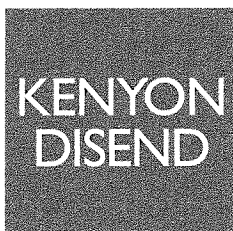


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Doug F. Mosich
Of Counsel

Shelley M. Kerslake
1967 - 2014

MEMORANDUM

TO: Planning Commission

CC: Mayor Jeff Johnson
Phillip Hill, City Administrator
Steve Bennett, Planning Director

FROM: Kim Adams Pratt and Andrew D. Tsoming *KAP*

DATE: October 8, 2019

RE: Development Agreements

The purpose of this memo is to provide a brief overview of development agreements, authorized by RCW 36.70B.170 -.210.

Development agreements are voluntary agreements between a city and a person having ownership or control of real property within its jurisdiction.¹ Cities may also enter into a development agreement for property that lies outside its legal boundaries as a part of a proposed annexation agreement or a utility service agreement.²

Development agreements must include “development standards” and “other provisions that shall apply to, govern, and vest the development, use, and mitigation of the development of the property for the duration of the agreement.”³ “Development standards” can include, but are not limited to the following:

- (a) Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes;

¹ RCW 36.70B.170(1).

² Id.

³ Id.

- (b) The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;
- (c) Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW;
- (d) Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;
- (e) Affordable housing;
- (f) Parks and open space preservation;
- (g) Phasing;
- (h) Review procedures and standards for implementing decisions;
- (i) A build-out or vesting period for applicable standards; and
- (j) Any other appropriate development requirement or procedure.

RCW 36.70B.170(3).

Development agreements also have specific limitations. First, development agreements cannot affect the validity of “a contract rezone, concomitant agreement, annexation agreement, or other agreement in existence on July 23, 1995, or adopted under separate authority.”⁴ Second, development agreements must be consistent with the development regulations adopted by a city.⁵ Finally, development agreements by themselves do not authorize cities to impose impact fees, inspection fees, or dedications or to require any other financial contributions or mitigation measures except as otherwise authorized by applicable state law.⁶

Before a city enters into a development agreement, a city must conduct a public hearing on the agreement. The public hearing may be held by the legislative body, a planning commission, hearing examiner, or other body designated by the legislative body to conduct the hearing.⁷ After a public hearing is held, a city may elect to enter into the agreement by passing a resolution or ordinance.⁸ The development agreements must then be recorded with the county Recorder’s Office.⁹

⁴ RCW 36.70B.170(2).

⁵ RCW 36.70B.170(1).

⁶ RCW 36.70B.210.

⁷ RCW 36.70B.200.

⁸ Id.

⁹ RCW 36.70B.190.

After a city enters into a development agreement, the agreement is enforceable by either party to the agreement, unless it is amended or terminated.¹⁰ They are binding on the parties and their successors, including a city that assumes jurisdiction through incorporation or annexation of the area covering the property.¹¹ The agreement's "development standards" apply throughout the term of the agreement (or for all or that part of the build-out period specified in the agreement). Development agreements are also not subject to new, or amendments to, zoning ordinances, development standards, or regulations adopted after the effective date of the agreement.¹² All permits or approvals after execution of these agreements must also be consistent with the agreement.¹³

Attached for your review are sample development agreement code provisions and a sample development agreement. Please let us know if you have any additional questions we can answer.

¹⁰ RCW 36.70B.180.

¹¹ Id.

¹² Id.

¹³ Id.

Chapter 17.38 AMENDMENTS AND DEVELOPMENT AGREEMENTS

Sections:

17.38.010 City council authority.

17.38.020 Initiation of amendments.

17.38.030 Rezones.

17.38.040 Contract rezone authorized.

17.38.050 Development agreement authorized.

17.38.060 Enforcement.

Legislative history: Ord. 97-406.

17.38.010 City council authority.

The city council may, after review by the planning commission, amend, supplement, or change any of the provisions, zone district boundaries, or zone district classifications in MCMC Titles [14](#) through [18](#). Such changes shall be consistent with and serve to implement the city of Mill Creek comprehensive plan. (Ord. 2005-609 § 2)

17.38.020 Initiation of amendments.

A. Initiation. Amendments to MCMC Titles [14](#) through [18](#) may be initiated by the city council, the planning commission or city staff.

B. Required Findings. Text amendments to the provisions of this code may be made if the following findings are made:

1. The amendment is consistent with the purposes of the comprehensive plan.
2. The amendment is consistent with the purposes of this title.

C. Review Process. Text amendments shall be reviewed and processed in accordance with MCMC Title [14](#), Development Code Administration. (Ord. 2005-609 § 2)

17.38.030 Rezones.

- A. Initiation. Amendments to zone district boundaries or classifications may be initiated by the city council, planning commission, city staff or petition of owners of 51 percent of the area of the properties to be rezoned. Said amendments to zone district boundaries shall be consistent with the land use map in the city of Mill Creek comprehensive plan or shall be processed in conjunction with an amendment to the comprehensive plan land use map.
- B. Required Findings. Amendments to zone district boundaries or classifications may be made if all the following findings are made:
1. The amendment is consistent with the comprehensive plan.
 2. The amendment is consistent with the purposes of this title.
 3. The amendment is consistent and compatible with the uses and zoning of the surrounding property.
 4. There have been significant changes in the circumstances of the property to be rezoned or surrounding properties to warrant a change in boundaries or classification.
- C. Official Map Amendments. All amendments to the official zoning map shall be consistent with the adopted comprehensive plan.
1. Proposed amendments to the official zoning map that are consistent with the comprehensive plan shall be reviewed by the planning commission and city council in accordance with the provisions of MCMC Title 14.
 2. Proposed amendments to the official zoning map that are inconsistent with the comprehensive plan require a comprehensive plan amendment to be reviewed and approved by the planning commission and the city council prior to the approval of a rezone.
- D. Burden of Proof. The applicant shall demonstrate that the proposed rezone satisfies the conditions of the required findings in this section.
- E. Review Process. Rezones and official map amendments shall be reviewed and processed in accordance with MCMC Title 14, Development Code Administration. (Ord. 2005-609 § 2)
- 17.38.040 Contract rezone authorized.**
An applicant may propose conditions on the use and development of the property to be rezoned in order to mitigate otherwise unacceptable adverse effects of the proposed action. If acceptable to the city, these conditions may be incorporated into a contract between the city and the property owner and adopted as a necessary requirement of the rezone. (Ord. 2005-609 § 2)
- 17.38.050 Development agreement authorized.**
The city may enter into a development agreement as authorized by RCW 36.70B.170 et seq. upon terms satisfactory to the city. (Ord. 2005-609 § 2)
- 17.38.060 Enforcement.**
Contract rezones and development agreements shall be enforced as permitted by law without limiting the foregoing or the city's police power. The parties to a contract rezone or a development agreement may agree to additional or supplemental enforcement provisions. (Ord. 2005-609

The Mill Creek Municipal Code is current through Ordinance 2018-843, passed December 11, 2018.

Disclaimer: The City Clerk's Office has the official version of the Mill Creek Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: <http://www.cityofmillcreek.com/>

City Telephone: (425) 921-5732

[Code Publishing Company](#).

Chapter 18.27 DEVELOPMENT AGREEMENTS

Sections:

- 18.27.010 Development agreement – Authorized.
- 18.27.020 Development agreement – Purpose.
- 18.27.025 Development agreement – Review process and fees.
- 18.27.030 Development agreement – Application requirements.
- 18.27.040 Development standards, flexibility.
- 18.27.050 Exercise of city police power and contract authority.
- 18.27.060 Form.
- 18.27.070 Conditions of approval.

18.27.010 Development agreement – Authorized.

The city may enter into a development agreement with a person having ownership or control of real property within its jurisdiction. The city may enter into a development agreement for real property outside its boundaries as part of a proposed annexation or a service agreement. A development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. (Ord. 1256 § 1 (part), 2006).

18.27.020 Development agreement – Purpose.

A. The purpose of this development agreement chapter is to implement RCW 36.70B.170 which authorizes the city to enter into "development agreements" with persons having ownership or control of real property. In adopting such statute, the city council concurs with the Washington State legislative findings as follows:

The lack of certainty in the approval of development projects can result in a waste of public and private resources, escalate housing costs for consumers and discourage the commitment to comprehensive planning which would make maximum efficient use of resources at the least economic cost to the public. Assurance to a development project applicant that upon government approval the project may proceed in accordance with existing policies and regulations, and subject to conditions of approval, all as set forth in a development agreement, will strengthen the public planning process, encourage private participation and comprehensive planning, and reduce the economic costs of development. Further, the lack of public facilities and services is a serious impediment to development of new housing and commercial uses. Project applicants and local governments may include provisions and agreements whereby applicants are reimbursed over time for financing public facilities. It is the intent of the Legislature by RCW 36.70B.170 through 36.70B.210 to allow local governments and owners and developers of real property to enter into development agreements;

B. Additionally, the city council found that development agreements may be appropriate in certain circumstances as a means to consolidate numerous issues involved in complex development projects into a single controlling instrument, benefiting the city, its citizens, and members of the regulated public; and

C. The city council found that the use of development agreements may further the objective of the comprehensive plan and development regulations adopted pursuant to the comprehensive plan. (Ord. 1256 § 1 (part), 2006).

18.27.025 Development agreement – Review process and fees.

A. A duly noticed public hearing pursuant to RCW 36.70B.200 and recommendation on the development agreement shall be made to the city council by the planning commission. The development agreement shall be subject to review and approval by the city council based on the record of the planning commission hearing. The decision of the city council to approve or reject a request for a development agreement shall be a discretionary, legislative act.

B. Fees for a development agreement review shall be as established by city schedule and collected at the time of the development agreement application. (Ord. 1256 § 1 (part), 2006).

18.27.030 Development agreement – Application requirements.

Applicants for a development agreement shall meet first with the technical review committee of the city to review the codes and policies applicable to the proposed application. Applications for development agreements shall include, but are not limited to, the following:

- A. Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes;
- B. The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, application fees, administrative charges, inspection fees, drafting fees, or dedications;
- C. Concurrent provisions of water, sewer, transportation facilities, and storm drainage under Chapter 20.12 NBMC, along with mitigation measures, development conditions, and other requirements under Chapter 14.04 NBMC, protection of critical areas under Chapters 14.05 through 14.12 NBMC, and stormwater management under Chapter 14.16 NBMC;
- D. Design standards such as maximum heights, setbacks, drainage and water quality requirements, building architectural elements, lighting, landscaping, parking, and other development features in this title;
- E. Affordable housing;
- F. Parks and open space preservation;
- G. Phasing;
- H. Review procedures and standards for implementing decisions;
- I. A build-out or vesting period for applicable standards;
- J. A written analysis of consistency with the comprehensive plan; and
- K. Any other development agreement application requirement or procedure deemed appropriate by the city council. (Ord. 1256 § 1 (part), 2006).

18.27.040 Development standards, flexibility.

A development agreement shall be consistent with applicable development regulations to the fullest extent possible; provided, a development agreement may allow development standards different from those otherwise imposed under the North Bend Municipal Code in order to provide flexibility to achieve public benefits, respond to changing community needs, or encourage modifications that provide the functional equivalent or adequately achieve the purposes of otherwise applicable city standards. Any development standards approved pursuant to a development agreement that differ from those in this code shall not require any further zoning reclassification, variance from city standards or other city approval

apart from development agreement approval. The development standards as approved through a development agreement shall apply to and govern the development and implementation of each covered site in lieu of any conflicting or different standards or requirements elsewhere in the North Bend Municipal Code. Subsequently adopted standards that differ from those of a development agreement adopted by the city as provided in this chapter shall apply to the covered development project only where necessary to address imminent public health and safety hazards or where the development agreement specifies a time period or phase after which certain identified standards can be modified. Determination of the appropriate standards for future phases which are not fully defined during the initial approval process may be postponed. Building permit applications shall be subject to the building codes in effect when the permit is applied for. (Ord. 1256 § 1 (part), 2006).

18.27.050 Exercise of city police power and contract authority.

As provided in RCW 36.70B.170(4), the execution of a development agreement is a proper exercise of the city's police power and contract authority. Accordingly, a development agreement may obligate a party to fund or provide services, infrastructure, or other facilities. A development agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety. (Ord. 1256 § 1 (part), 2006).

18.27.060 Form.

Development agreements shall be consistent with RCW 36.70B.170 through 36.70B.210. All development agreements shall be in form and content as approved by the city attorney. (Ord. 1256 § 1 (part), 2006).

18.27.070 Conditions of approval.

In approving a development agreement, conditions of approval shall at a minimum establish:

- A. A site plan for the entire project, showing locations of critical areas and buffers, required open spaces, perimeter buffers, location and range of densities for residential development, and location and size of nonresidential development;
 - B. The expected build-out time period for the entire project and the various phases;
 - C. Project phasing and other project-specific conditions to mitigate impacts on the environment, on public facilities and services including transportation, utilities, drainage, police and fire protection, schools, and parks;
 - D. Road and stormwater design standards that shall apply to the various phases of the project;
 - E. Bulk design and dimensional standards that shall be implemented throughout subsequent development within the project;
 - F. The size and range of uses authorized for any nonresidential development within the project;
 - G. The minimum and maximum number of residential units for the project;
 - H. Any sewer and/or water comprehensive utility plans or amendments required to be completed before development can occur; and
 - I. Conceptual plans for open space, recreation, parking, landscaping, lighting and building design. (Ord. 1256 § 1 (part), 2006).
-

The North Bend Municipal Code is current through Ordinance 1661, passed June 19, 2018.

Disclaimer: The City Clerk's Office has the official version of the North Bend Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: <http://www.northbendwa.gov/>
(<http://www.northbendwa.gov/>)
City Telephone: (425) 888-1211
Code Publishing Company (<https://www.codepublishing.com/>)

CHAPTER 18.86 DEVELOPMENT AGREEMENTS

Sections:

- 18.86.010 Development Agreements - Authorized
- 18.86.020 "Development Standards" Defined
- 18.86.030 Development Standards, Flexibility
- 18.86.040 Exercise of City Police Power and Contract Authority
- 18.86.050 Form – Public Hearing Required
- 18.86.060 Conditions of Approval
- 18.86.070 Recording
- 18.86.080 Discretionary, Legislative Act

18.86.010 Development Agreements - Authorized

The City may enter into a development agreement with a person having ownership or control of real property within its jurisdiction. The City may enter into a development agreement for real property outside its boundaries as part of a proposed annexation or a service agreement. A development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement.

(Ord. 2378 §2, 2012)

18.86.020 "Development Standards" Defined

For purposes of this chapter, the term "development standards" means and includes, but is not limited to:

1. Project elements such as permitted uses, residential densities, and non-residential densities and intensities or building sizes;
2. The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, or dedications;
3. Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW;
4. Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;
5. Parks and open space preservation;
6. Phasing;
7. Review procedures and standards for implementing decisions;
8. A build-out or vesting period for applicable standards; and
9. Any other development requirement or procedure deemed appropriate by the City Council.

(Ord. 2378 §3, 2012)

18.86.030 Development Standards, Flexibility

A development agreement shall be consistent with applicable development regulations to the fullest extent possible; *provided*, a development agreement may allow development standards different from those otherwise imposed under the Tukwila Municipal Code in order to provide flexibility to achieve public benefits, respond to changing community needs, or encourage modifications which provide the functional equivalent or adequately achieve the purposes of otherwise applicable City standards. Any approved development standards that differ from those in the Code shall not require any further zoning reclassification, variance from City standards or other City approval apart from development agreement approval. The development standards as approved through a development agreement shall apply to and govern the development and implementation of each covered site in lieu of any conflicting or different standards or requirements elsewhere in the Tukwila Municipal Code. Subsequently adopted standards that differ from those of a development agreement adopted by the City as provided in this chapter shall apply to the covered development project only where necessary to address imminent public health and safety hazards or where the development agreement specifies a time period or phase after which certain identified standards can be modified. Determination of the appropriate standards for future phases that are not fully defined during the initial approval process may be postponed. Building permit applications shall be subject to the building codes/regulations/ordinances and fire codes/regulations/ordinances in effect when the permit is applied for.

(Ord. 2378 §4, 2012)

18.86.040 Exercise of City Police Power and Contract Authority

As provided in RCW 36.70B.170(4), the execution of a development agreement is a proper exercise of the City's police power and contract authority. Accordingly, a development agreement may obligate a party to fund or provide services, infrastructure, or other facilities. A development agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

(Ord. 2378 §5, 2012)

18.86.050 Form – Public Hearing Required

Development agreements shall be consistent with RCW 36.70B.170 through 36.70B.210. All development agreements shall be in a form and content as approved by the City Attorney. Development agreements shall be approved by ordinance or resolution and shall be subject to review and approval by the City Council after a duly noticed public hearing pursuant to RCW 36.70B.200.

(Ord. 2378 §6, 2012)

18.86.060 Conditions of Approval

In approving a development agreement, conditions of approval shall at a minimum establish:

1. A site plan for the entire project, showing locations of sensitive areas and buffers, required open spaces, perimeter buffers, location and range of densities for residential development, and location and size of non-residential development;
2. The expected build-out time period for the entire project and the various phases, if proposed;
3. Project phasing, if proposed, and other project-specific conditions to mitigate impacts on the environment, on public facilities and services including transportation, utilities, drainage, police and fire protection, schools, and parks;
4. Road and storm water design standards that shall apply to the various phases, if proposed, of the project;
5. Bulk design and dimensional standards that shall be implemented throughout subsequent development within the project;
6. The size and range of uses authorized for any non-residential development within the project; and
7. Any sewer and/or water comprehensive utility plans or amendments required to be completed before development can occur.
8. Any other item deemed necessary by the City Council.

(Ord. 2378 §7, 2012)

18.86.070 Recording

A development agreement shall be recorded with the real property records of the county in which the property is located pursuant to RCW 36.70B.190.

(Ord. 2378 §8, 2012)

18.86.080 Discretionary, Legislative Act

The decision of the City Council to approve or reject a request for a development agreement shall be a discretionary, legislative act.

(Ord. 2378 §9, 2012)

**DEVELOPMENT AGREEMENT BETWEEN THE
CITY OF LAKE FOREST PARK
AND**

FOR THE _____ DEVELOPMENT

I. PREAMBLE

THIS DEVELOPMENT AGREEMENT is made and entered into this ____ day of _____, 20__, by and between the City of Lake Forest Park, a non-charter, optional code Washington municipal corporation, hereinafter the "City," and _____, a (corporation, limited partnership, partnership, etc.) organized under the laws of the State of _____, hereinafter the "Developer." The City and Developer are collectively referred to in this Agreement as the "Parties," and individually as a "Party."

II. RECITALS

WHEREAS, development agreements between a local government and a person having ownership or control of real property within its jurisdiction are authorized by RCW 36.70B.170(1) and chapter _____ of the Lake Forest Park Municipal Code; and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement (RCW 36.70B.170(1)); and

WHEREAS, for the purposes of this development agreement, "development standards" includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3); and

WHEREAS, pursuant to RCW 36.70B.170(1), a development agreement must be consistent with the applicable development regulations adopted by a local government planning under chapter 36.70A RCW and the City's regulations, including but not limited to LFPMC _____, *et. seq.*; and

WHEREAS, this Development Agreement by and between the City of Lake Forest Park and the Developer (hereinafter the "Development Agreement"), relates to the development known as _____, which is located at: (provide street address _____) (hereinafter the "Subject Property"); and

WHEREAS, [INSERT ADDITIONAL INFORMATION SPECIFIC TO PROJECT]; and

WHEREAS, a development agreement must be approved by ordinance or resolution after a public hearing (RCW 36.70B.200); and

WHEREAS, a public hearing for this Development Agreement was held on _____, and the City council approved this Development Agreement by Ordinance/Resolution _____ on _____;

NOW THEREFORE, in consideration of the mutual promises set forth here, the parties hereto agree as follows:

III. AGREEMENT

Section 1. The Project. The Project is the development and use of the Subject Property, consisting of _____ acres in the City of Lake Forest Park. The _____ (identify development permit/approval) describes the Project as _____ (number of residential units, retail and service uses, parks, etc.), as depicted in Exhibit ____.

Section 2. The Subject Property. The Subject Property is legally described in Exhibit ____, attached hereto and incorporated herein by this reference.

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

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

b) "Council" means the duly elected legislative body governing the City of Lake Forest Park.

c) "Design Guidelines" means the Lake Forest Park Design Manual, as adopted by the City.

d) "Director" means the City's Community Development Director or Director of Planning and Building.

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

f) "Existing Land Use Regulations" means the ordinances adopted by the City Council of Lake Forest Park in effect on the Effective Date, including the adopting ordinances that govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards and specifications applicable to the development of the Subject Property, including, but not limited to the Comprehensive Plan, the City's Official Zoning Map and development standards, the Design Manual, the Public Works Standards, SEPA, Concurrency Ordinance, and all other ordinances, codes, rules and regulations of the City establishing subdivision standards, park regulations, building standards. Existing Land Use Regulation does not include non-land use regulations, which includes taxes and impact fees.

g) "Landowner" is the party who has acquired any portion of the Subject Property from the Developer who, unless otherwise released as provided in this Agreement, shall be subject to

the applicable provisions of this Agreement. The "Developer" is identified in Section III.5 of this Agreement.

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

i) "Vesting date" means _____, the date the complete _____ Application was submitted.

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

- a) Exhibit A – legal description of the Subject Property.
- b) Exhibit B – Map showing Development/Site Plan.
- c) Exhibit C – _____.
- d) Exhibit D - _____.

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

a) The "City" is the City of Lake Forest Park, 17425 Ballinger Way Northeast, Lake Forest Park, WA 98155.

b) The "Developer" or Owner is a private enterprise which owns the Subject Property in fee, and whose principal office is located at _____.

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

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

Section 7. Effective Date and Term.

This Agreement shall commence upon the effective date of the Adopting Ordinance approving this Agreement and shall continue in force for a period of ____ years unless extended or terminated as provided herein. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject however, to post-termination obligations of the Developer or Landowner.

Section 8. Terms.

[Insert Terms of the Agreement- i.e. zoning amendments, statutory warranty deed, easement, etc.]

A. Planning and Development.

B. Public Works.

C. Fire Department.

D. Police Department.

E. Parks Department.

Section 9. Vested Rights. During the term of this Agreement, unless sooner terminated in accordance with the terms hereof, in developing the Subject Property consistent with the Project described herein, Developer is assured, and the City agrees, that the development rights, obligations, terms and conditions specified in this Agreement, are fully vested in the Developer and may not be changed or modified by the City, except as may be expressly permitted by, and in accordance with, the terms and conditions of this Agreement, including the Exhibits hereto, or as expressly consented thereto by the Developer.

Section 10. Major and Minor Modifications. Modifications from the approved permits or the exhibits attached hereto may be approved as outlined below.

A. Minor Modifications. A proposed modification to the permits or exhibits shall be considered a minor modification if the proposal does not materially modify the size or scope of the Project as defined by the Agreement. The Mayor or his/her designee may approve minor modifications upon submission of a written application by the Developer describing the proposal in sufficient detail to determine whether the proposal qualifies as a minor modification. If the application does not provide sufficient information, the Mayor or his/her designee may request additional information from the Developer or reject the application. If the Mayor or his/her designee determines that the proposal qualifies as a minor modification, the modification may be administratively approved by noting the changes in Land Use File L17-0040.

B. Major Modifications. A proposed modification to the permits or exhibits shall be considered a major modification if the proposal does not constitute a minor modification. If the Mayor or his/her designee determines that the proposal constitutes a major modification, the Developer shall submit the proposal for an amendment to this Agreement by following the process established by law for the adoption of a development agreement in accordance with Section IV.15.

C. The Mayor's determination on modifications shall be a final decision.

Section 11. Further Discretionary Actions. Developer acknowledges that the Existing Land Use Regulations contemplate the exercise of further discretionary powers by the City. These powers include, but are not limited to, review of additional permit applications under SEPA. Nothing in this Agreement shall be construed to limit the authority or the obligation of

the City to hold legally required public hearings, or to limit the discretion of the City and any of its officers or officials in complying with or applying Existing Land Use Regulations.

Section 12. Existing Land Use Fees and Impact Fees.

A. Land use fees adopted by the City by ordinance as of the Effective Date of this Agreement may be increased by the City from time to time and are applicable to permits and approvals for the Subject Property, as long as such fees apply to similar applications and projects in the City.

B. All impact fees shall be paid as set forth in the approved permit or approval, or as addressed in chapters of the Lake Forest Park Municipal Code.

IV. GENERAL PROVISIONS

Section 1. Assignment of Interests, Rights, and Obligations. This Agreement shall be binding and inure to the benefit of the Parties. No Party may assign its rights under this Agreement without the written consent of the other Party, which consent shall not unreasonably be withheld. This Agreement shall be binding upon and shall inure to the benefit of the heirs, successors, and assigns of Developer and the City.

Section 2. Incorporation of Recitals. The Recitals contained in this Agreement, and the Preamble paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.

Section 3. Severability. The provisions of this Agreement are separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of this Agreement, or the validity of its application to other persons or circumstances.

Section 4. Termination. This Agreement shall expire and/or terminate as provided below:

A. This Agreement shall expire and be of no further force and effect if the Developer fails to submit a complete building permit application for the Project with ___ year(s) or if the Project construction is not substantially underway prior to expiration of such permits and/or approvals. Nothing in this Agreement shall extend the expiration date of any permit or approval issued by the City for any development.

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

C. This Agreement shall terminate upon the expiration of the term identified in Section III.7 or when the Subject Property has been fully developed, which ever first occurs, and all of the Developer's obligations in connection therewith are satisfied as determined by the City. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City Attorney that the Agreement has been terminated. This Agreement shall automatically terminate and be of no further force and effect as to any single-family residence, any other residential dwelling unit or any non-residential building and the lot or parcel upon which such residence or building is located, when it has been approved by the City for occupancy.

D. This Agreement shall terminate upon the abandonment of the Project by the Developer. The Developer shall be deemed to have abandoned the Project if/when _____.

E. This Agreement may terminate pursuant to Section IV.3, Severability or Section IV.10, Default, or as otherwise outlined in this Agreement.

Section 5. Effect upon Termination on Developer Obligations. Termination of this Agreement as to the Developer of the Subject Property or any portion thereof shall not affect any of the Developer's obligations to comply with the City Comprehensive Plan and the terms and conditions or any applicable zoning code(s) or subdivision map or other land use entitlements approved with respect to the Subject Property, any other conditions of any other development specified in the Agreement to continue after the termination of this Agreement or obligations to pay assessments, liens, fees or taxes.

Section 6. Effects upon Termination on City. Upon any termination of this Agreement as to the Developer of the Subject Property, or any portion thereof, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the property affected by such termination (provided that vesting of such entitlements, conditions or fees may then be established for such property pursuant to then existing planning and zoning laws).

Section 7. Specific Performance. The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Agreement by any party in default hereof.

Section 8. Governing Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. Venue for any action shall lie in King County Superior Court or the U.S. District Court for Western Washington.

Section 9. Attorneys' Fees.

In the event of any litigation or dispute resolution process between the Parties regarding an alleged breach of this Agreement, the prevailing party shall be entitled to an award of attorneys' fees.

Section 10. Notice of Default/Opportunity to Cure/Dispute Resolution.

A. In the event a Party, acting in good faith, believes the other Party has violated the terms of this Agreement, the aggrieved Party shall give the alleged offending Party written notice of the alleged violation by sending a detailed written statement of the alleged breach. The alleged offending Party shall have thirty (30) days from receipt of written notice in which to cure the alleged breach unless the Parties agree, in writing, to additional time. This notice requirement is intended to facilitate a resolution by the Parties of any dispute prior to the initiation of litigation. Upon providing notice of an alleged breach, the Parties agree to meet and agree upon a process for attempting to resolve any dispute arising out of this Agreement. A lawsuit to enforce the terms of this Agreement shall not be filed until the latter of (a) the end of the cure period or (b) the conclusion of any dispute resolution process.

B. After notice and expiration of the cure period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party or Landowner to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement. In addition, the City may decide to file an action to enforce the City's Codes, and to obtain penalties and costs as provided in the Lake Forest Park Municipal Code for violations of this Development Agreement and the Code.

Section 11. No Third-Party Beneficiaries. This Agreement is for the benefit of the Parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a signatory to this Agreement shall have any third-party beneficiary or other rights whatsoever under this Agreement. No other person or entity not a Party to this Agreement may enforce the terms and provisions of this Agreement.

Section 12. Integration. This Agreement and its exhibits represent the entire agreement of the parties with respect to the subject matter hereof. There are no other agreements, oral or written, except as expressly set forth herein.

Section 13. Authority. The Parties each represent and warrant that they have full power and actual authority to enter into this Agreement and to carry out all actions required of them by this Agreement. All persons are executing this Agreement in their representative capacities and represent and warrant that they have full power and authority to bind their respective organizations.

Section 14. Covenants Running with the Land. The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties. The Developer, Landowner and every purchaser, assignee or transferee of an interest in the Subject Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Subject Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of a Developer contained in this

Agreement, as such duties and obligations pertain to the portion of the Subject Property sold, assigned or transferred to it.

Section 15. Amendment to Agreement; Effect of Agreement on Future Actions. This Agreement may be amended by mutual consent of all of the parties, provided that any such amendment shall follow the process established by law for the adoption of a development agreement (*see*, RCW 36.70B.200). However, nothing in this Agreement shall prevent the City Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations affecting the Subject Property during the term of this Agreement, as the City Council may deem necessary to the extent required by a serious threat to public health and safety. Nothing in this Development Agreement shall prevent the City Council from making any amendments of any type to the Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations relating to the Subject Property upon termination of this Agreement.

Section 16. Releases. Developer, and any subsequent Landowner, may free itself from further obligations relating to the sold, assigned, or transferred property, provided that the buyer, assignee or transferee expressly assumes the obligations under this Agreement as provided herein.

Section 17. Notices. Notices, demands, correspondence to the City and Developer shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated in Section III.5. Notice to the City shall be to the attention of both the City Administrator and the City Attorney. Notices to subsequent Landowners shall be required to be given by the City only for those Landowners who have given the City written notice of their address for such notice. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

Section 18. Reimbursement for Agreement Expenses of the City. Developer agrees to reimburse the City for actual expenses incurred over and above fees paid by Developer as an applicant incurred by City directly relating to this Agreement, including recording fees, publishing fees and reasonable staff and consultant costs not otherwise included within application fees. This Agreement shall not take effect until the fees provided for in this section, as well as any processing fees owed to the City for the Project are paid to the City. This Agreement shall be terminated if the Developer does not pay to the City the fees provided for in this section. Upon payment of all expenses, the Developer may request written acknowledgement of all fees. Such payment of all fees shall be paid, at the latest, within thirty (30) days from the City's presentation of a written statement of charges to the Developer.

Section 19. Police Power. Nothing in this Agreement shall be construed to diminish, restrict or limit the police powers of the City granted by the Washington State Constitution or by general law.

Section 20. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner to challenge this Agreement or any provision herein, the City may elect to tender the defense of such lawsuit

or individual claims in the lawsuit to Developer and/or Landowner(s). In such event, Developer and/or such Landowners shall hold the City harmless from and defend the City from all costs and expenses incurred in the defense of such lawsuit or individual claims in the lawsuit, including but not limited to, attorneys' fees and expenses of litigation, and damages awarded to the prevailing party or parties in such litigation. The Developer and/or Landowner shall not settle any lawsuit without the consent of the City. The City shall act in good faith and shall not unreasonably withhold consent to settle.

Section 21. No Presumption Against Drafter. This Agreement has been reviewed and revised by legal counsel for both Parties and no presumption or rule that ambiguity shall be construed against the party drafting the document shall apply to the interpretation or enforcement of this Agreement.

Section 22. Headings. The headings in this Agreement are inserted for reference only and shall not be construed to expand, limit or otherwise modify the terms and conditions of this Agreement.

Section 23. Recording. Developer shall record an executed copy of this Agreement with the King County Auditor, pursuant to RCW 36.70B.190, no later than fourteen (14) days after the Effective Date.

Section 24. Legal Representation. In entering into this Agreement, Developer represents that it has been advised to seek legal advice and counsel from its attorney concerning the legal consequences of this Agreement; that it has carefully read the foregoing Agreement and knows the contents thereof and signs the same of its own free act; and that it fully understands and voluntarily accepts the terms and conditions of this Agreement.

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

OWNER/DEVELOPER:

CITY OF LAKE FOREST PARK

By _____
Its _____

By _____
Its Mayor

ATTEST:

By _____
City Clerk

APPROVED AS TO FORM:

By _____
City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this _____ day of _____, before me personally appeared _____, to me known to be the individual that executed the within and foregoing instrument, and acknowledged the said instrument to be his/her free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

Print name: _____
Notary Public in and for the State of
Washington
Residing at _____
Commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this _____ day of _____, before me personally appeared _____, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument, and acknowledged as the _____ of the City of Lake Forest Park to be the free and voluntary act of said party for the uses and purposes mentioned in this instrument.

Print name: _____
Notary Public in and for the State of
Washington
Residing at: _____
Commission expires: _____