12 15. Street furniture shall be provided along 132nd Street SE, 39th Avenue SE, 133rd Street SE,
13 and 41st Avenue SE and shown on the landscape and streetscape plans. Street furniture
shall include, but not be limited to bicycle racks, planters/pots, benches, and trash cans.

14 16. The developer shall provide a secured performance bond for the approved landscape plan
15 equal to 125 percent of the cost of labor and materials, in accordance with MCMC Section
16 16.16.040, posted prior to the issuance of the first building permit.

17 17. Once the developer has fulfilled the obligations of the landscape performance bond, the
18 Applicant shall enter into a two-year maintenance bond equal in value to not less than 15
19 percent of the original bond amount for the approved and installed landscaping in
accordance with MCMC Section 16.16.090.

20 **LEED Neighborhood Design Standards:**

21 18. The Binding Site Plan, construction (civil) plans and buildings permits shall be reviewed
22 for consistency with the 2009 LEED Neighborhood Design requirements. Civil Plans will
23 not be issued until the City determines that the development meets the LEED
Neighborhood Design Standards.

24 **Protection of Critical Areas:**

25 19. The wetland and its associated buffer shall be placed in a separate tract and shall be
26 designated as a Native Growth Protection Area (NGPA) on the face of the Binding Site

1 Plan, and shall be recorded on all documents of title for all affected lots or land areas,
2 pursuant to MCMC Section 18.06.830. Tract restrictions shall include:

3 A. An assurance that native vegetation will be preserved for the purpose of preventing
4 harm to property and the environment, including, but not limited to, controlling surface
5 water runoff and erosion, maintaining slope stability, buffering, and protecting plants,
6 fish, and animal habitat; and

7 B. The right of the City to enforce the terms of the restrictions.

8 20. Prior to commencing construction activity, the edge of the wetland buffer (western edge of
9 proposed site improvements) shall be clearly staked, flagged and protected with fencing.
10 Site clearing shall not commence until the Applicant has submitted written notice to the
11 Public Works and Development Services Department that the buffer requirements of
12 MCMC Sections 18.06.810 and 18.06.930 (E) have been met.

13 21. Prior to issuance of a Certificate of Occupancy, the boundary at the edge of the NGPA tract
14 being created shall be identified with permanent signs or markers every 100 feet to clearly
15 indicate the location of the NGPA buffers, pursuant to MCMC Section 18.06.810.

16 22. Pursuant to MCMC Section 15.10.045.A, barrier fencing shall be placed around the drip
17 lines of the trees to be retained prior to commencing clearing and grading, and be
18 maintained until construction is completed.

19 23. In accordance with MCMC Section 15.10.075.B, where trees designated to be retained are
20 damaged, destroyed or removed during the construction of the proposed improvements, a
21 penalty in the amount of \$1,000 may be assessed for each tree, and each tree shall be
22 replaced at a 3:1 ratio.

23 **Construction of Public Roads and Site Improvements:**

24 24. Construction activity that generates noise levels shall be limited to Monday through Friday,
25 7 a.m. to 9 p.m., with weekend hours 8 a.m. to 9 p.m. as required by MCMC Section
26 9.14.030.

27 25. No non-attended idling of construction equipment shall be permitted and mufflers are
28 required on all construction vehicles.

29 26. A Clearing and Grading permit for all clearing, grading, roadway, stormwater, and erosion
30 control work shall be approved by the Director of Public Works and Development Services
31 prior to any clearing or grading work on the site.

32 27. The developer shall construct all frontage improvements along 132nd Street SE (SR 96)

required by the Washington State Department of Transportation and the EGUV Engineering Study dated December 2012, including, but not limited to the intersection improvements for the 39th Avenue SE/132nd Street SE intersection. The design, construction, and operation of the SR 96 improvements are subject to the review and approval of the Washington State Department of Transportation.

28. The developer shall dedicate or cause to be dedicated to the City the remaining width of the portion of 41st Avenue SE, full width of 39th Avenue SE, and 133rd Street SE. Developer's dedication shall comply with all terms and provisions for roadway alignment as shown on the Binding Site Plan and the requirements of MCMC Chapter 16.14. Dedication shall be completed either by (i) showing the dedication on the face of the Final BSP for the project; or (ii) by separate dedication deed approved and accepted by City before the Final BSP is released for recording.
29. Construction of Public Roads - 41st Avenue SE, 39th Avenue SE, and 133rd Street SE. The developer shall construct the remaining half of the public right-of-way improvements for 41st Avenue SE, as described in the Development Agreement and as shown on the Binding Site Plan and Preliminary Clearing and Grading Plans. In addition, the Developer shall construct the full 84.5 to 70-foot width of the public right-of-way for 39th Avenue SE, and the full 89 foot width of 133rd Street SE. Road construction shall include: (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 with electrical outlets and landscaping; and (vi) signage and striping.
30. The developer shall construct the south leg of the 132nd Street SE (SR 96)/39th Avenue SE signalized intersection. The traffic signal and channelization will be modified to accommodate this improvement. This includes the addition of the south leg of the intersection, as well as construction of an eastbound right-turn lane at the intersection. This will reduce congestion created by eastbound vehicles turning into the south leg of the intersection.
31. Signal Modifications at the Seattle Hill Road/132nd Street SE Intersection. With WSDOT approval, the developer shall modify the intersection phasing and southbound channelization according to the Traffic Impact Analysis.
32. The Developer shall install a six-foot wide concrete trail with amenities within the 20-foot perimeter landscape buffer. The location of the trail shall be field located by the Developer and approved by City staff prior to construction. Amenities may include pedestrian lighting and small activity nodes with benches, and/or picnic tables, per the EGUV Design Guidelines.
33. All public improvement work shall be adequately secured through a security device (such as a bond, assignment of funds, etc.) acceptable to the City prior to beginning construction in accordance with MCMC Chapters 16.16 and 16.20.

1
2 34. A stormwater easement shall be shown on the face of the Binding Site Plan for the Vintage
3 at Mill Creek. Verification of an executed easement shall be provided to the City prior to
approval of the Clearing and Grading permit.

4 35. Provisions for temporary overflow parking for the Senior Center shall be provided on the
5 site as feasible during construction and signed accordingly.

6 36. The developer shall submit a geotechnical report to address the construction of
7 improvements. This includes, but is not limited to fill under the parking lots, building
foundations, stormwater facilities, and retaining walls.

8 **Engineering and Site Work:**

9
10 37. A Clearing and Grading permit for all clearing, grading, roadway, stormwater, and erosion
11 control work shall be approved by the Director of Public Works and Development Services
prior to any clearing or grading work on the site.

12 38. The Applicant shall provide a pedestrian connection from the walkway along the southern
13 perimeter to the existing pedestrian pathway in the Plat of Creekside Place and Creekside
West as shown on the site plan.

14 39. The developer shall submit stormwater plans and documentation to address all required
15 drainage improvements. The approved stormwater system shall include the following
16 elements and conditions per MCMC Chapter 15.14 and the 2012 Department of Ecology
Stormwater Management Manual for Western Washington as amended in 2014.

17 A. Final drainage plans shall be submitted to the Director of Public Works and
18 Development Services for review and approval.

19 B. A Stormwater Pollution Prevention Plan (SWPPP) shall be prepared to address the
20 required elements and all Best Management Practices that are expected to be used
on site for erosion and sediment control.

21 C. The developer shall apply for an individual Construction Stormwater General
22 Permit from the State Department of Ecology, and provide proof of the issued
permit to the City prior to beginning construction.

23 D. A final stormwater report signed and stamped by a licensed professional engineer
24 shall be submitted to the Director of Public Works and Development Services for
25 review and approval.

26 E. The property owners shall be obligated to own, maintain and operate the stormwater

1 system outside the public right-of-way to the satisfaction of the Director of Public
2 Works and Development Services.

- 3 F. Provisions shall be included with the Final Binding Site Plan for maintenance of
4 the stormwater system outside the public right-of-way, including, but not limited
5 to, adequate access to maintenance locations, provisions and easements that allow
6 the City to inspect and maintain the system at its discretion, and adequate provisions
7 to ensure uninterrupted function of the facilities for the proposed development.

- 8 40. All new and existing utilities within the project shall be placed underground in accordance
9 with MCMC Section 17.22.110. The Applicant shall be responsible for all costs associated
10 with undergrounding the utilities. Appropriate easements or right-of-way for all utilities
11 shall be provided by the Applicant and shown on the face of the Final Binding Site Plan.

12 **SEPA Mitigation Fees and Measures**

- 13 41. The developer shall pay mitigation to the City of Mill Creek in the amount of \$1,098,000
14 for impacts to the City roadway system. Payment of traffic mitigation fees to the City is
15 required prior to the issuance of the first building permit.

- 16 42. Neighborhood Park: In accordance with Resolution 2013-503 and Chapter 17.48 MCMC,
17 the developer shall pay \$416,771.28 (\$1,177.32 per renter occupied unit x 354 units) to
18 offset impacts to neighborhood parks prior to issuance of first residential building permit.

- 19 43. Community Park: In accordance with Resolution 2013-503 and Chapter 17.48 MCMC,
20 the developer shall pay \$253,032.12 (\$714.78 per unit x 354 units) to offset impacts to
21 community parks prior to issuance of first residential building permit.

- 22 44. The developer shall enter into a voluntary mitigation agreement with the Everett School
23 District and pay mitigation fees for \$1,677 per two or more bedroom units. Assuming 227
24 or more bedroom units, \$380,679.00 will be required. Proof of payment of mitigation fees
25 is required prior to the issuance of the first residential building permit.

- 26 45. The developer is responsible for replacing the existing six-foot high wood residential
fences, which are currently located along the southern boundary, if damaged during
construction and/or as necessary and shall coordinate such replacement with the adjacent
property owners.

46. The developer shall relocate the existing bus stop, which is located west of the 39th Street
SE/132nd Street SE on the south side of the 132nd Street SE roadway. The relocated stop
will be improved with a 70 foot bus zone within the right turn pocket at the southeast corner
of 39th Avenue SE and 132nd Street SE with a Type 4 bus shelter. This request is consistent
with the lane geometry included in East Gateway Urban Village Preliminary Engineering
Design Study to off-set impacts to Community Transit. The developer shall enter into a

Developer Agreement with Community Transit.

47. In addition, the developer shall improve the westbound bus stop on the northwest corner of 132nd Street SE and 44th Avenue SE with a bus shelter. The bus pad and shelter standards by Community shall be utilized.

Utilities:

48. The developer shall be responsible for all fees and obtaining the required permits and agreements necessary to provide on and off-site sewer improvements and to extend the water and sewer service to the subject site.

49. All new and existing utilities within the project and along all roadway frontage areas shall be placed underground in accordance with MCMC Section 17.22.110. The developer shall be responsible for all costs associated with undergrounding the utilities. No new utility poles shall be installed in the project site. Appropriate easements or right-of-way for all utilities shall be provided by the developer as shown on the face of the Final Binding Site Plan. Said Utility Construction Plans shall be submitted to the appropriate service provider for review and approval prior to construction.

50. All utilities shall be adequately sized for future built-out conditions of the entire EGUV area in accordance with the Engineering Study.

Fire District Requirements:

51. Aerial fire apparatus access roads must be provided as required by IFC Appendix D for buildings over 30' in height.

52. Approved fire apparatus access roads must extend to within 150' of all portions of the ground floor of each building.

53. Approved fire apparatus access roads and an approved water supply must be in place prior to combustible building materials being brought on site.

54. Fire Flow and fire hydrant placement is required by IFC Appendices B and C, and will be calculated using the final design areas and types of construction.

55. Prior to building permit issuance, the Silver Lake Water and Sewer District shall provide a letter indicating capacity up to the level of required fire flow for each building.

56. Ensure all hydrants required for this site are equipped with 4" STORTZ" adaptors.

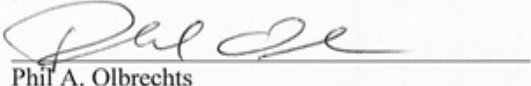
57. Ensure all *street name* and *no parking* signs are posted prior to occupancy.

1 58. Building addresses shall be clearly posted on each building.

2 59. KNOX box(s) would be required to allow fire department access to all sprinkler systems,
3 fire alarm systems, mechanical rooms, etc. Contact the Fire District for number type, size
4 and specific location.

5 60. No Parking/Fire Lane to be reviewed and coordinated with the Fire District and installed
6 by the developer.

7 Decision issued June 3, 2019.

8 
9 Phil A. Olbrechts

10 Hearing Examiner

11 **Appeal Right and Valuation Notices**

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13 MCMC 14.03.030(B)(4) provides that the final decision of the hearing examiner is subject to appeal
14 to the Mill Creek City Council. MCMC 14.11.030 requires appeals of the hearing examiner's
15 decision to be filed within fifteen days from the date of the hearing examiner's decision. Appeal
16 requirements are governed by Chapter 14.11 MCMC.

17 Affected property owners may request a change in valuation for property tax purposes
18 notwithstanding any program of revaluation.
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