

STAFF REPORT NO. 035-12

TO: Mayor and City Council
FROM: Eric Holmes, City Manager 

DATE: 04/16/12

Subject: Amendment to Existing Development Agreements pertaining to Expiration Date of Development Standards.

Objective: The Applicant is proposing to extend the existing Development Agreements for ten more years to retain the vested Development Standards of the CC and MC Zoning Districts on applicable properties. The new proposed expiration date coincides with the date of expiration of approved transportation concurrency.

The Applicant would like to retain vesting of these Development Standards as the land use approvals pertaining to each of the subject properties (identified on the attached map as Parkside Retail, 136th Avenue Place, and Stone Mill East) were designed and approved under the Development Standards described by the Development Agreement. In order to retain the value of approved land use approvals, the Applicant would like to guarantee that the Development Standards continue to apply.

Present Situation: The Applicant has worked with the City to develop the surrounding infrastructure to adequately support the development of the subject sites. Specifically, the Applicant has made the following investments:

- \$3.1 million in payment towards transportation system improvements
- Constructed the NE 4th Street connection
- Installed the new traffic signal at NE 4th Street and NE 136th Street.

In conjunction with these investments, the Applicant has developed two sites along NE 136th Avenue, and retains one Subdivision and two Site Plan Approvals for the remaining sites along the corridor, which are the subject of this proposal. With land use approvals and vested transportation concurrency for the three subject sites, the Applicant possesses “shovel ready” sites along the NE 136th Avenue corridor. If the prior Development Standards are no longer applicable to the site, any potential modifications to the site plans will trigger a new Site Plan Review process as an entirely new set of Development Standards would apply. In such situation, the sites would lose value in terms of the permit readiness and ability to easily develop for potential tenants.

There is not a significant difference between the vested MC (Industrial Commercial) zone Development Standards and what would now be the OCI (Office Commercial Industrial) zone Development Standards for the subject properties. The most significant difference is the building setbacks, which are described below. The vested and current CC (Community Commercial) Development Standards are similar.

Building Setback Location	MC	OCI
Front	0	5

Back	0	5
Side	0	5

Finally, the City has invested more than \$50 million in transportation improvements surrounding the NE 136th Avenue corridor to support the development of expected growth, which includes these subject sites. By removing potential barriers to immediate permitting, the City will support the anticipated development and return on investment of this infrastructure.

Advantage(s):

1. The City will support the readiness of “shovel ready” properties under some of the worst economic conditions since the Great Depression.
2. City will support potential development of expected retail and employment property that will provide a return on investment for the infrastructure surrounding the subject properties.
3. City has clear alignment of expiration dates for all agreements pertaining to the subject properties.

Disadvantage(s): Current Development Standards will not apply to the subject sites if there is a modification to the approved Site Plan Review developments.

Budget Impact: None.

Prior Council Review: City staff provided a Memorandum dated April 3, 2012.

Action Requested: On Monday, April 16, 2012, adopt a resolution approving the Development Agreement Extension to retain the Development Standards of the CC and MC Zoning Districts on applicable properties for ten additional years, so that the development standard expiration date coincides with the date of expiration of approved transportation concurrency.

Attachment(s):

- Site Map
- Resolution
- Development Agreement Extension



Haagen Development Agreement Extension

2012 April 6

Transportation Improvements

Vancouver, Washington



04/16/12

RESOLUTION NO. _____

A RESOLUTION relating to the approval of a development agreement pursuant to RCW Chapter 36.70B; relating to and providing for a Development Agreement Extension amendment to Prior Development Agreements as specified in the Development Agreement Extension; and authorizing the City Manager to execute the Development Agreement Extension.

WHEREAS, the City of Vancouver has entered into several development agreements with Dale Haagen and associates (Developers) regarding the future development of Developers' properties located generally along 136th Avenue in Vancouver (Property), which Property is described in the Development Agreement Extension amendment attached hereto as Exhibit A; and

WHEREAS, the original August 15, 1997 Development Agreement was subject to a term of fifteen (15) years, with an expiration date of August 15, 2012; and

WHEREAS, an April 29, 2002 Clarifying Agreement sets an expiration date of May 1, 2012 for certain development standards for the Property; and sets an expiration date of May 1, 2022 for transportation concurrency for the Property; and

WHEREAS, a December 12, 2005, Letter Agreement signed by the City Manager commits City staff to recommend to the Vancouver City Council an extension of the expiration date of the zoning provisions, in the event that any of the time limits set forth in the above described agreements approach their expiration and the Property has not yet been fully developed, constructed, or occupied; and

WHEREAS, any required evaluation of these agreements under RCW 43.21C, the State Environmental Policy Act, of the environmental impacts was completed at the time of the original agreements; and

WHEREAS, in view of economic uncertainty at this time, a Development Agreement Extension is requested to May 1, 2022, so that all expiration dates coincide with the transportation concurrency expiration date; and

WHEREAS, as described in Staff Report _____, it is in the mutual interest of the City and Developers to enter into a Development Agreement Extension respecting the development of the Property; and

WHEREAS, a public hearing was duly noticed and held by City Council on _____, regarding the approval of the attached Development Agreement;

NOW, THEREFORE,

BE IT RESOLVED BY THE CITY OF VANCOUVER:

Section 1. Findings. The recitals set forth above are adopted as the findings of the City Council of the City of Vancouver in support of adoption of this resolution.

Section 2. The City Council, in accordance with RCW 36.70B.200 hereby authorizes the City Manager to execute on behalf of the City the Development Agreement Extension attached hereto as Exhibit "A".

ADOPTED at regular session of the Council of the City of Vancouver, this _____ day of _____, 2012.

Timothy D. Leavitt, Mayor

Attest:

Lloyd Tyler, City Clerk
By: Carrie Lewellen, Deputy City Clerk

Approved as to form:

Ted H. Gathe, City Attorney

AFTER RECORDING RETURN TO:
Tarlow Naito & Summers, LLP
150 SW Harrison St., Suite 200
Portland OR 97201

Reference numbers of related documents:

8810240143; 9612260158; 9708220298

Additional Reference #s on page _____ of document

Grantor(s): (Last, First, Middle Initial)

1. Haagen, Dale A.
2. Haagen, Jaana H.
3. The Haagen Family Trust
4. JD Properties Vancouver, LLC
5. 136th Avenue Place, LLC
6. Evergreen Place Center, LLC
7. Stonemill Center II, L.L.C.

Additional grantors on page _____ of document

Grantee(s): (Last, First, Middle Initial)

1. City of Vancouver

Additional grantees on page _____ of document

Legal Description: (abbreviated form: i.e. lot, block, plat or section township, range, quarter/quarter)

NW & SW 1/4 SECTION 26 TOWNSHIP 2 NORTH RANGE 2 EAST WM

Additional legal beginning on page 11 of document

Assessor's Property Tax Parcel/Account Number(s):

164717-000; 164746-000; 164761-000; 164760-000; 164767-000; 164768-000;
164769-000; 164770-000; 164771-000; 164772-000; 164773-000; 164774-000;
164775-000; 164751-000; 164752-000; 164753-000; 164776-000; 164777-000;
165165-026; 165165-027; 165165-028; 165165-029; 164165-005; 165175-005;
164738-002; 164738-004; 164738-006; 164738-008; 164738-010; 164738-012;
164738-014; 164738-016; 164738-018; 164738-022; 164738-020; 164738-024

Additional parcel #s on page _____ of document

DEVELOPMENT AGREEMENT EXTENSION

Effective Date: March 12, 2012

Parties: **DALE A. HAAGEN AND JAANA H. HAAGEN, THE HAAGEN FAMILY TRUST AND THEIR RESPECTIVE AGENTS, SUCCESSORS AND ASSIGNS;** and
THE CITY OF VANCOUVER, WASHINGTON,
a Washington municipal corporation.

Recitals:

A. Dale A. Haagen and Jaana H. Haagen ("Haagen"), the Haagen Family Trust ("Trust"), and their respective agents, successors and authorized assigns (together "Developer") are the owners of certain real properties in Vancouver included in the legal descriptions in Exhibit A attached hereto and incorporated herein, more commonly known as 136th Ave., Vancouver, Washington (the "Property").

B. Haagen, the Trust, Gary A. Rademacher and Iva D. Rademacher ("Rademacher"), and their respective agents and assigns (together "Developers") as well as Clark County, the City of Vancouver ("City"), C-TRAN and George E. and Hazel E. Stein entered in to a certain Development Agreement dated October 21, 1988, recorded in the deed records of Clark County in 1988, under recording number 8810240143, which provided for the deeding of certain right of way and the construction of NE 136th Ave. and NE 9th St. in Clark County, WA ("Original Development Agreement"). Among other things, as part of the Original Development Agreement, Clark County accepted a deed whereby Developers conveyed 30 acres of property west of NE 136th Ave. to Clark County for the purpose of developing a community park.

C. Clark County and Developers entered into a certain Development Agreement dated December 17, 1996, recorded in the deed records of Clark County on December 26, 1996, under recording number 9612260158, which provided for channelization of NE 136th Ave. in Clark County, as well as an access management plan for access for adjoining property to and from NE 136th Ave., NE 9th St. and NE 4th St. ("Additional Development Agreement").

D. The City and Developers entered into a certain Development Agreement dated August 14, 1997, recorded in the deed records of Clark County on August 22, 1997 under recording number 9708220298, which, among other things, provided for reservation of certain capacity in the transportation system for the development of certain real properties owned by Developers and to provide for uses of the certain real properties under the City's zoning and comprehensive plan designations which are consistent with the pre-existing uses allowed under Clark County zoning and comprehensive plan designations ("1997 Development Agreement").

E. The City and Developer entered into a certain Agreement Clarifying 1997 Development Agreement dated April 29, 2002, which, among other things, provided for

interpretations and obligations under the 1997 Development Agreement (“2002 Clarifying Agreement”). A copy of the 2002 Clarifying Agreement is attached hereto as Exhibit B.

F. The City and Developer entered into a certain letter agreement dated December 12, 2005 (“2005 Letter Agreement”). A copy of the 2005 Letter Agreement is attached hereto as Exhibit C. Among other things, paragraph 5 of the 2005 Letter Agreement states:

The City agrees that it will recommend to the Vancouver City Council an extension of the 1997 Development Agreement/2002 Clarifying Agreement in the event that any of the time limits set forth in said agreements approach their expiration and the Haagen Property on NE 136th Avenue has not yet been fully developed, constructed, or occupied.

G. The Original Development Agreement, Additional Development Agreement, 1997 Development Agreement, 2002 Clarifying Agreement and the 2005 Letter Agreement are together herein referenced as “Prior Development Agreements”.

H. Developer is the current owner of the Property which adjoins NE 136th Ave. and which is affected by the Prior Development Agreements. Current economic conditions have prevented the full development, construction and occupation of the Property.

I. Pursuant to RCW 36.70B.170(1), the parties are authorized to enter into this development agreement extension that sets forth development standards and other provisions that apply to, govern and vest the development and use of the Property (“Development Agreement Extension”).

NOW, THEREFORE, the parties agree as follows:

1. **Purpose.** The general purpose of this Development Agreement Extension is, pursuant to the Prior Development Agreements, to extend the expiration date for providing for vesting of development rights and to make no other changes to the Prior Development Agreements.
2. **Agreement.** This Development Agreement Extension governs and vests the development of the Property.
3. **Prior Development Agreements Extension.** The Prior Development Agreements, and each of them, shall continue to exist in full force and effect between the parties; except that Section 5.16 of the 2002 Clarifying Agreement, which states that, “The above stated Sections 2.7 and 2.9 of the 1997 Development Agreement shall remain in full force and effect until May 1, 2012.” is hereby amended to extend the expiration date to May 1, 2022, to coincide with the transportation certificate of concurrency expiration date in Section 4.1 of the 2002 Clarifying Agreement.
4. **Vesting of Transportation Concurrency.** This Development Agreement Extension provides for continuation of the Prior Development Agreements’ provisions including, but not limited to, those provisions which require the City to reserve and vest the

transportation trips for the Property for use and that these trips are vested for purposes of transportation concurrency, as authorized by VMC chapter 11.95. Specifically, Section 4.1 of the 2002 Clarifying Agreement states that vesting of transportation capacity will expire on May 1, 2022, unless an additional extension is requested by Developer.

5. The 2002 Clarifying Agreement attached hereto as Exhibit B is hereby incorporated into this Development Agreement Extension as part of the Development Agreement Extension, as if fully set forth herein.

6. The 2005 Letter Agreement attached hereto as Exhibit C is hereby incorporated into this Development Agreement Extension as part of the Development Agreement Extension as if fully set forth herein. Specifically, as set forth in Paragraph 5 of the 2005 Letter Agreement:

The City agrees that it will recommend to the Vancouver City Council an extension of the 1997 Development Agreement/2002 Clarifying Agreement in the event that any of the time limits set forth in said agreements approach their expiration and the Haagen Property on NE 136th Avenue has not yet been fully developed, constructed, or occupied.

7. **City's Reserved Authority.** Anything in this Development Agreement Extension to the contrary notwithstanding, the City shall have the authority to impose new or different regulations to the extent required by a serious threat to public health and safety as required by RCW 36.70B.170(4); provided, however, that such action shall only be taken by legislative act of the Vancouver City Council after appropriate public process.

8. **Authorization.** The persons executing this Development Agreement Extension on behalf of Developer and the City are authorized to do so and, upon execution by such parties, this Development Agreement Extension shall be a valid and binding obligation of such parties in accordance with its terms. The parties have each obtained any and all consents required to enter into this Development Agreement Extension and to consummate or cause to be consummated the transactions contemplated hereby.

9. **Run with the Land.** This Development Agreement Extension shall run with the land and be binding on the parties' successors and assigns. This Development Agreement Extension shall be recorded with the Clark County Auditor.

10. **Term.** The term of this Development Agreement Extension shall expire on May 1, 2022, unless earlier extended by the parties.

11. **Not an Exclusive Agreement; Incorporation by Reference.** This Development Agreement Extension is one of multiple contractual transaction documents negotiated between Developer and the City; specifically, the Prior Development Agreements. Such other contractual transaction documents are not merged herein, and shall continue to have binding effect based upon their own terms except for amendment of the expiration date to May 1, 2022, as stated in Section 3 of this Development Agreement Extension.

12. **Public Hearing.** The Vancouver City Council has approved execution of this Development Agreement Extension by resolution after a public hearing.

CITY:

CITY OF VANCOUVER,
a Washington Municipal Corporation

Dated: _____, 2012

By: _____
Eric Holmes, City Manager

Attest:

R. Lloyd Tyler, City Clerk
By: Carrie Lewellen, Deputy City Clerk

Approved as to form:

Ted H. Gathe, City Attorney

DEVELOPER:

Dated: 3/12, 2012

By: Dale A. Haagen
Dale A. Haagen

Dated: March 12th, 2012

By: Jaana H. Haagen
Jaana H. Haagen

(Signatures continue on following page.)

Dated: 3-12, 2012

THE HAAGEN FAMILY TRUST

By: M. Mary Haagen
M. Mary Haagen, Trustee

Dated: march 12th, 2012

JD PROPERTIES VANCOUVER, LLC,
a Washington Limited Liability Company

By: Jaana H. Haagen
Jaana H. Haagen, Member

Dated: MARCH 12TH, 2012

By: Dale A. Haagen
Dale A. Haagen, Member

Dated: MARCH 12TH, 2012

136TH AVENUE PLACE, LLC,
a Washington Limited Liability Company

By: Dale A. Haagen
Dale A. Haagen, Member

Dated: March 12th, 2012

By: Jaana H. Haagen
Jaana H. Haagen, Member

Dated: March 12th, 2012

EVERGREEN PLACE CENTER, LLC,
a Washington Limited Liability Company

By: Jaana H. Haagen
Jaana H. Haagen, Member

Dated: MARCH 12TH, 2012

By: Dale A. Haagen
Dale A. Haagen, Member

Dated: March 13th, 2012

STONEMILL CENTER II, L.L.C.,
a Washington Limited Liability Company

By: Georges C. St. Laurent, Jr.
Georges C. St. Laurent, Jr., Manager

(Acknowledgments on following page)

(Acknowledgment for the City of Vancouver)

State of Washington)
)
County of)

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

Dated: _____, 2012

Notary Public
My Appointment Expires: _____

(Acknowledgment for Dale A. Haagen and Jaana H. Haagen)

State of Washington)
County of Clark)

I certify that I know or have satisfactory evidence that Dale A. Haagen and Jaana H. Haagen are the persons who appeared before me, and said persons acknowledged that each signed this instrument, and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: March 12, 2012

[Signature]

Notary Public
My Appointment Expires: 09.09.12



(Acknowledgments continue on following page.)

(Acknowledgment for Haagen Family Trust)

State of Washington)
)
County of)

I certify that I know or have satisfactory evidence that M. Mary Haagen is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Trustee for the Haagen Family Trust, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: March 13, 2012


S.M. Opdycke
Notary Public
My Appointment Expires: 09.09.12
(Acknowledgment for JD Properties, LLC)
VANCOUVER

State of Washington)
)
County of Clallam)

I certify that I know or have satisfactory evidence that Dale A. Haagen and Jaana H. Haagen are the persons who appeared before me, and said persons acknowledged that each signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as Members of JD Properties, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: March 12, 2012


S.M. Opdycke
Notary Public
My Appointment Expires: 09/09/12
(Acknowledgments continue on following page.)

(Acknowledgment for 136th Avenue, LLC)

State of Washington)
County of Clallam)

I certify that I know or have satisfactory evidence that Dale A. Haagen and Jaana H. Haagen are the persons who appeared before me, and said persons acknowledged that each signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as Members of 136th Avenue Place, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: March 12, 2012



S.M. Opdycke
Notary Public
My Appointment Expires: 09-09-12

(Acknowledgment for Evergreen Place Center, LLC)

State of Washington)
County of Clallam)

I certify that I know or have satisfactory evidence that Dale A. Haagen and Jaana H. Haagen are the persons who appeared before me, and said persons acknowledged that each signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as Members of Evergreen Place Center, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: March 12, 2012



S.M. Opdycke
Notary Public
My Appointment Expires: 09-09-12

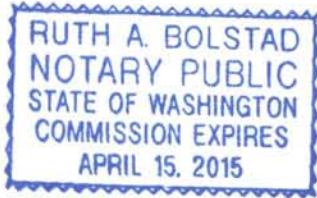
(Acknowledgments continue on following page.)

(Acknowledgment for Stonemill Center II, L.L.C.)

State of Washington)
)
County of CLARK)

I certify that I know or have satisfactory evidence that Georges C. St. Laurent, Jr. is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as a Manager of Stonemill Center II, L.L.C., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: March 13, 2012
RAB



Ruth A. Bolstad
Notary Public
My Appointment Expires: 4-15-15
RAB

Exhibit B: 2002 Clarifying Agreement

AGREEMENT CLARIFYING 1997 DEVELOPMENT AGREEMENT

This Agreement is entered into this 29 day of April, 2002 by and between the City of Vancouver (hereafter "City") and Dale A. Haagen and Jaana Haagen ("Haagen"), the Haagen Family Trust ("Trust"), and their respective agents and assigns (hereafter the "Developers").

RECITALS

A. Clark County, Gary A. and Iva D. Rademacher and the Developers entered into a certain Development Agreement dated December 17, 1996, recorded in the deed records of Clark County on December 26, 1996, under recording number 9612260158, (the "1996 Development Agreement"). Haagen is the successor in interest to the Rademacher interest. City is the successor in interest to the Clark County interest.

B. City, Gary A. and Iva D. Rademacher, and the Developers entered into a certain Development Agreement dated August 14, 1997, recorded in the deed records of Clark County on August 22, 1997 under recording number 9708220298, (the "1997 Development Agreement"). Haagen is the successor in interest to the Rademacher interest.

C. The Developers are owners of property adjoining NE 136th Ave. that is affected by the Original Development Agreement and/or the 1996 Development Agreement, and/or the 1997 Development Agreement, which property is commonly known as Tax Lot Nos. 2, 3, 4/3, 63, 62, 26, 55, 56, 71, 5, 5/1, 5/2, 48, 87, 86, 85, 84, 83, 82, 81, 80, 79, 78, 77, 70, and legally described in the attached Exhibit "A" (hereinafter described collectively or singularly as the "Property" or

"Properties").

E. The City and Developers attended a mediation with Judge John Skimas on August 25, 2000 in an attempt to resolve outstanding issues regarding the interpretation of the 1997 Development Agreement. In a further attempt to resolve these issues, the parties entered into a further mediation.

F. The parties desire to enter into an Agreement so as to resolve certain issues that have arisen between the parties over interpretations and obligations under the 1997 Development Agreement

NOW, THEREFORE, the parties agree as follows:

1. ISSUANCE OF CERTIFICATES OF CONCURRENCY.

1.1 The City agrees to issue (or modify or amend as the case may be) certificates of concurrency for the following Developers' projects within the City's standard review and approval process:

a. 136th Avenue Place, PRJ2000-01403, for 233 PM Peak Trips (The certificate of concurrency issued by the City for this project on August 3, 2001 is hereby modified to incorporate by reference the terms of this Agreement).

b. Stonemill East, PRJ2001-00138, for 117 PM Peak Trips (The certificate of concurrency to be issued by the City for this project shall incorporate the terms of this Agreement).

1.2 Expiration of Certificates of Concurrency.

The certificates of concurrency issued to the Evergreen Place Business Park, Stonemill East, 136th Avenue Retail Center, and 136th Avenue Office Place are not subject to the 30

month expiration provisions under VMC 11.95.120(A).

2. PAYMENT FOR TRANSPORTATION SYSTEM IMPROVEMENTS.

2.1 In consideration of the issuance or modification of the certificates of concurrency set forth in Section 1.1 above, as well as the vesting of transportation capacity set forth in Section 4 below, Haagen agrees to contribute the monetary consideration set forth below to the City for transportation system projects that will create the capacity necessary for the issuance or modifications of such certificates of concurrency and vesting:

a. \$3,100,000.00. In keeping with the construction timing of the necessary road improvements, payments shall be made on or before the following schedule: \$500,000.00 on or before October 1, 2002; and the balance of \$2,600,000.00 on or before October 1, 2003. Haagen agrees record a deed of trust to secure payment of the \$2,600,000.00 against the real property known as 5400 McArthur Blvd., Vancouver, WA, within ten (10) days of execution of this Agreement. Haagen may prepay said payments in whole or part at any time. In the event of a prepayment, Haagen shall be entitled to immediate issuance of traffic impact fee credits (as set forth below) in the amount of such prepayment.

b. Haagen will complete the NE 4th Street connection pursuant to the development approval for 136th Avenue Place.

c. Haagen's payment of the sums set forth in this Section 2.1 shall represent the Developers' proportionate share of all the necessary improvements to all traffic management zones and subareas and all other impacted corridors and intersections affected by development of the Property (including, but not limited to, proportionate assessment for any traffic signals at intersections impacted by such development), including the TIF Overlay fees for the freeway off-

ramp at Mill Plain Boulevard and I-205 for the trips represented by the certificates of concurrency (and/or reservation of transportation capacity) set forth in Section 1.1 above, as well as the vesting of the Property set forth in Section 4 for complete development of the Property. Developers shall not be required to pay any additional amounts for transportation system improvements or mitigation of traffic impacts from the east curb face to the west curb face of NE 136th Avenue, or the south curb face to the north curb face of NE 9th Street, NE 4th Street, and LeRoy Haagen Memorial Drive arising out of or related to the certificates of concurrency or vesting of capacity for development of the Property. Developers shall be responsible for improvements on the Property outside of such curb widths associated with access points as required as conditions for development approval otherwise consistent with this Agreement. If any setbacks are affected on Developers' site plans by the dedication of any additional rights of way for such access improvements, the Developers shall be granted an administrative variance from the setback requirements. The City shall be responsible for the cost of installing any additional street lights on NE 136th Avenue.

2.2 Except as provided in Section 1 and this Section 2, no certificates of concurrency issued, to be issued, or modified under the terms of this Agreement, nor any development approval in connection with the development proposal for which such certificates of concurrency are issued, shall contain any condition for payment by Developers for transportation system improvements, or mitigation thereof from the east curb face to the west curb face of NE 136th Avenue, or from the south curb face to the north curb face of NE 9th Street, NE 4th Street and LeRoy Haagen Memorial Drive related to or caused by such development. Developers shall be responsible for improvements on the Property outside of such curb widths associated with access

points as required as conditions for development approval otherwise consistent with this Agreement. If any setbacks are affected on Developers' site plans by the dedication of any additional rights of way for such access improvements, the Developers shall be granted an administrative variance from the setback requirements.

2.3 Except as provided for in Section 2.1(c) above, Developers shall be responsible for payment of traffic and other impact fees and development review fees in the same manner and amount as any other development in the subject area.

3. ISSUANCE OF TRAFFIC IMPACT FEE CREDITS.

3.1 The City acknowledges that the projects necessary to mitigate the traffic impacts and to create the transportation capacity necessary for the development of the Property are included on its Capital Facilities Plan and Traffic Impact Fee Program and therefore are eligible for traffic impact fee credits for the fair market value of right of way dedicated, and the reasonable construction costs incurred by Haagen in construction and dedication of such improvements and/or for the direct monetary consideration paid by Haagen to the City. City will issue East City and Evergreen subarea traffic impact fee credits to Haagen as follows:

a. \$3,100,000.00 for improvements within the transportation management zones and subareas affected by the trips created by the development of the Property. The traffic impact fee credits issued to Haagen pursuant to this section may be utilized to offset traffic impact fees assessed in any transportation management zone within the East City or Evergreen subareas; provided, however, that Haagen shall not utilize more than \$800,000.00 in traffic impact fee credits in the Evergreen subarea. At the time Haagen receives traffic impact fee credits he shall specify the subarea such credits shall be issued in.

b. \$1,125,104.70 for dedication of right of way and construction of road improvements and traffic signalization for NE 9th Street east and west of NE 136th Avenue. Haagen has dedicated the right of way and construction improvements for NE 9th Street to the City.

c. \$264,651.00 for dedication of right of way and construction of road improvements for NE 4th Street east of NE 136th Avenue. Developers have dedicated the right of way and construction improvements for NE 4th Street to the City.

d. Credits for dedication of right of way and construction of road improvements and traffic signalization for NE 4th Street west of NE 136th Avenue as set forth in Exhibit D. Immediately upon completion of construction of the improvements to NE 4th Street and acceptance thereof by the City, Haagen shall dedicate the right of way for NE 4th Street and the City shall issue the impact fee credits.

3.2 The traffic impact fee credits set forth in Sections 3.1(a) shall be issued to Haagen immediately upon receipt by the City of the payments from Haagen set forth in Sections 2.1(a).

3.3 The traffic impact fee credits set forth in Sections 3.1(b) and (c) have been issued to Haagen pursuant to the City's letter dated December 18, 2001 attached hereto as Exhibit B.

3.4 The traffic impact fee credits set forth in Section 3.1(d) shall be issued to Haagen pursuant to the City's letter dated December 18, 2001 attached hereto as Exhibit B.

3.5 The traffic impact fee credits issued pursuant to this Section 3.1(a) shall be freely transferable within the East City and Evergreen subareas, respectively, but shall not be transferable across subarea boundaries, and shall not be subject to amendment or modification of the City's traffic impact fee ordinance, or any other additions or modifications to the VMC for a

period of five (5) years from the date of this Agreement.

3.6 In the event the City needs to purchase TIF credits for the development of the proposed Eastside Community Center, it shall provide Haagen with a right of first refusal to sell his TIF credits to the City. The City shall provide Haagen with any written and signed, bona fide offer from a third party desiring to sell TIF credits to the City. Haagen shall have ten (10) business days from receipt of such notice to respond to each written offer and each revised written offer.

4. VESTING OF TRANSPORTATION CAPACITY.

4.1 Property Vested

In consideration of the payments made by Developers pursuant to Section 2 herein, the City agrees that the Property described in the attached Exhibit A is vested pursuant to VMC 11.95 as it relates to any capacity issue for development of the Property. Certificates of concurrency shall be issued by the City for development of the Property upon application by Developers. Such vesting shall expire on May 1, 2022. As each portion of the Property is developed, Developers agree to submit a transportation impact study as required by VMC 11.95.060; provided, however, that Developers shall only be responsible for those transportation costs associated with any mitigation or transportation system improvements set forth in Section 2 of this Agreement.

5. MISCELLANEOUS.

5.1 136th Avenue Place Appeal of Conditions of Approval.

City agrees to modify the conditions of approval for 136th Avenue Place pursuant to the terms of Exhibit C attached hereto. Immediately following the execution of this Agreement,

Developers agree to dismiss their appeal of the 136th Avenue Place conditions of approval.

Except as modified by Exhibit C attached hereto, the conditions of approval set forth in the Staff Decision and Report dated August 22, 2001 shall apply. Immediately following execution of this Agreement, Developers agree to dismiss their appeal of the August 3, 2001 certificate of concurrency and conditions of approval.

5.2 Stonemill East Staff Report and Decision.

Immediately following the execution of this Agreement, the City agrees to issue the Staff Report and Decision for Stonemill East on terms and conditions consistent with the draft Staff Report and Decision for Stonemill East dated 2002, as modified by Exhibit D, and consistent with this Agreement.

5.3 Conditions of Approval for Future Development Applications.

Conditions for approval of development applications for the remainder of Developers' Property on NE 136th Avenue that relate to transportation, concurrency and traffic impact issues shall be in compliance with the 1996 Development Agreement, and this Agreement.

5.5 LeRoy Haagen Memorial Drive and LeRoy Haagen Memorial Community Park.

The City shall complete the street lighting and landscaping, and open LeRoy Haagen Memorial Drive for public travel from the east boundary of LeRoy Haagen Memorial Community Park to NE 136th Avenue within twelve (12) months from the date of this Agreement. The City shall correct any signage and/or written material to properly reference the name of the park as LeRoy Haagen Memorial Community Park.

5.6 NE 9th Street.

Developers shall not have any financial responsibility for the construction of any portion of NE 9th Street, nor for any traffic mitigation measures incorporated into any future construction of NE 9th Street, except as otherwise noted in Section 2.

5.7 Dismissal of Appeal of City's Amendment to Capital Facilities Plan.

Developers have dismissed their appeal of the City's amendment to the Capital Facilities Plan files with the Western Washington Growth Management Hearings Board under Case No. 01-2-0023 with prejudice and without cost.

5.8 Dismissal of Declaratory Judgment Action.

Immediately upon execution of this Agreement, the City and Developers shall dismiss the declaratory judgment action and counterclaims filed in Clark County Superior Court under cause number 01-2-03122-1 with prejudice and without cost.

5.9 Reserved Authority of City.

Anything in this Agreement to the contrary notwithstanding, the City of Vancouver, shall have the authority to impose new or different regulations to the extent required by a serious threat to public health and safety as required by RCW 36.70B.170(4), to the extent such threat is proximately caused, or proximately aggravated by, the impacts of the proposed development of the Property, or any portion thereof. Provided, however, that such action shall only be taken by legislative act of the City Council after appropriate public process. The Developers reserve all rights to contest and/or appeal the implementation of such new or different regulation, and further reserve the right to seek any damages they may be lawfully entitled to, to the extent such new or different transportation regulation impacts the property rights conveyed under this

Agreement. To the extent such new or different regulation requires the modification of any transportation capacity right otherwise granted or reserved under this Agreement, any such modification (including but not limited to the design, engineering and construction of any improvement) shall be at the sole expense of the City of Vancouver.

5.10 Attorney's Fees and Costs.

In the event any controversy or claim arises under this Agreement, the substantially prevailing party at arbitration or trial and appeal, shall be entitled to its reasonable costs, disbursements and attorney fees, together with all expenses which it may reasonably incur in taking such action.

5.11 Mediation/Arbitration.

In the event of any dispute regarding the obligations of the parties hereunder, or the interpretation of any provision hereunder, the parties agree to submit such dispute for mediation with U.S. District Court Judge Ann Aiken, or a mediator she designates in her place. In the event such mediation is not successful, the parties agree to submit the dispute for mandatory arbitration. In the event of arbitration, the parties shall either agree on an arbitrator, or in the event the parties cannot agree, the parties agree to an arbitrator to be appointed by Judge Aiken. The results of any arbitration shall be binding on the parties. Each party shall be responsible for one half the cost of the mediator and/or arbitrator.

5.12 Nonwaiver Clause.

Failure by either party at any time to require performance by the other party of any of the provisions hereof shall in no way affect the parties' rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding

breach or a waiver of this nonwaiver clause.

5.13 Governing Law.

This Agreement shall be construed with and governed by the laws of the State of Washington.

5.14 Severability.

If any portion of this Agreement shall be invalid or unenforceable to any extent, the validity of the remaining provisions shall not be affected thereby.

5.15 Amendment and Modification.

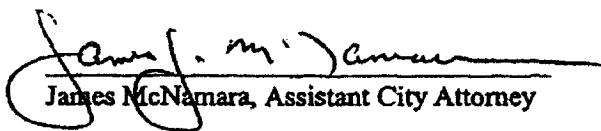
This Agreement may only be amended by mutual agreement of the parties except as provided for in Section 5.9, and shall not be subject to amendment or modification either generally with regard to an amendment to the City of Vancouver Comprehensive Plan, Zoning Ordinances, Arterial Atlas, or any other process, or road standards or concurrency ordinance(s), or specifically with regard to any Developers' Property abutting NE 136th Ave., NE 9th St., or NE 4th St. without the prior written consent of the owner of any property adjoining NE 136th Ave., that would be affected by such amendment or modification.

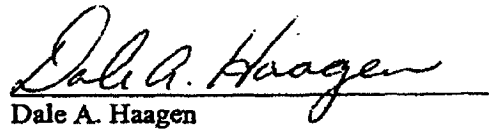
5.16 Effect of this Agreement and Integration of all Previous Agreements.

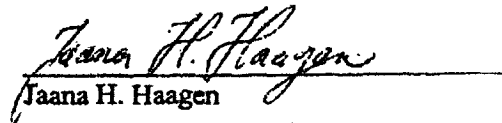
The 1996 Development Agreement and Sections 2.2, 2.5, 2.6, 2.7, 2.8, 2.9, 3.4, 3.5, 3.6, 3.7, and 3.8 of the 1997 Development Agreement shall continue to exist in full force and effect between the parties; provided, however, that in the event any term or condition of any of said development agreements is inconsistent with the terms or conditions of this Agreement, the terms of this Agreement shall prevail. The above stated Sections 2.7 and 2.9 of the 1997 Development Agreement shall remain in full force and effect until May 1, 2012. Except for the said

development agreements, this Agreement shall represent the final agreement of the parties and shall supersede any and all other negotiations or agreements, oral or written, between the parties including the August 25, 2000 Skimas mediation.

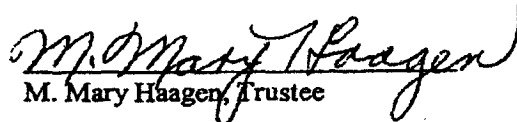
Approved as to Form:


James McNamara, Assistant City Attorney

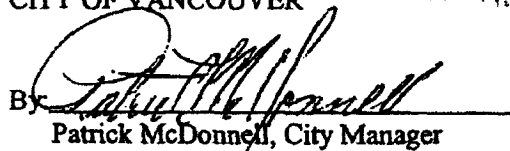

Dale A. Haagen


Jaana H. Haagen

The Haagen Family Trust


M. Mary Haagen, Trustee

CITY OF VANCOUVER

By 
Patrick McDonnell, City Manager

EXHIBITS

- A Legal Description of Developers' Property
- B Impact Fee Credits Letters Dated December 18, 2001
- C Resolution of Conditions of Approval for 136th Avenue Place
- D Resolution of Conditions of Approval for Stonemill East
- E General Design of Right-in, Right-out access points

Exhibit C: 2005 Letter Agreement

P.O. Box 1995
Vancouver, Washington 98668-1995



www.ci.vancouver.wa.us

December 12, 2005

Mark F. Stoker
Attorney at Law
Heurlin, Potter, Jahn, Leatham & Holtmann, P.S.
P.O. Box 611
Vancouver, Washington 98666-0611

Re: Haagen

Dear Mark:

Thanks for meeting on November 23rd to attempt to resolve the outstanding issues regarding the Haagens' rights under their agreements with the City.

We have come to an agreement on the following issues:

1. Parkside

Although the City maintains that our code provides that certificates of concurrency are issued at the time of site plan approval for commercial developments, we recognize some ambiguity in the VMC on this issue. In light of that lack of clarity, the City will issue a certificate of concurrency for 1330 trips for the Parkside Retail Subdivision. Recognizing that the 2002 Clarifying Agreement does not place a numerical limit on the number of trips the Haagen property is entitled to for development on NE 136th Avenue, additional trips would be issued in the event a site plan is submitted that demonstrates a need for more trips, or in the event changes of use occur where the City requires additional trips be issued over and above those contemplated by previously approved site plans and associated certificates of concurrency.

2. Stonemill East, 136th Avenue Place, Evergreen Place

The City agrees that even though certificates of concurrency have already been issued for these developments, additional trips would be issued, if needed, based on revised site plans, or newly submitted site plans, or in the event changes of use occur where the City requires additional trips be issued over and above those contemplated by previously approved site plans and associated certificates of concurrency.

Royce E. Pollard • Mayor
Dan Tonkovich • Councilmember
Pat Jallota • Councilmember
Jeanne Harris • Councilmember



EXHIBIT C
PAGE 1 OF 3

Tim Leavitt • Councilmember
Jeanne E. Stewart • Councilmember
Larry J. Smith • Councilmember
Pat McDonnell • City Manager

Letter to Mark Stoker
December 12, 2005
Page 2

3. Limitation of Trips

As mentioned above, it is agreed that the 2002 Clarifying Agreement did not place a numerical limit on the trips that the Haagens, their successors or assigns will be issued to develop all of their property on NE 136th Avenue (the "Haagen Property"). Additional PM Peak Hour Trips beyond the Parkside Retail Subdivision, Stonemill East, 136th Avenue Place, and Evergreen Place certificates of concurrency will be issued to owners of the Haagen Property for individual site plan applications, or modifications of existing site plans, or changes in use in said site plans should the trip generation and distribution reports based upon the most recent edition of the ITE Trip Generation Manual filed in connection with such applications indicate a need for such additional PM Peak Hour Trips as agreed to by the City, or in such other instances where the City determines it is necessary or appropriate to issue additional certificates of concurrency or modify existing certificates of concurrency in connection with the development of any of the Haagen Property. In the event that the total number of trips needed for a site plan currently possessing a Certificate of Concurrency is less than that needed by a revision to that site plan, the Certificate of Concurrency shall be adjusted to reflect the actual number needed and the City's model shall be adjusted accordingly; provided, however, that should a change of use in said revised site plan require the issuance of additional trips, the City will issue the same as provided above, except that traffic impact fees that would otherwise be charged for such additional trips shall first be offset by the average daily trips associated with the recapture of trips by the City as a result of the previous revision.

It is, and has been, the City's intent that the number of PM Peak Hour Trips the Haagen Property may need for development and use is not limited under the terms of the Clarifying Agreement, nor is it limited by the number of trips the City currently has placed in its concurrency model for the undeveloped Haagen Property, nor will the City refuse to issue such trips if the City's concurrency model or other considerations otherwise require a moratorium or limitation on the availability of trips. The City continues to affirm that in connection with the monetary contributions the Haagens have made under the terms of the Clarifying Agreement, the Haagen Property is fully vested under the City's concurrency ordinance.

4. Traffic Studies

The Haagens have indicated a concern that the City not require extensive additional transportation studies for the development of the Haagen Property, in light of the studies that have already been completed. The City agrees, and assures the Haagens that at the time an owner of any of the Haagen Property files a site plan application or modification of an existing site plan to develop said Haagen Property, or in the event changes of use occur where the City requires additional trips be issued over and above those contemplated by previously approved site plans and associated certificates of concurrency, no additional traffic studies will be needed except for trip generation and distribution based on the identified uses. In addition, a safety analysis addressing the design of the access points for a specific site plan application will be needed consistent with the provisions of Section 2.2 of the 2002 Clarifying Agreement.

Letter to Mark Stoker
December 12, 2005
Page 3

5. Zoning Extension

The City agrees that it will recommend to the Vancouver City Council an extension of the 1997 Development Agreement/2002 Clarifying Agreement in the event that any of the time limits set forth in said agreements approach their expiration and the Haagen Property on NE 136th Avenue has not yet been fully developed, constructed, or occupied. For purposes of this Agreement, "fully occupied" will mean that each area approved for occupancy has been leased at some point although, due to tenant turnover, may be unoccupied at the time any of the time limits set forth in said agreements approach their expiration.

6. Appeal Fees

The City agrees that upon withdrawal of the current appeal of the OPUS Development certificate of concurrency approval granted by the Planning Commission, it will refund the \$1,000 appeal fee to the Haagens.

7. Dismissal of Appeals

The Haagens agree to dismiss their pending LUPA petitions, and withdraw their demand for arbitration arising out of the 2002 Clarifying Agreement. The Haagens further agree to withdraw their appeal of the issuance of the OPUS certificate of concurrency.

Execution of a copy of this letter by the Haagens will evidence their agreement to the terms set forth herein. Upon receipt of an executed copy of the letter, I will have the Transportation Department issue the certificate of concurrency for Parkside Retail Subdivision.

Thank you for your assistance.

Sincerely,



PAT McDONNELL

City Manager

Cc: Thayer Rorabaugh, Transportation Manager
Ahmad Qayoumi, Concurrency Manager
James McNamara, Assistant City Attorney

We agree to the terms of this letter this 30th day of ~~December~~^{January}, 2005


DALE A. HAAGEN


JAANA H. HAAGEN

EXHIBIT C
PAGE 3 OF 3