

CONTRACT 2005-_____

CITY OF MILL CREEK
DEVELOPMENT AGREEMENT
FOR
TOWN CENTER
(PHASE III)

TABLE OF CONTENTS/OUTLINE

	<u>Page</u>
1.0 Parties	1
2.0 Recitals	1
3.0 Property Descriptions	3
3.1 Property	3
3.2 Zone Designation	3
4.0 Binding Site Plan	3
4.1 Description	3
5.0 Master Development Plan	3
5.1 Master Development Plan Required	3
5.2 Binding Nature; Conflict	3
5.3 Future Environmental Review	3
5.4 Future Lot Development Process	4
5.5 Major and Minor Modifications	4
5.6 Recordation	4
6.0 State Environmental Policy Act ("SEPA") Conditions	4
6.1 Authority	4
6.2 Conditions and Requirements	4
7.0 Conditions Arising from Non-City Agencies with Jurisdiction	11
7.1 Authority	11
7.2 Snohomish County	11
7.3 Transit	11
7.4 Silver Lake Sewer and Water District	11
7.5 Washington State Department of Fish and Wildlife	12
7.6 Fire District No. 7	12

8.0	Town Center Design Guidelines	12
8.1	Description.....	12
8.2	Application to Project.....	12
8.3	Conditions and Requirements.....	12
8.3.1	Ground Floor Retail Use Requirement.....	12
8.3.2	Project Lighting.....	13
8.3.3	Project Landscaping.....	13
8.3.4	Landscape Performance and Maintenance Bonds.....	13
8.3.5	Project Identification.....	13
8.3.6	Sidewalks.....	13
9.0	Non-SEPA Transportation Improvements and Mitigation	13
9.1	Public Works Department Conditions.....	13
9.1.1	SR 527 Improvements.....	14
9.1.2	Trail.....	14
9.1.3	Traffic Mitigation.....	15
10.0	Parking	15
10.1	Unified Parking Plan.....	15
10.1.1	On Street Parking.....	15
10.1.2	Employee Parking.....	16
10.1.3	Minimum Required Parking.....	16
10.1.4	Shared Parking Zones.....	16
10.1.5	Shared Parking Agreements.....	16
10.2	Transportation Demand Management.....	16
11.0	Use of Open Space; Operational Agreement	16
11.1	Open Space.....	17
11.2	City Authority Over Open Spaces.....	17
11.3	Pedestrian Access Easements.....	17
11.4	Operational Agreement.....	17
12.0	Construction	17
12.1	General.....	17
12.2	City Inspection.....	17
12.3	Clearing and Grading.....	17
12.4	Tree Protection.....	18
12.4.1	SR 527 Roadway Buffer.....	18
12.4.2	Tree Replacement.....	18
12.5	Construction Noise.....	18
13.0	Environmentally Critical Areas	18

13.1	Buffer Enhancement Plan.	18
13.2	Maintenance and Performance Bonds.	18
13.3	Protection of Wetlands.....	18
13.4	ESA Biological Assessment.	18
14.0	Binding Site Plan	19
14.1	Preparation.	19
14.2	Notice of Conditions.	19
14.3	Updating of Binding Site Plan.	19
15.0	Phasing of Project	19
15.1	Phasing.....	19
	15.1.1 Infrastructure Phase.	19
	15.1.2 Building Phase I.....	19
15.2	Subsequent Phases.	20
16.0	Bonding; Security	20
16.1	Bond Required; Approval.	20
16.2	Public Improvements and Wetlands Bonds.	20
16.3	Waiver and Release.....	20
17.0	Transfer of Property by Developer	20
17.1	Authority to Transfer.	20
17.2	Obligations of Successors.	20
18.0	Binding Nature; Modification; Vested Rights	20
18.1	Binding Nature.....	20
18.2	Modification of Agreement.....	20
18.3	Vested Rights.....	21
19.0	Enforcement Authority	21
19.1	Description.....	21
20.0	Dispute Resolution	21
20.1	Description.....	21
21.0	Authority to Approve Agreement	21
21.1	By Developer.	21
21.2	By City.....	21
22.0	General Terms	21
22.1	Integration.	21
22.2	Venue.	21

22.3	No Waiver of Police Power or Condemnation Authority.....	22
22.4	Covenant Running with Land.....	22
22.5	Developer's Responsibility.....	22
22.6	Attorneys Fees.....	22
22.7	Severability.....	22

CONTRACT 2005-_____

**CITY OF MILL CREEK
DEVELOPMENT AGREEMENT
FOR
TOWN CENTER
(PHASE III)**

1.0 Parties

1.1 This Development Agreement (“Agreement”) is made this ____ day of January 2005 by and between the City of Mill Creek, a Washington municipal corporation (the "City") and Mill Creek Commercial, LLC, a Washington limited liability company ("Developer").

2.0 Recitals

2.1 The Developer is the owner of a tract of land located in the City of Mill Creek, Washington, containing approximately 6.6 acres, the legal description of which is attached and incorporated in full as **Exhibit A** (the "Property").

2.2 The Property is located within a portion of the City that is planned for development as a new commercial and retail center for the City (the "Town Center"), and comprises approximately one quarter of the Town Center planning area.

2.3 The Developer wishes to develop the Property in accordance with the City's Town Center Conceptual Plan and Design Guidelines, adopted January 28, 1997, and as subsequently amended (collectively "Town Center Plan" or "Town Center Design Guidelines"), and thus intends to utilize the Property for development of a mixed-use commercial and retail community consisting of shops, businesses, residential uses, open space, plazas, recreational facilities, utilities, community facilities, road systems and other related components and amenities (the "Project," "Project Site," "Development Site" or "Planned Development.").

2.4 As part of the proposed development, the Developer has filed a Binding Site Plan Application, filed under City File No. BS 04-55. Through this application, the Developer seeks approval of a Binding Site Plan that will fix and establish the development of the Property in a form that is consistent with the requirements of the City. The Binding Site Plan shall be referred to herein as the “BSP,” “Binding Site Plan,” or “BS 04-55.”

2.5 The Developer also seeks a Zone Text amendment to increase the maximum allowed height of residential buildings within the Town Center from four (4) stories and 50 feet to five (5) stories and 60 feet for mixed-use, residential structures. The Zone Text Amendment shall be referred to herein as the “ZTA,” “Zone Text Amendment,” or “ZTA 04-16.”

2.6 The City and the Developer wish to ensure that the Property will be developed in accordance with the provisions of the Town Center Master Plan, Town Center Design Guidelines, and BS 04-55, in compliance with all applicable City codes, plans, and development regulations, and in a manner acceptable to the City. These include, but are not limited to, the current edition of the Mill Creek Comprehensive Plan (December 2004) and the Mill Creek Municipal Code ("MCMC"), specifically including, but not limited to, Development Code Administration (Title 14), Building and Construction (Title 15), Plats and Subdivisions (Title 16), Zoning Regulations (Title 17), and Environmental Policies (Title 18).

2.7 Following consideration of BS 04-55 pursuant to the City's development review process, the City Council determined that BS 04-55 was in the public interest, was in furtherance of the public health, welfare and safety of the citizenry of Mill Creek, and was consistent with the requirements of law applicable to the proposed site plan, all provided that certain conditions were met by the Developer. Accordingly, the City Council approved Ordinance No. 2005-____, granting the Developer's application for BS 04-55 subject to certain conditions.

2.8 The City and the Developer agree that the purpose of this Development Agreement is to comply with the Mill Creek Municipal Code, and the Conditions of Approval for BS 04-55 as approved by Ordinance 2005-_____, by setting forth in detail the conditions and requirements applicable to the Project as part of the Town Center. The City and the Developer further agree that this Development Agreement establishes certain rights of the Developer to develop the Property for the time period and in accordance with the conditions specified herein and the approvals granted by the City with respect to the Project. The City and the Developer further agree that this Development Agreement is consistent with RCW Chapter 36.70B, the Mill Creek Municipal Code, and the Mill Creek Comprehensive Plan, and also with applicable elements of the Town Center Draft Environmental Impact Statement (July 1996), the Town Center Final Environmental Impact Statement (September 1996), the Mitigated Determination of Non-Significance issued for BS 04-55 (July 23, 2004), and the Addendum to the Mitigated Determination of Non-Significance (hereinafter referred to as "Addendum") issued on December 1, 2004.

2.9 The City and the Developer agree that each has entered into this Development Agreement knowingly and voluntarily and agree to be bound by the terms and conditions of this Development Agreement.

2.10 The City and the Developer agree that the foregoing terms and recitals are material to this Development Agreement, and that each party has relied on the material nature of such terms and recitals in entering into this Development Agreement.

THEREFORE, in consideration of the mutual benefits of this Development Agreement and the actions and promises set forth herein, including without limitation the approval

of the Binding Site Plan, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

3.0 Property Descriptions

3.1 Property. The Property, which is the subject of this Development Agreement, is fully described in **Exhibit A**, attached and incorporated by this reference as though fully set forth herein.

3.2 Zone Designation. The zoning designation of the Property as Planned Community Business shall be unchanged for the duration of this Development Agreement.

4.0 Binding Site Plan

4.1 Description. BS 04-55 was approved by the City as set forth in Ordinance 2005-____. BS 04-55, through its various components and conditions, establishes the required layout of tracts and lots, rights-of-way for roads, streets, lanes and sidewalks, public utilities, public utility and pedestrian easements, and critical and wetland areas and attendant buffers. BS 04-55, through its various components and conditions, also establishes the general layout of building footprints and parking areas. In accordance with RCW 58.17.035, the Binding Site Plan shall be recorded in the Snohomish County Auditors Office prior to the sale of any lots, tracts or parcels created by the Binding Site Plan.

5.0 Master Development Plan

5.1 Master Development Plan Required. Development of the Property shall be consistent with the Master Development Plan approved pursuant to MCMC Section 17.21.020. Said Master Development Plan shall consist of and include BS 04-55, the illustrative Master Site Plan, this Development Agreement, and the Town Center Design Guidelines.

5.2 Binding Nature; Conflict. The Developer and all subsequent applicants for individual building permits and all other permits related to land or actions within the Property shall be bound by and shall comply with the terms and conditions of the Master Development Plan. All the terms and conditions of the Master Development Plan as described in the attached Master Development Plan staff report, as amended by Planning Commission Resolution 2004-121 and as approved by the City Council, shall apply to the Project, provided that, should an irreconcilable conflict arise when two or more of the terms and conditions of the Master Development Plan are applied, the more restrictive of said terms as determined by the City shall be applied to the Project.

5.3 Future Environmental Review. In approving the Master Development Plan, the City acknowledges that it has undertaken and completed all currently required environmental review for the Project. Further environmental review shall not be required for individual permits falling within the scope of the Project (e.g., building permits for Town Center buildings depicted on the illustrative

master plan required by MCMC Section 17.21.030 {A}), provided that every such permit shall be conditioned in accordance with the terms and conditions of the Master Development Plan.

5.4 Future Lot Development Process. Upon approval of the Master Development Plan and in accordance with the City's development regulations, applicants seeking to develop individual lots within the Project shall submit appropriate applications for building or other permits, and shall be subject to review and approval of the City and/or the Design Review Board as appropriate.

5.5 Major and Minor Modifications. Any change or amendment to the approved Master Development Plan shall comply with the provisions of MCMC Section 17.21.090. In determining the degree of modification, the Director shall place emphasis on the consistency of the proposed modification with the Town Center Design Guidelines and with the Master Development Plan, except that changes of use determined by the City to be consistent with MCMC Title 17 and changes of building footprints of fifteen percent (15%) or less shall be deemed minor modifications.

5.6 Recordation. This Development Agreement shall be recorded with the Snohomish County Auditor at the Developer's expense following the final execution of this Agreement, in accordance with RCW 36.70B.190 and Ordinance 2005-_____. The Binding Site Plan and the ordinance approving this Agreement shall be recorded prior to the issuance of building permits at the Developer's expense as provided by City regulations.

6.0 State Environmental Policy Act ("SEPA") Conditions

6.1 Authority. The conditions in this Section have been imposed on the Project in accordance with the State Environmental Policy Act, RCW Chapter 43.21C and MCMC Chapter 18.06, and are also set forth in the Mitigated Determination of Non-Significance ("MDNS") issued on July 23, 2004 and the Addendum issued on December 1, 2004.

6.2 Conditions and Requirements. The following environmental conditions shall apply to the Project:

ELEMENTS OF THE ENVIRONMENT IMPACTED BY THIS ACTION AND MITIGATION MEASURES

The environmental impacts of this proposal are documented in the Environmental checklists, dated July 19, 2004 and November 29, 2004, and other information on file with the City of Mill Creek, including the Draft and Final Environmental Impact Statements for the Town Center Master Development Plan. The listed mitigation measures are imposed in response to the City's review of this information.

1. EARTH

Erosion could occur during the clearing and grading of the site, as well as for building foundations, rockeries, roadways, driveways, and utilities. If not properly mitigated, uncontrolled erosion could result in detrimental impacts to Wetland A and North Creek.

To mitigate the potential impacts of the site clearing and grading work, the following mitigation measures shall be implemented:

- A. A Construction Stormwater Pollution Prevention Plan (SWPPP) shall be prepared in accordance with the requirements in the 2001 Department of Ecology Stormwater Management Manual for Western Washington. The SWPPP shall be submitted to the Director of Public Works for review prior to civil plan approval.
- B. The appropriate Best Management Practices (BMP) for temporary erosion and sedimentation control shall be installed in accordance with approved SWPPP prior to any grading or extensive land clearing. These facilities must be satisfactorily maintained until construction and landscaping is completed and the potential for on-site erosion has passed.
- C. Public streets, most notably Main Street and 153rd Street SE, shall be cleaned once per day or as directed by the City. Flushing of streets with water will not be allowed.
- D. From October 1 through April 30, no soils shall remain exposed and unworked for more than two days. From May 1 through September 30, no soils shall remain exposed and unworked for more than seven days. Any unworked soil shall be stabilized with a City approved BMP.
- E. Disturbed soil shall be hydroseeded if not worked within 30 days.

2. AIR

Construction activities may generate dust. Dust shall be controlled by watering areas of soil disturbance during construction, and cleaning public streets once a day.

3. WATER

Stormwater: Development will generate stormwater runoff that may contain oil, heavy metals, fertilizers, and other potential pollutants. Increased impervious surfaces result in larger volumes of stormwater runoff and high peak discharges that, if unmitigated, could cause downstream erosion, destruction of fish habitat, and adverse impacts to the off-site and the on-site wetlands.

A preliminary storm drainage plan and report were submitted with the Binding Site Plan application. Stormwater facilities have already been designed and constructed for Phase I and Phase II of the Town Center. Phase I, located north of 153rd Street SE is grand fathered under the requirements of

the 1992 Department of Ecology Stormwater Manual. Phase II, located east of Main Street and south of 153rd Street SE, was designed and constructed in accordance with the 2001 Department of Ecology Stormwater Management Manual for Western Washington.

The north half of Phase III was originally Lot 8 of Phase 1, and the stormwater facilities for that portion of the site have already been constructed. Runoff from that area is directed into an existing wetpond, which outfalls to the wetland buffer via a level spreader.

The south half of Phase III is subject to the requirements of the 2001 Department of Ecology Stormwater Management Manual for Western Washington. An underground vault will be constructed in the parking lot in front of building M to provide detention and water quality treatment for the development area west of Main Street. In addition, since this is a commercial development, a secondary treatment filter will be installed to remove pollutants from the vault discharge. The outlet of the vault will discharge into the adjacent wetland buffer through a new level spreader that will be field located to minimize construction impacts.

Groundwater: The subject property has a relatively shallow groundwater table. No groundwater withdrawals are proposed; however, development of the site may decrease the quantity of the shallow seasonal groundwater feeding the adjacent wetlands, as well as disrupt current shallow groundwater flow patterns. Development may also alter the existing wetland hydrology and hydro-period of the portion of the North Creek wetland (also referred to herein as Wetland A) adjacent to the development site.

The following minimum measures are required to mitigate the impacts of the proposal on stormwater and groundwater:

- A. The applicant shall include all required public and private drainage improvements in the engineering design plans and stormwater report for the Director of Public Works approval. The approved stormwater system shall include the following elements and conditions:
 - 1) Detention and water quality treatment facilities with a conveyance system that meet the requirements of the City of Mill Creek and the 2001 Department of Ecology Stormwater Management Manual for Western Washington.
 - 2) Provisions on the Final Binding Site Plan for maintenance of the stormwater system, including, but not limited to adequate access to maintenance locations, provisions and easements that allow the City to inspect, maintain, and/or operate the detention and treatment system at its discretion.
 - 3) Requirements that the property owners are obligated to own, maintain and operate the stormwater system outside the public right-of-way to the satisfaction of the City Engineer. Specific maintenance measures shall be indicated on the approved engineering plans and in the final drainage report.

- 4) A final stormwater drainage report signed and stamped by a licensed professional engineer shall be submitted to the Director of Public Works for review and approval.
- B. Site engineering, including the storm drainage system, shall be designed to minimize impacts on the hydro-period in the central wetland and forest. A monitoring plan, acceptable to the City, and based upon the health and survival rate of wetland plant communities, shall be developed by the project proponent and submitted to the City prior to approval of the clearing and grading plan. The monitoring plan shall remain in effect for five years and identify baseline data and specific standards for assessing the hydro-period. Appropriate locations for vegetation plots or other acceptable means of monitoring shall be subject to approval by the City. A contingency plan shall also be developed for implementation in the event that post-construction monitoring reveals that deleterious hydro-period impacts caused by this action have occurred or will continue.
 - C. A Hydraulic Project Approval (HPA) permit shall be obtained from the Washington State Department of Fish and Wildlife, if applicable, prior to clearing and grading of the site. Other state and federal permits shall also be obtained, if applicable. The applicant shall provide documentation that applicable permits have been obtained.

Wetlands: A portion of the North Creek wetland system (referred to as Wetland A) is located on the subject property. This wetland has been classified as a palustrine forested wetland, and has high to moderately high value for several important wetland functions. In accordance with Chapter 18.06, MCMC, Wetland A has been identified as a Type II wetland. Buffer width is determined by the intensity of the adjacent land use. For high impact land uses, a minimum 100-foot buffer is required, and for low impact land uses, a minimum 50-foot buffer is required.

The proponent is proposing an averaged 50-foot wetland buffer from Wetland A and buffer enhancement plantings. The applicant is required to demonstrate that the proposed buffer and enhancement plan is consistent with the Chapter 18.06, MCMC to reduce potential impacts to Wetland A.

The following minimum measures are required to mitigate the potential impacts of the proposal on Wetland A:

- A. Buffers adjacent to Wetland A shall be provided in accordance with Chapter 18.06.090, MCMC. A Sensitive Areas Report and Wetland Mitigation Plan shall be reviewed and approved prior to approval of the Master Development Plan and Binding Site Plan.
- B. The following measures shall be incorporated into the Wetland Mitigation Plan to minimize potential impacts to Wetland A:

- 1) Avoid human intrusion into Wetland A and its associated buffer by implementing the following measures:
 - a. Locate the North Creek Trail in the outer portion of the wetland buffer to minimize impacts to the Wetland A. Install post and dowel fencing consistent with the North Creek Trail standards on the western edge of the trail.
 - b. Enhance the wetland buffer with native trees and shrubs that will provide a “full and bushy” screen in appropriate locations. Trees shall be installed at a variety of sizes, ranging from 8 to 12 feet in height for conifers, and 1-1/2 to 3-1/2 inches in diameter for deciduous trees.
 - 2) Shield roadway, parking lot and building light fixtures to avoid spillover of light into the wetlands and associated buffers.
 - 3) Installation of vegetation in appropriate locations along the western edge of the parking areas to prevent light intrusion into the wetlands and associated buffers.
- C. Construction activity shall be restricted so as not to cause disturbance of or intrusion into the buffer of Wetland A, except in limited instances for the installation of stormwater discharge facilities such as lateral spreaders providing wetland recharge, buffer enhancement planting, trail construction, or other work as approved by the City.
- D. All trees to be cut shall be removed in a manner that the fall direction is away from the wetland and wetland buffer unless approved by the City as part of a mitigation or habitat improvement effort. No trees shall be removed from the wetland buffer without City approval and unless they are determined, by a qualified plant biologist or certified arborist, to be hazardous.
- E. Construction stockpiles and debris shall be placed outside the wetland buffer at locations approved by the City. Any wetland buffer destroyed or disturbed during construction shall be replaced and restored as each phase of construction is complete.

4. PLANTS

The vegetated portion of the site proposed for development is comprised primarily of a mixed coniferous-deciduous canopy, with the upland portions dominated by coniferous species and the wetland portions dominated by deciduous tree species. Development of the site will result in the removal of most of the upland coniferous forest. Vegetation removal has already occurred in conjunction with previous residential development (now demolished), the development of Lots 1 and 8, and the construction of a north/south sanitary sewer line constructed by the Silver Lake Water District in 1999 (the sewer line follows the proposed alignment of Main Street). Removal of the remaining upland forest will result in the loss of wildlife habitat, as well as subject the remaining

forest stand to stresses such as increased temperature, light, wind-throw and altered hydrology. Negative edge effects could reach into the remaining forest for a distance of 200 – 300 feet. (DEIS, Section 3.4.2, page 48; Technical Appendix VII, pages 18-19).

The following minimum measures are required to mitigate the impacts of the proposal on plants:

- A. Trees and landscaping along streets, around the perimeter of the site, adjacent to buildings, and within parking areas and public plazas, shall be installed in accordance with the Town Center Design Guidelines and Chapter 17.34, MCMC.

5. ANIMALS

Terrestrial Habitat: Removal of the existing upland coniferous forest will result in the loss of habitat for wildlife, including a reduction in the diversity of species and reduced populations of remaining species. Post-construction light, noise and glare may make the wetland forest habitat less suitable after the upland forest is cleared and if the wetland buffer exhibits degraded conditions.

Aquatic Habitat: Stormwater from the subject property will be released into wetlands associated with North Creek. North Creek provides habitat for the Puget Sound Chinook Salmon, which has been listed as a threatened species under the Endangered Species Act. Increased surface water runoff and high peak discharges, if unmitigated, may cause increased erosion, downstream flooding, reduced water quality, and destruction of fish habitat. To minimize impacts to downstream fish habitat, the project's stormwater system shall be designed per the requirements in Section 3 of this Determination.

The following minimum measures are required to mitigate the impacts of the proposal on animals:

- A. Remaining habitat (wetlands and their associated buffers) shall be enhanced using a variety of enhancement measures such as the use of native plants. A buffer enhancement plan will be reviewed and approved by the City prior to approval of the Master Development Plan and Binding Site Plan. The enhanced habitat shall be monitored for a period of five years from the date the City accepts the installation of the enhancement measures.
- B. Install interpretive signs in appropriate locations, along the western edge of the parking areas adjacent to the wetland buffer to provide educational information regarding the protection of the natural habitat. The design content and location of the signs shall be reviewed and approved by the City prior to their installation.

6. AESTHETICS

The proposed development is located in the Planned Community Business (PCB) zone district. As stated in Chapter 17.21, MCMC, the purpose of this zone district is to promote “pedestrian oriented mixed-use commercial, office, residential and public uses that conform to the design and layout of the approved Master Plan contained within the adopted Town Center Design Guidelines. To ensure that the proposed development meets the intent of the PCB zone district, the project shall be designed in accordance with the Town Center Design Guidelines, and shall be subject to review and approval by the City of Mill Creek Design Review Board.

7. TRANSPORTATION

The Town Center Phase III development is under the same traffic mitigation requirements as Phase I and Phase II, which were identified and approved in the final traffic study prepared by Transportation Planning and Engineering, Inc., dated January 20, 2000.

City of Mill Creek Traffic Mitigation: Payment of traffic mitigation fees to both the City and Snohomish County are required for this development. A traffic study shall be submitted to the City and County to verify the final land use and store composition of the development. The applicant shall pay the total amount of the traffic mitigation fees identified by the Public Works Director prior to issuance of any building permits.

Snohomish County: The Reciprocal Impact Mitigation Agreement between the City of Mill Creek and Snohomish County, dated December 18, 1991 (RIM Agreement), established policies and procedures for the review of development impacts on inter-jurisdictional transportation systems and the requirement to mitigate appropriate impacts in accordance with adopted road improvement programs. In accordance with the RIM Agreement, the applicant shall comply with specific measures identified by Snohomish County that are reasonably necessary to mitigate the project’s impacts on directly affected County roads in the surrounding area.

The application for a mixed retail/commercial development constitutes a development subject to SCC Title 26B. The development is located in Transportation Service Area D. SCC Title 26B requires review of a development’s impacts to road system capacity. Snohomish County has determined, based on adopted formulas, that commercial development mitigation fees for future road system capacity are \$148.00 per ADT.

Pedestrian Circulation: The City’s Comprehensive Plan and Town Center Design Guidelines identify the North Creek Trail as a major non-motorized transportation facility within the SR 527 Corridor. In addition to the sidewalk system, this trail provides an important link to various Town Center uses and adjacent neighborhoods.

To mitigate the projects impact on the circulation network, the project proponent is required to construct a pedestrian/bike trail in accordance with the North Creek Trail Standards and Town Center Design Guidelines. The trail shall be constructed on the west side of Main Street from its current terminus at the south end of Lot 8 of Phase I to the existing northern terminus located on lot 7 of Mill Creek Plaza.

8. PUBLIC SERVICE – FIRE SERVICE

The City of Mill Creek and Snohomish County Fire District No. 7 have executed an Interlocal Agreement for mitigation of development impacts on fire facilities/services. Mitigation fees are determined by the anticipated impact a development will have on Fire District facilities. Based on the provisions of this Interlocal Agreement, the mitigation required is \$365.00 per equivalent development unit (EDU), which is 2,400 square feet of structure. Payment of the mitigation fee to the Fire District is required prior to the issuance of each building permit.

9. PUBLIC SERVICE - EVERETT SCHOOL DISTRICT:

The City of Mill Creek and the Everett School District have executed an Interlocal Agreement for mitigation of development impacts on district facilities. Approval of the project will have an impact on the Everett School District facilities. The Everett School District has determined that a contribution of \$7,133.68 is required to mitigate impacts to District facilities. This mitigation amount is based upon total number of multi-family units multiplied by the Student Generation Rate, as calculated below: The total amount shall be paid prior to the issuance of the permit for Building R.

30 units (1 bedroom multi-family) x .006 students x \$3,179 =	\$572.22
16 units (2 bedroom multi-family) x .129 students x \$3,179 =	<u>\$6,561.46</u>
TOTAL	\$7,133.68

7.0 Conditions Arising from Non-City Agencies with Jurisdiction

7.1 Authority. The City utilizes its Technical Review Committee pursuant to MCMC Section 14.05.050 to evaluate land use development applications and incorporate responses from other agencies with jurisdiction. Agency comments that are relevant to SEPA impacts and attendant mitigation measures are included in Section 6.0 above. Comments and conditions arising from non-City agencies with jurisdiction are set forth below.

7.2 Snohomish County. To mitigate impacts of the project on the Snohomish County transportation system, the Developer shall contribute \$148.00 per ADT, based on the Supplemental Traffic Study submitted with each building permit, in the approximate amount of \$151,271. Proportional payment of this traffic mitigation to Snohomish County shall be made prior to the issuance of each building permit needed for the Project.

7.3 Transit. Bus stops will be provided on Main Street in the general location of Buildings P and M, in both directions, consistent with Community Transit design standards for transit access and as stated in the January 14, 2004 correspondence from Brent Russell, System Planner for Community Transit to Bill Trimm, City of Mill Creek Community Development Director.

7.4 Silver Lake Sewer and Water District. Sewer and water connections shall be made in accordance with plans approved by the Silver Lake Sewer and Water District.

7.5 Washington State Department of Fish and Wildlife. If required by state statute or regulation, the Developer shall obtain a Hydraulic Project Approval ("HPA") prior to any site work requiring such approval.

7.6 Fire District No. 7. Fire hydrant design, location and spacing shall be reviewed and approved by Fire District No. 7 and the Silver Lake Sewer and Water District prior to issuance of building permits. All building addresses shall be clearly visible on building frontages to fire and emergency vehicles.

8.0 Town Center Design Guidelines

8.1 Description. The Town Center Design Guidelines shall control the design of building sites, streets, sidewalks, plazas, public areas, landscaping, architectural character of buildings, exterior building walls, roofs, building materials, general colors, service areas, lighting, signage, parking and other urban design features.

8.2 Application to Project. The Town Center Design Guidelines will be administered by City staff and used by the City's Design Review Board to evaluate various building and site development features proposed for the Project, including development of individual lots. The Town Center Design Guidelines shall be applied to the Project as development regulations within the meaning of RCW 36.70A.030 and the uses described in MCMC Section 17.21.040.

8.3 Conditions and Requirements. The Town Center Design Guidelines shall be used to evaluate the development features of the Binding Site Plan and to condition BS 04-55 and subsequent building (and other) permits and related site plans proposed for each lot. In addition, the parties agree that certain site features require special treatment beyond those listed in the Town Center Design Guidelines. These site features are listed below, together with the special conditions that apply to them.

8.3.1 Ground Floor Retail Use Requirement. All proposed buildings that front on Main Street shall devote a minimum of 75 percent of its retail frontage to ground-floor, pedestrian-oriented uses, as defined in the Town Center Design Guidelines.

8.3.2 Because of the length of Buildings K, M, N, P and R being equal to or greater than 100 feet in length, the Building Articulation section of the Design Guidelines shall be

expressly used in the design, review and approval process of the architectural character of the buildings.

8.3.3 The southern end of the two story portion of Building M shall be rotated to the west to align with Main Street in order to provide a minimum of 16 feet between the southeast corner of the building and the curb on Main Street.

8.3.4 Project Lighting. A lighting plan and photometric plan for Phase III of the Project shall be submitted for review and approval by the City. The photometric plan shall include minimum and maximum illumination levels and uniformity ratios. Lighting shall be designed to eliminate glare and minimize any spillover of light into adjoining wetlands and buffers, as well into adjoining developments. The light pole height and luminaire color shall conform to the Town Center Design Guidelines. Metal halide lights shall be used for building exteriors, parking areas, pedestrian courts, and Main Street. The luminaires in the existing Main Street lights shall be replaced with metal halide fixtures. Decorative light pole bases (Cyclone Model BD 55) shall be installed on existing light poles on Main Street.

8.3.5 Project Landscaping. The Developer shall submit, for City approval, a landscape plan consistent with the Town Center Design Guidelines and MCMC Chapter 17.34. Such plan shall include the entire Project Site including parking areas, primary and secondary streets, and the North Creek buffer and trail. The landscape plan shall be prepared by a licensed landscape architect and shall be reviewed and approved by the Design Review Board prior to issuance of individual building permits. The landscape plan shall be implemented commensurate with Project construction. Street trees shall include root barriers and tree wells/grates that have a minimum dimension of 4 feet x 4 feet. Irrigation shall be provided in all landscape areas.

8.3.6 Landscape Performance and Maintenance Bonds. Performance and maintenance bonds shall be required for all landscaping as provided by City code, except as modified below. The amount of the performance bond for landscaping shall be one hundred twenty-five percent (125%) of the cost of installation, including plant materials, irrigation, and labor for Phase III of the Project. Upon acceptance of the landscaping and irrigation system for each phase of the Project by the City, and posting of the maintenance bond, the performance bond shall be released. A two-year maintenance bond, equaling twenty percent (20%) of the amount of the performance bond, shall be posted prior to or at the time of the City's acceptance of the landscaping and irrigation system.

8.3.7 Project Identification. A monument site entry marker, consistent with the Town Center Design Guidelines, shall be provided in the proximity of the southern Main Street entrance to the Property. The sign shall require review and approval by the Design Review Board. The monument sign at the south Main Street entry shall be designed to ensure that the entrance to the Town Center is visible to northbound trips off of Mill Creek Boulevard onto Main Street.

8.3.8 Sidewalks. The Developer shall coordinate with the City to provide a transition of sidewalk widths between Town Center and the City's Main Street Connection Project.

9.0 Non-SEPA Transportation Improvements and Mitigation

9.1 Public Works Department Conditions. Prior to issuance of any building permit for the Project, unless other timing is indicated, the Developer shall complete the following, or shall provide a secured agreement satisfactory to the City Attorney and City Engineer for the following:

9.1.1 Right-of-Way Improvements. Complete the following prior to issuance of any Certificate of Occupancy for the Project:

a) Sidewalks, Pedestrian Plazas and Lighting. Concrete sidewalks and pedestrian plazas shall be installed along and adjacent to the Project frontage on Main Street, 153rd Street and as illustrated on the approved Master Site Plan. Pedestrian crossings shall be clearly indicated through use of varied pavement textures, raised crossings, or other construction techniques as approved by the Director of Public Works. Adequate street and pedestrian lighting shall be installed along Main Street and all pedestrian areas as required by the City and PUD. The street and pedestrian lights (pole and luminaire head) shall be consistent with the type used within Phase 1 of the Town Center. Lighting calculations and plans shall be submitted for review by the City Engineer prior to construction. The applicant shall be responsible for the first year of operational costs for the street lights, and shall pay these costs to the City prior to energizing the street lights.

b) Interior Streets

1) The applicant shall construct or reconstruct the full-width of Main Street and 153rd Street SE as necessary for the planned development. This work shall consist of all items within the ultimate Main Street and 153rd Street SE right-of-ways, including, but not limited to the following elements and conditions:

i) Paving, signage, storm drainage facilities, vertical curb and gutter, on-street parking facilities, concrete crosswalks, sidewalks, lighting and landscaping.

ii) All facilities constructed along the Project frontage shall be in compliance with the adopted and amended Mill Creek Town Center Design Guidelines.

iii) The interior drive aisles shall be designed for emergency vehicle access, to ensure good traffic circulation and to maximize driver safety. The configuration of the interior drive aisles and associated channelization

shall be approved by the Directors of Public Works and Community Development and Fire District 7.

9.1.2 Trail. The Developer shall design and construct a trail system adjacent to the North Creek wetlands as indicated on the approved Master and/or Binding Site Plan and Town Center Design Guidelines. The trail system shall be constructed from its current terminus at the south end of Lot 8 of Phase I to the existing northern terminus located on lot 7 of Mill Creek Plaza and shall be field located by the City. Construction of the North Creek Trail shall be consistent with the North Creek Trail Design Standards except where modified by the Director of Community Development pursuant to the MDNS or the Town Center Design Guidelines. The North Creek Trail Design Standards shall apply to pedestrian furnishings, buffer fencing, signs and lighting. A public access easement shall be granted for public use of the trail system to the satisfaction of the City Attorney. The trail shall be completed prior to the issuance of the first Certificate of Occupancy for any building in the Project. Where the trail enters the Town Center site on the north side of Building P, it shall be a minimum width of 10 feet exclusive of vehicle overhang areas and shall incorporate pedestrian-oriented features.

9.1.3 Traffic Mitigation. A supplemental traffic study shall be submitted to the City to verify the final land use and store or tenant composition of the Project. The applicant shall pay the total amount of the traffic mitigation fees identified by the Public Works Director prior to issuance of each individual building permit.

- a) The applicant shall contribute to the City's transportation mitigation program based on the preliminary traffic distribution outlined in Exhibit C.
- b) Traffic mitigation fees shall be paid proportionately with each individual building permit. A supplemental traffic study shall be submitted with each building permit to verify the trip generation rate for the final building occupants and land use.
- c) In accordance with the RIM Agreement, the applicant shall comply with specific measures identified by Snohomish County that are reasonably necessary to mitigate the Project's impacts on directly affected County roads in the surrounding area. Traffic mitigation fees shall be paid to Snohomish County prior to issuance of any building permits.

10.0 Parking

10.1 Unified Parking Plan. The mixed-use nature of the Town Center is designed to encourage pedestrian activity and discourage internal vehicle trips. Through the application of shared parking among tenants, the Unified Parking Plan is intended to ensure that adequate parking is provided for customers and employees of the Town Center while decreasing large expanses of surface parking area.

10.1.1 On-Street Parking. On-street parking stalls shall be for customer parking only. On-street stalls may be allocated to the adjacent building/use for purposes of meeting the required parking ratio set by this Section 10.1.

10.1.2 Employee Parking. Employee parking shall be limited to the peripheral stalls of parking lots behind buildings, leaving the most convenient stalls for customer parking.

10.1.3 Minimum Required Parking. Each Town Center lot shall be developed with sufficient parking to meet the following minimum parking ratios for each use developed on the lot, unless a shared parking zone is established pursuant to Section 10.1.4 below:

<u>Use</u>	<u>Stalls Per Bldg. Sq. Ft. or Unit</u>
Retail	4.0 / 1,000 sq. ft.
Office	3.5 / 1,000 sq. ft.
Restaurant	9.0 / 1,000 sq. ft.
Residential	1.5/ unit

10.1.4 Shared Parking Zones. Shared parking zones may be created to maximize parking availability among uses whose peak parking periods offset each other and to establish the minimum number of stalls for each parking zone ("Shared Parking Zone"). Parking ratios within Shared Parking Zones shall be based on the Urban Land Institute Shared Parking Guidelines. As development proceeds, shared parking zones will be created pursuant to Section 10.1.5 below.

10.1.5 Shared Parking Agreements. If the owner of a Town Center lot desires to provide fewer parking stalls for that lot than are required by Section 10.1.3, or if an owner desires to obtain the right to use parking stalls on other Town Center lots to meet that owner's parking requirements, the first lot owner shall enter into a Shared Parking Agreement with the owner of one or more other Town Center lots to provide such parking stalls; provided that all lots benefited and burdened by a Shared Parking Agreement shall collectively contain sufficient parking stalls to meet the minimum parking ratio requirement established by Section 10.1.3; and provided further that all such Shared Parking Agreements shall be approved by the Director and the City Attorney in advance of their effective date, and shall be recorded by the first lot owner.

10.2 Transportation Demand Management (TDM). The Developer shall coordinate with Community Transit and provide a centrally located in-lane transit stop on Main Street as TDM measure in the Project. Additional TDM measures include, but are not limited to, preferential parking for car pools and van pools, bicycle racks, informational kiosks and an on-site transportation coordinator to promote a ride-match program. These additional measures shall be addressed and implemented through the Town Center Business Association Operational Agreement.

11.0 Use of Open Space; Operational Agreement; Conditions, Covenants and Restrictions

11.1 Open Space. A central feature of the Town Center Plan is providing open spaces and public spaces for use by the public and the City, both on a daily basis and on a special event or special occasion basis. The parties acknowledge that there are three types of open space within the Project: (1) *public open spaces* (consisting of dedicated street rights-of-way and portions of sidewalks), (2) *private open spaces* (consisting of plazas, trails, buffers, the wetlands, and portions of sidewalks), and (3) *protected open spaces* (consisting of designated wetlands and the wetland buffers, but excluding the North Creek Trail itself). Both the public and private open spaces are intended for general use by the public-at-large. The protected open spaces (excluding the North Trail itself) are not intended for general public access and may be used only in conformance with City regulations and other applicable restrictions. In addition, however, the parties recognize that the Town Center merchants may desire to conduct certain sales and promotional events on or in the private open spaces, and that the City desires to conduct periodic community-wide events using all or portions of the dedicated public spaces and open spaces. By way of example only, such community events could include holidays, parades, public activities, presentations, or any other reason deemed desirable or necessary by the City.

11.2 City Authority Over Open Spaces. Nothing in this Development Agreement or the Operational Agreement shall limit, in any respect, the City's authority to control, regulate or take any other action in, on or upon the public open spaces. In addition, the City shall have the authority at the City's sole discretion, but not the obligation, to regulate access to, conduct, behavior and other actions occurring within any open space areas designated on the Binding Site Plan.

11.3 Pedestrian Access Easements. Except for designated wetlands and buffers, a public pedestrian access easement allowing public access shall be granted over all private open spaces, including without limitation, sidewalks, pedestrian paths, trails and plazas, sidewalks along Main Street, and the North Creek Trail. All such public access easements shall be described and shown on the face of the Binding Site Plan.

11.4 Operational Agreement. The Developer shall adopt and become a party to the Operational Agreement applicable to Town Center Phases I and II to coordinate the use, activities, events and maintenance of the public and private open spaces within the Town Center. The Operational Agreement is attached and incorporated into this Development Agreement as Exhibit B.

11.5 Conditions, Covenants and Restrictions. The Developer shall adopt CC&Rs for Phases II and III that are substantially equivalent to the CC&R's adopted for Phase I under recording number 200211060454.

12.0 Construction

12.1 General. Upon the City's approval of specific site development plans based on the Master Development Plan, the Developer shall timely proceed with site construction and improvements.

12.2 City Inspection. The Developer shall pay fees to the City for plan review and construction inspection in accordance with MCMC Chapter 3.42.

12.3 Clearing and Grading. Clearing and grading for the Project shall be restricted solely to those areas identified on the final approved clearing and grading plans. The approved limits of clearing shall be included on the approved construction drawings. No other clearing of any nature shall be allowed without the express prior written approval of the City. Site grading at the south end of the Project shall minimize impacts to the adjoining property.

12.4 Tree Protection. The three large Douglas Fir trees located south of Building R shall be retained as site amenities and protected during construction through installation of barrier fencing at the drip lines of the trees. Because of the significance size and age of these trees, the penalty specified in the following subsection shall be assessed in the amount of \$7,500.00 per tree.

12.4.1 Tree Replacement. Trees designated for preservation that are injured, damaged or removed during construction shall be replaced at a ratio of 3:1. The replacement trees shall be a coniferous (preferably native) species and have a minimum height at planting of 12 feet. In addition, a penalty of \$5,000.00 per tree may be assessed for any trees that are damaged, removed or destroyed by the Developer without the express prior written approval of the City. The City may, at its discretion, issue a stop work order for the Project until the penalty is paid.

12.5 Construction Noise. Construction hours and noise limitations shall be in compliance with City regulations unless otherwise approved in writing by the City Engineer.

13.0 Environmentally Critical Areas

13.1 Buffer Enhancement Plan. The Developer shall enhance the buffer for Wetland A, to mitigate impacts resulting from the construction of the Project. Enhancement shall be performed in accordance with the approved Buffer Enhancement Plan for Wetland A, dated October 2, 2003 and revised November 29, 2004. Plant materials shall be field located and amended as necessary to

accommodate on-site conditions and to satisfy the mitigation measures outlined in the MDNS at Sections 4 and 5 above.

13.2 Maintenance and Performance Bonds. The Developer shall enter into an agreement for implementation of the plans identified in this Section 13. Said agreement shall be secured by a performance bond for a period of five years in the amount of one hundred twenty-five percent (125%) of the cost of all labor and materials needed to implement the plans. Upon acceptance of the wetland mitigation and buffer enhancement work by the City, the performance bond shall be released. A five-year maintenance bond, equaling twenty percent (20%) of the amount of the performance bond, shall be posted prior to or at the time of the City's acceptance of the wetland mitigation and buffer enhancement work. In addition, the Developer shall provide an agreement satisfactory to the City Attorney that will ensure compliance with the monitoring and maintenance schedule contained within the final wetland mitigation and buffer enhancement plans.

13.3 Protection of Wetlands. The Developer shall place North Creek and its associated wetlands located on the Property in a separate tract and preserve such area through a permanent protective mechanism approved by the City Attorney. The location and use limitations associated with the wetlands and buffers shall be shown on the face of the Binding Site Plan, and the permanent protective mechanism shall be recorded with the Snohomish County Auditor's Office at the Developer's expense.

13.4 ESA Biological Assessment. The Developer is encouraged to prepare a Biological Assessment under the Endangered Species Act ("ESA") and submit a copy of that report to the City. The City acknowledges that the Developer has, up to the execution date of this Development Agreement, complied with all of the City's existing and applicable environmental regulations, notwithstanding that all conditions required under the MDNS are not yet completed. The Developer acknowledges that future compliance with the ESA, if required, is not addressed by this Development Agreement, but compliance shall not be inconsistent with the rights afforded by RCW 36.70B.180 et seq.

14.0 Binding Site Plan

14.1 Preparation. The Binding Site Plan shall be prepared by the Developer in conformance with MCMC Chapter 16.12.

14.2 Notice of Conditions. All utility, stormwater, drainage, maintenance, and landscaping buffers/easements, together with all attendant restrictions and conditions required by the City, shall be portrayed on the face of the Binding Site Plan or recorded on a separate page along with the Binding Site Plan.

14.3 Updating of Binding Site Plan. The recorded Binding Site Plan shall be updated as each lot is developed to reflect the conditions of such new development. The updated Binding Site Plan shall be prepared by the Developer of each lot and submitted to the City for review and

approval at the time of the City's acceptance of as-built drawings for each developed lot. Upon approval by the City, the updated Binding Site Plan shall be recorded with the Snohomish County Auditor's Office at the Developer's expense.

15.0 Phasing of Project

15.1 Phasing. The Project shall be developed in phases to expedite site preparation and ensure a strong pedestrian presence with the completion of initial buildings and uses. To meet this goal, two phasing standards are required for initial construction of the Project:

15.1.1 Infrastructure Phase. The infrastructure phase of construction shall include the following: clearing and grading; installation of utilities; sidewalks; stormwater detention facilities; buffer enhancement; North Creek Trail construction, rough grades for all building pads; and pole bases and metal halide luminaire heads for the streetlights along Main Street.

15.1.2 Building Phase I. The first phase of building construction shall include construction of a combination of structures, uses and tenants sufficient to stimulate pedestrian activity. Such combination shall implement the required tenant mix specified in the purchase and sale agreement between Wakefield Pacific Inc. dated December 17, 2003. The Developer shall use its best efforts to construct the following buildings depicted on the Master Site Plan in the first phase of development.

Retail Buildings:	Buildings J, K, and L
Residential:	Building R
Parking Garage:	Building Q

15.2 Subsequent Phases. Subsequent phases of construction shall be as agreed upon by the City and Developer.

16.0 Bonding; Security

16.1 Bond Required; Approval. Performance bonds, payment bonds, and maintenance bonds shall be required, managed, and released as set forth in the MCMC unless otherwise specified in this Development Agreement. All bonding documents shall be approved by the City Attorney.

16.2 Public Improvements and Wetlands Bonds. Public improvements and wetlands performance bonds shall be submitted to the City prior to beginning construction.

16.3 Waiver and Release. No bond shall be released without the prior written consent of the City and completion of the work for which the bond was submitted. No performance or payment bond shall be released before any required maintenance bond has been submitted.

17.0 Transfer of Property by Developer

17.1 Authority to Transfer. The Developer's right to sell, transfer, mortgage, hypothecate, convey or take any other similar action regarding the title to or financing for the Property shall not be infringed by this Agreement, provided however that any such transfer, sale, etc. shall be expressly subject to the terms and conditions, rights and obligations of this Development Agreement, BS 03-54, and the Master Development Plan. In any proposed transfer, the Developer (and any subsequent transferor) shall give actual notice to the transferee of all such documents.

17.2 Obligations of Successors. The Master Development Plan, Development Agreement, and BS 04-55 shall be binding on all subsequent purchasers, lessees or lessors, and transferors of every nature.

18.0 Binding Nature; Modification; Vested Rights

18.1 Binding Nature. Once executed by the parties, this Development Agreement shall be binding on the Developer, its successors and assigns, and on the City, its successors and assigns, through December 31, 2017.

18.2 Modification of Agreement. Until January 1, 2018, this Development Agreement may be modified only with the mutual agreement of the Mill Creek City Council and the Developer; provided that this shall not restrict the City's exercise of its police power under the Washington Constitution except as may be limited by RCW 36.70B.180 et seq. and provided further that mutual agreement shall be required to change the Operational Agreement. Thereafter, this Development Agreement shall be subject to the City's then applicable development regulations.

18.3 Vested Rights. Until January 1, 2018, the Developer shall have the right to develop the Property in accordance with the Master Development Plan and the City's ordinances and regulations in effect on the date of this Development Agreement, and the Developer shall be considered to be vested as to such Master Development Plan, ordinances and regulations under the current property rights vesting laws of the state of Washington, including but not limited to RCW 36.70B.180 et seq.

19.0 Enforcement Authority

19.1 This Development Agreement may be enforced against the Developer, its successors and assigns. Nothing in this Development Agreement shall alter or change the City's enforcement authority under the City code or state law.

20.0 Dispute Resolution

20.1 In the event of a dispute between the parties about the application or interpretation of this Development Agreement, the Developer may appeal to the department head with jurisdiction, whose decision shall be accorded substantial weight and deference. The Developer may thereafter appeal to the City Manager, whose decision shall be the City's final decision unless the parties agree to submit the dispute to mediation within ten days of the City Manager's decision. Appeals of the City's decision shall otherwise be taken to the Superior Court for Snohomish County.

21.0 Authority to Approve Agreement

21.1 By Developer. By executing this Development Agreement, the Developer represents and warrants that it has taken all necessary steps under its corporate authorities to authorize such act, and that its execution of this Development Agreement is valid and binding for all purposes.

21.2 By City. By executing this Development Agreement, the City represents and warrants that it has taken all necessary steps under its corporate authorities to authorize such act, and that its execution of this Development Agreement is valid and binding for all purposes, subject only to subsequent appeals filed in accordance with RCW 36.70B.200.

22.0 General Terms

22.1 Integration. The Master Development Plan and its component parts constitute the entire agreement between the parties, and no prior oral or written agreement shall be valid.

22.2 Venue. Venue for all disputes arising under or connected with the Master Development Plan and its component parts shall be in the Superior Court for Snohomish County. This Development Agreement shall be governed and interpreted in accordance with Washington law.

22.3 No Waiver of Police Power or Condemnation Authority. The City does not waive its police power or condemnation authority by entering into this Development Agreement, except as may be limited by RCW 36.70B.180 et seq.

22.4 Covenant Running with Land. This Development Agreement and its component parts shall be covenants running with the land and/or equitable servitudes, and shall be binding on the parties and their successors and assigns, and on all subsequent purchasers, lessees or lessors, and transferors of every nature as set forth herein.

22.5 Developer's Responsibility. Any act or omission required of or permitted by the Developer hereunder may be taken by the Developer or by its agents, contractors or employees; provided that the Developer shall not thereby be relieved of its responsibility or liability to the City under this Development Agreement.

22.6 Attorneys Fees. In any action arising under or related to this Development Agreement, the prevailing party shall be entitled to be paid its reasonable attorneys fees, expenses and costs by the nonprevailing party, whether in mediation or arbitration, at trial or on appeal, or in any bankruptcy proceeding.

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

City of Mill Creek:

Mill Creek Commercial, LLC, a limited liability company:

Robert S. Stowe, City Manager

By: _____
Its: _____

ATTEST:

Kelly M. Hennesey, City Clerk

APPROVED AS TO FORM:
Short Cressman & Burgess PLLC

APPROVED AS TO FORM:

Scott M. Missall, City Attorney

Attorney for Mill Creek Commercial, LLC

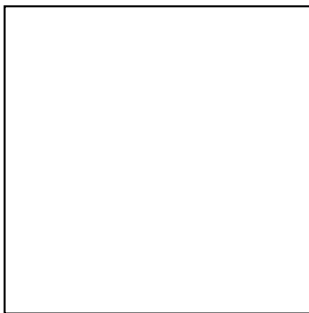
Exhibits to Agreement:

- Exhibit A: Legal Description of the Property
- Exhibit B: Operational Agreement
- Exhibit C: Master Development Plan Staff Report

STATE OF _____)
)
COUNTY OF _____) ss:

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and s/he acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as the 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: _____, 2005.



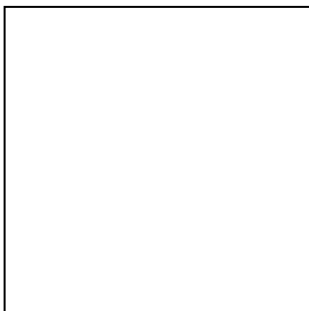
Print Name: _____
NOTARY PUBLIC in and for the state of
Washington, residing at:

My Appointment Expires: _____

STATE OF _____)
)
COUNTY OF _____) ss:

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

DATED: _____, 2005.



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

My Appointment Expires: _____

After recording return to:

Scott M. Missall
Short Cressman & Burgess PLLC
999 Third Avenue, Suite 3000
Seattle, Washington 98104-4088

Document Title(s)	City of Mill Creek Development Agreement for Town Center, Phase III
Reference Number(s) of related documents	BS 04-55 and ZTA 04-16
Grantor(s)	Mill Creek Commercial, LLC
Grantees(s)	City of Mill Creek
Legal Description	NW Section 6, Township 27N, Range 5E, for complete legal description see Exhibit A.
Assessor's Property Tax Parcel/Account Number	2705 060020 2700; 2705 060020 0800; 2705 060020 0900; 2705 060020 1000; 2705 0600300 0100