

**CITY OF REDMOND
RESOLUTION NO. 1523**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON, APPROVING A DEVELOPMENT AGREEMENT FOR PROPERTY OWNED BY LENNAR MULTIFAMILY COMMUNITIES LOCATED ON PARCEL NOS. 122505-9095, 122505-9229, AND 122505-9152

WHEREAS, Lennar Multi-Family Communities (LMC) owns an approximately 4.9-acre site at parcel nos. 122505-9095, 122505-9229, and 122505-9152 in Redmond ("LMC Marymoor"); and

WHEREAS, Lennar Multi-Family Communities has requested that the City and Lennar Multi-Family Communities enter into a development agreement for the property, in order to set forth the development standards and other provisions that will govern and vest the development, use, of a Master Planned Development including up to 450 multi-family units, a minimum of 5 percent of the total units be constructed as three-bedroom units, 35,000 square feet of commercial space, a daycare facility, a public art program, community gardens, enhanced pedestrian amenities, local commercial space, and associated site improvements; and

WHEREAS, pursuant to RZC 21.76.070(P), the Redmond City Council reviewed and approved the Lennar Multi-Family Communities

Master Planned Development and Site Plan Entitlement application;
and

WHEREAS, pursuant to RCW 36.70B.200, the Redmond City Council opened and held a public hearing on the proposed agreement on August 20, 2019 and closed the record on August 20, 2019; and after considering all testimony presented at the public hearing, determined that a development agreement for the Lennar Multi-Family Communities Property should be approved.

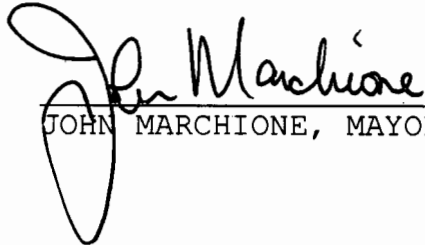
NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. Development Agreement Approved. That certain agreement entitled, "Lennar Multi-Family Communities Master Plan Development Agreement," attached hereto as Exhibit A and incorporated herein by this reference as if set forth in full, is hereby approved and shall govern development of the Lennar Multi-Family Communities Property described in said agreement. The Mayor is hereby authorized to execute the Development Agreement on behalf of the City.

Section 2. Recording. As provided in RCW 36.70B.190, a signed original of the Agreement shall be recorded with the real property records of King County, Washington and shall be binding on the parties and their successors and assigns.

ADOPTED by the Redmond City Council this 20th day of August,
2019.

CITY OF REDMOND



JOHN MARCHIONE, MAYOR

ATTEST:



CHERYL XANTHOS, INTERIM CITY CLERK

(SEAL)

FILED WITH THE CITY CLERK: August 6, 2019
PASSED BY THE CITY COUNCIL: August 20, 2019
RESOLUTION NO. 1523

YES: BIRNEY, CARSON, MARGESON, MYERS, PADHYE
NO: FIELDS
RECUSED: ANDERSON

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (“Agreement”) is entered into this ____ day of _____, 2019 (“Effective Date”), by and between the City of Redmond (“City”), a Washington municipal corporation, and Lennar Multifamily Communities, LLC (“Owner”), a Delaware limited liability company. The City and Owner are referred to collectively as the “Parties” and individually as a “Party.”

RECITALS

A. Owner is planning the redevelopment of land located at 17611 NE 70th Street in Redmond, Washington and legally described on the attached Exhibit A (the “Property”). The redevelopment plan includes multifamily housing units and some ground-floor pedestrian-oriented commercial uses (“the Project”). The Property is located in the City’s Southeast Redmond Neighborhood in Marymoor Design District (“MDD”) 2.

B. As required by Redmond Zoning Code (“RZC”) 21.76.070.P.2.b, Owner has prepared a master plan entitled “LMC – Marymoor Master Plan” dated _____, 201__ (“Master Plan”) to provide for coordinated redevelopment of the Property. The Master Plan has been the subject of a public review process that included public review and comment at a neighborhood meeting and recommendations for approval by the City’s Design Review Board and Technical Committee. The Redmond City Council also conducted a public hearing to obtain further public comment on the Master Plan and this Agreement.

C. Environmental impacts of the development proposed by the Master Plan were identified and the City issued a Determination of Non-Significance for the Master Plan on _____, 2019, under City File No. SEPA-2019-_____.

Completion of the Project in accordance with this Agreement will promote the goals and policies of the Redmond Comprehensive Plan, including but not limited to, allowing residents and visitors greater access to major employment hubs, emphasizing regional retail as part of mixed-use developments, and providing a mix of retail and commercial opportunities that meet a range of needs from daily goods and services to niche and boutique retailers, to restaurants and entertainment. The Comprehensive Plan goals furthered by the Project include, but are not limited to: N-SE-1, N-SE-2, N-SE-3, N-SE-4, N-SE-14, N-SE-36, N-SE-37, N-SE-40, N-SE-45, as illustrated in the Master Plan.

D. RCW 36.70B.170 through 36.70B.210 authorize cities to enter into development agreements with property owners to govern the future development of real property. A development agreement between Owner and the City is a collaboration that will provide mutual benefit for the Parties and the residents and businesses of the Southeast Redmond Neighborhood.

E. By executing this Agreement, the Parties intend to set forth their mutual agreements and understandings as they relate to the development of the Property and the Project.

AGREEMENT

PURSUANT TO RCW 36.70B.170 through 36.70B.210 and in consideration of, and subject to, the mutual promises, benefits, and obligations set forth herein, the City and LMC enter into the following Development Agreement and agree to be bound by its terms.

1. **Land and FAR.** The Property governed by this Agreement, exclusive of public right-of-way, consists of approximately 213,501 square feet of land located at 17611 NE 70th Street and legally described on Exhibit A to this Agreement. The Property governed by this Agreement is depicted on Exhibit B to this Agreement. As provided in RZC 21.13.080 and .150, the maximum allowed development on the Property is expressed in terms of the ratio of floor area to total gross land area prior to dedication of new public right-of-way or provision of other land for public amenities ("FAR"). FAR for the Project shall thus be calculated for all purposes by using 213,501 square feet of total gross land area. Future dedications of land for right-of-way or other public use or improvements and future acquisitions of right-of-way the City or other public agencies through condemnation or otherwise shall not reduce the land area used for calculating FAR, the development rights provided for in this Agreement, or development rights provided through applicable land use regulations.

2. **The Project.** The Project is the proposed redevelopment of the Property and consists of approximately 450 multifamily residential units, 36,000 square feet of ground floor commercial space, and parking for approximately 550 vehicles. The Project also includes approximately 25,000 square feet of publicly accessible and private community space, including community gardens, connections to the East Lake Sammamish Trail, and public art.

3. **Conformance with Master Plan.** The Redmond City Council approved the Master Plan on _____, 2019. Approval of the development shown in the Master Plan and identified in this Agreement is specifically conditioned upon dedication of the land and construction of the improvements identified in the Master Plan and/or this Agreement, including but not limited to, the public community space, streets, and utility facilities identified hereafter. The Project shall substantially conform to the Master Plan, including amendments thereto as provided for in RZC 21.76.090(D). Site and building modifications to facilitate interim use of existing structures, if any, are not regulated by the Master Plan. In the event of a conflict between the Master Plan and this Agreement, this Agreement shall control.

4. **Vested Rights.**

4.1 **Development Regulations.** Except as provided otherwise in this Agreement, development of the Project shall be vested to and governed by City development regulations in effect as of the Effective Date of this Agreement. Except as expressly stated otherwise herein, any amendments to or additions made during the term of this Agreement to City development regulations shall not apply to or affect the conditions of development of the Project. As used in this Agreement, "development regulations" shall be deemed to include regulations, policies, procedures and guidelines addressing zoning, environmental review (including SEPA procedures and substantive SEPA policies), building and site design, utilities, stormwater, impact

fees, transportation concurrency and other laws, ordinance, policies, and administrative regulations and guidelines of the City governing land development.

4.2 Exemptions. The following are exempt from vesting under this Agreement:

- 4.2.1** Plan review fees, inspection fees, and transportation, school, and fire impact fees established by schedules, charts, tables, or formulae;
- 4.2.2** Water, sewer, stormwater, and other utility connection charges, general facility charges, Cascade Water Alliance charges, Metro charges, and monthly service charges;
- 4.2.3** Amendments to building, plumbing, mechanical, fire, and other construction codes adopted pursuant to RCW 19.27 and 19.27A; and
- 4.2.4** Other City enactments that are adopted pursuant to state or federal mandates (such as, but not limited to, the City's NPDES Municipal Stormwater Permit) that preempt the City's authority to vest regulations.

4.3 City's Reserved Rights. Notwithstanding any other provisions of this Agreement, pursuant to RCW 36.70B.170(4) the City reserves authority to impose new or different officially adopted regulations of general applicability to the extent required by a serious threat to public health and safety, as determined by the Redmond City Council after written notice and an opportunity to be heard has been provided to Owner.

4.4 Future Amendments to Code. Owner may request to be bound by future amendments to the Redmond Zoning Code, the Redmond Municipal Code, or other regulations, policies, or guidelines against which Owner is vested under this Agreement. The City's Planning Director may deny such request if the Director determines that compliance with the vested regulation is necessary to meet the City's intent in approving the Master Plan or to achieve a development of like quality and benefit to the City. If Owner disagrees with such denial, Owner may apply for an amendment of this Agreement as provided in Subsection 4.5 below

4.5 Amendments to Agreement. This Agreement may be amended administratively if no new land use not allowed under current regulations is proposed, no reduction in the amount of open space, as defined in RZC 21.78, is proposed, no increase in the total amount of square footage or number of dwelling units is proposed; no reduction in the infrastructure required by this Agreement or the Master Plan conditions of approval is proposed and the request does not involve a request to be bound by future code amendments that has been denied by the Planning Director as provided in Subsection 4.4 above. Any amendment not meeting the criteria of the preceding sentence must be approved by the Redmond City Council using the process for consideration of development agreements set forth in the RZC.

5. **Term.** The term of this Agreement shall be ten (10) years, except as provided in this Section. The City and Owner may agree to extend the term of this Agreement, provided that such extension is approved by the Redmond City Council. The Redmond Zoning Code currently limits the term of a master plan approval in the Marymoor Design District to ten (10) years, with the potential for a five (5) extension. The City and Owner intend for this Agreement to be in effect for a term concurrent with the Master Plan and intend that any request for extension of the Master Plan will be processed concurrently with an extension of this Agreement, and that any expiration of the Master Plan shall cause this Agreement to expire. The City and Owner agree that if the Master Plan is extended, the term of this Agreement shall likewise be extended for the term of the Master Plan.

6. **Development Approvals.**

6.1 **Live/Work Units.** “Live/Work” units are single units (e.g., studio, loft, or one-bedroom) consisting of both a commercial/office component and a residential component that is occupied by the same resident. Live/Work units in the Project are classified as commercial space for FAR and other applicable development standards. Any Live/Work Units constructed as part of the Project shall be located along 68th Street NE and along the north-south connector trail through the center of the Project. The location of the Live/Work units in the Project is depicted on Exhibit C to this Agreement.

6.2 **Flexibility.** Detailed plans for development of the Property have been submitted through the site plan entitlement process and other approval processes set forth in the RZC, as applicable. Road widths, right-of-way dedications, public amenity spaces, and street and utility improvements shall be governed by the Master Plan for any site plan entitlement application. However, depictions of building footprints, shapes, square footage, and number of stories in the Master Plan are illustrative only. Such graphics and text in the Master Plan shall not constrain the process of designing and approving individual developments, which shall address applicable city-wide and special MDD2 design guidelines, codes, and standards. Approved uses in the Master Plan may be transferred to any building on the site and the unit count of residential units may be modified, including ~~increasing or~~ decreasing the number of units allowed, so long as the new use generates the same or lesser trips as the project approved as part of the Master Plan, based on the methodology of the Transportation Impact Analysis accompanying the Master Plan. Any transfer of approved uses in the Master Plan must meet the standards and/or intent of RZC 21.13 “Southeast Redmond Regulations”. Subsequent developments within the Master Plan shall be allowed to be flexible to achieve the intent of this Agreement stated in Section 3, to allow the City to obtain its public benefits and rights-of-way, and to allow for the administrative flexibility and amendments permitted in Section 4.5. The Agreement may be administratively amended pursuant to Section 4.5 to reflect changes to the Project permitted under this section.

6.3 **Conditions.** The City shall not impose any condition on the Project, or on any development proposal within the Project, that is inconsistent with the Master Plan, except as authorized in this Agreement or otherwise authorized by applicable City codes or state or federal regulations, including but not limited to those codes and regulations set forth in Section 4.2 against which LMC is not vested, or under those circumstances set forth in Section 4.3.

6.4 Development Site/Land Division. The size, configuration and number of legal lots or development parcels within the Property may be modified if approved by the City without amendment of the Master Plan through boundary line adjustments, lot consolidations, binding site plans, short plats, subdivisions or the creation of condominiums. Any future land division or consolidation shall not impact the ultimate size of open spaces, infrastructure, or other required public amenity space or public benefits or improvements, unless permitted as an administrative amendment to this Agreement and unless the City obtains like public amenity space, public benefits, or infrastructure.

7. Phasing of Development.

7.1 Description of Phases. Owner will develop the Property in phases that are described in the Master Plan at pages _____. Owner intends to begin construction of all phases as part of Phase 1, including the below-grade parking garage described in the Master Plan. Owner anticipates completing construction of the buildings described in the Master Plan in phases. Amendment of the phasing plan may be administratively approved by agreement of Owner and the City staff as long as all infrastructure, public amenity space, and public benefits associated with each phase remain coordinated so as to provide adequate mitigation for the impacts associated with the development proposed in that phase, and the City obtains like public benefits associated with each phase.

7.2 Street and Right-of-Way Improvements. Owner will construct the street improvements shown in the Master Plan and required by the Master Plan conditions of approval in order to mitigate the transportation impacts associated with the Project. The improvements and associated right-of-way are generally shown on Exhibit D to this Agreement. Changes to the Project that result in administrative amendments to this Agreement under Section 4.5 will not require additional street and/or right of way improvements beyond those described in the Master Plan and this Agreement, so long as the change to the Project generates the same or fewer vehicle trips as the Project prior to the amendment, based on the methodology of the Transportation Impact Analysis accompanying the Master Plan. Easements and dedications shall be provided for the City of Redmond's review at the time of construction drawing approval and finalized for recording prior to the issuance of a building permit for any multi-family structure. The construction of any frontage street improvement, and the dedication of each completed frontage street improvement and associated right-of-way shall be completed prior to the occupancy of any building in the phase for which the improvement is required. Should Owner desire to construct improvements designated for future phases at an earlier time, such work shall be subject to City approval and shall be coordinated with the City. The improvements shall be designed and constructed in accordance with the Master Plan and shall comply with City of Redmond standards and code requirements.

7.3 Administrative Deviations for Streets.

7.3.1 Right-of-Way Widths. Right-of-way dedication width and location along NE 70th St, 176th Ave NE and NE 68th St are depicted in the Master Plan.

7.3.2 NE 69th Street Public Easement. Owner will grant the City a public access easement for public use and access to NE 69th Street, the width and location are shown on the Master Plan.

North-South Trail. Owner will grant the City a public access easement for public use and access to the North-South trail connecting the future NE 68th street and NE 69th, the width and location are s shown on the Master Plan.

7.4 Utilities. Any required water mains, sewer mains, and storm drainage facilities will be installed in public right-of-way or in easements acceptable to the City. Any necessary right-of-way and easements shall be dedicated or conveyed to the City. Construction of such improvements shall be in accordance with City standards, including but not limited to, the City's standard construction details and the City of Redmond Stormwater Manual. Owner will construct improvements as shown in the Master Plan and according to the phasing schedule, if any, approved as part of that Plan. No additional utility improvements will be required, except as may be necessary to meet state or federal mandates against which Owner is not vested under Section 4.2 and except as may be required by the City under circumstances described in Section 4.3. Changes to the Project that result in administrative amendment to this Agreement will not result in additional utility requirements beyond those described in the Master Plan and its conditions of approval, provided that there is no increase in stormwater runoff as the result of the amendment and provided that the utility demands of the amendment do not exceed the capacity of the proposed Master Plan utilities or the City utility system used by the Project. Deviations from the Master Plan that provide materially equivalent utility service and that comply with City standards may be proposed by the Owner and approved administratively by the City staff without amendment of the Master Plan or this Agreement.

7.5 Local Improvement District. In consideration of Owner's construction of the transportation and utility improvements described in this Agreement and in the Master Plan, and based on the City's acknowledgment that existing utility facilities have adequate capacity to service the Project, the Property shall not be included in any currently planned or future Local Improvement District (or similar) assessments related to expansions of the water and/or sewer infrastructure serving the Marymoor Subarea and, except as provided in Section 7.4, will not be required to build or contribute to any currently planned or future improvements, such as Wastewater Pump Station 13 and associated sewer mains, that are not shown to be constructed by the Owner in the Master Plan.

8. NE 70th Street Improvements. Owner's preliminary design of all infrastructure along NE 70th Street has been reviewed for code compliance and conformance with Sound Transit's plans for the NE 70th Street ROW. See Exhibit E for letter of concurrence from Sound Transit. Owner shall be responsible for constructing all frontage improvements from the new curb line back to the final property line along NE 70th Street on Owner's property, subject to final agreement with Sound Transit. All other ROW work along 70th, including paving, signalization, underground power and water/sewer infrastructure within the travel lanes, will be constructed by Sound Transit. In the event that sound Transit's project is significantly delayed or canceled, per RZC

21.17.F the Owner is responsible for all frontage improvements that would be associated with this project, including paving, curbs, sidewalks, storm drainage, street lights, and underground utilities (except as provided for in RZC 21.17.020) along NE 70th Street on Owner's property, conforming to the standards.

9. Transportation Impact Fees and Credits.

9.1 Generally. Except as otherwise provided in this Agreement, Owner shall pay transportation impact fees for the Project in effect at the time building permits are issued for each building.

9.2 Calculation of Transportation Impact Fees. The City's method and procedure for calculating net new project demand for mobility units for purposes of transportation impact fees shall be modified for development within the Master Plan Property to account for structures currently existing on the Property ("Existing Structures"). Upon demolition of an Existing Structure, credit for reduction of existing demand for mobility units attributable to such Existing Structure shall automatically accrue to the owner of the Existing Structure. The credit may be used in whole or part by such owner to reduce the demand for mobility units attributable to such owner's development within the Master Plan Property or may be assigned to another owner or developer of property within the Master Plan Property. Credits may only be used in the calculation of net new mobility unit demand for development within the Master Plan Property and may not be used in connection with any development located outside of the Master Plan Property. Consistent with the Redmond Municipal Code (RMC) 3.10.120, at the time of building permit issuance, the Owner may choose to use the City's standard traffic impact fee rates outlined in the schedules in RMC 3.10.100 for the year of the building permit issuance, or have an independent study conducted to develop unique transportation impact fee rates. All independent fee calculation studies shall meet the standards outlined in RMC 3.10.120 and shall be submitted to the City for review and approval.

9.3 Credits against Transportation Impact Fees.

9.4 Per the City of Redmond Municipal Code Chapter 3.10, Section 3.10.130. (A), whenever a development approval is conditioned upon a developer's conveyance of land for and/or construction of specified system improvements, the developer shall be entitled to a credit against the impact fee that would be imposed for the value of the land or property interest conveyed and/or the actual cost of construction. The total amount of credit granted shall not exceed the total amount of the impact fee the Owner is required to pay upon completion of the Project. If the amount of credits in a particular phase exceed the amount of the impact fee required for that phase, Owner may apply the remaining credit against impact fees required for future phases of development.

In consideration of Owner constructing the transportation improvements as set forth in this agreement and shown in the Master Plan, the city shall credit against all Redmond transportation impact fees due to the City the total project cost (including land value, design, permit fees, construction costs, and right-of-way dedications) of improvements made and listed in the Redmond Transportation Facilities Plan (TFP) or subsequently added to the plan or its successor. If not already part of the TFP, City staff shall propose for City Council decision in 2020 the inclusion in the TFP of all transportation improvements listed below. In the event Owner pays all

or part of the cost of a TFP project in lieu of construction, the credit shall be in the amount of such payment.

9.4.1 176th Avenue NE (between NE 68th Street and NE 70th Street)

9.4.2 NE 70th Street

In order to accommodate Owner construction of transportation improvements prior to City Council decision on inclusion in the TFP, and pursuant to Redmond Municipal Code Chapter 3.10, Section 3.10.130(a), the total cost of improvements shall be estimated prior to any impact fee payment made by Owner and credited against such payment. Owner shall be required to provide a performance assurance device (such as a performance bond, irrevocable letter of credit, or escrow agreement) for the amount of such credit. If, at any time during construction of the Project, the Redmond City Council has approved amendment of the TFP to include any or all the improvements described above as transportation improvements, City shall release Owner from its performance assurance requirement upon completion of the transportation improvements, pursuant to Redmond Municipal Code Chapter 3.10, Section 3.10.130(d). In the event the transportation improvements are not added to the TFP by the completion of the Project, Owner shall pay the remaining traffic impact fees equal to the amount of the credit received.

10. Transportation Management.

10.1 Transportation Mitigation. On-site street and right of way improvements required to mitigate the transportation impacts associated with the Project are outlined in the Master Plan. No additional on-site or off-site transportation mitigation will be required for construction of the Project. Changes to the Project that result in administrative amendments to this Agreement will not result in additional transportation mitigation beyond those described in the Master Plan and this Agreement, so long as the change to the Project generates the same or lesser trips as the Prior Use, based on the methodology of the Transportation Impact Analysis accompanying the Master Plan.

10.2 Transportation Concurrency Certificate for Development Proposed on or before December 31, 2025. Pursuant to RZC 21.52.010(B)(7), development proposed in a building permit application submitted to the City on or before December 31, 2025 as part of Phase I or subsequent phases, as described in the Master Plan, shall be deemed to have met the transportation concurrency requirements set forth in the RZC, so long as the change to the Project generates the same or lesser trips as the project approved as part of the Master Plan, based on the methodology of the Transportation Impact Analysis accompanying the Master Plan. No additional analysis and no additional transportation concurrency certificates shall be required to construct any development proposed as part of a building permit application submitted to the City on or before this date.

11. **Family Housing Units.** A minimum of five percent (5%) of the total number residential dwelling units in the Project shall be three-bedroom units. Three-bedroom units shall have three bedrooms, each of which shall be private and of at least ___ square feet in size.

12. **Local Commercial Use.** By the conclusion of the final phase of development under the Master Plan, Owner will make available a minimum of 3,500 sf. of area for local commercial tenant(s). Local Commercial is defined as a general sales or service use (as defined by RZC 21.78) founded or based in Redmond or the adjacent cities of Kirkland, Bellevue, Issaquah, Sammamish, or Woodinville that has less than three (3) locations. National franchises (e.g. 7-11, Subway, GNC, etc.) shall not be considered a Local Commercial Use.

13. **King County Trail Crossing.** Subject to the approval authority of the King County Parks Department, Owner shall construct improvements to add east/west connections extending pedestrian connections from both NE 68th and NE 69th Streets to the East Lake Sammamish trail. Improvements may include raised parking lot crossings, additional pavement markings, enhanced surfaces, additional landscaping and direction signage.

14. **NE 68th Streetscape.** Owner shall, to the extent approved through the site plan entitlement process, endeavor to design the 68th Street public spaces to be above and beyond what would be required by code in quality and public amenity space.

15. **Community Gardens.** Owner shall provide a minimum of two public garden spaces accessible to the community on a first come, first serve basis. The total area devoted to the public garden spaces shall be a minimum of 5000 square feet. The public garden spaces will include individual raised planter beds, paths, and a shared tool shed. The administration and maintenance of the gardens will be handled by the Owner's property management team.

16. **1% for the Arts.** Owner shall provide publicly viewable art in the project with a total budget, inclusive of design and administrative fee, of a minimum of 1% of the overall construction cost, defined as the sum of all construction costs shown on all building permits associated with the development. The final public art design shall be reviewed and approved by the Redmond arts commission, and may include but not be limited to: art integrated into the façade of the north building, balconies on the west building, and landscaping throughout the development.

17. **Public Benefit.** The City agrees that the other public benefits provided by the Project and stated herein provide sufficient public benefit to meet the requirements of RZC 21.76.070.L.3.e.

18. **Right-of-Way and/or Easement Dedication.** In accordance with RZC 21.52.030.G, where a planned street right-of-way or roadway, sidewalk, slope, or utility easement, as indicated by RZC 21.52.030.D, or as necessary to complete a public street, lies within the proposed development, the fee owner of the Property shall be required to dedicate the right-of-way and/or easement to the City as a condition of approval, unless stated otherwise in this Agreement. Prior to acceptance of the right-of-way and/or easement by the City, the fee owner will be required to remove or subordinate any existing private easements or rights that encumber

the property to be dedicated, and shall be required to remove any encroachments on such easements or rights-of-way.

19. Transfer of Ownership. In the event of transfer of ownership of all or any portion of the Property, the benefits accruing to, and the obligations placed upon the Owner under this Agreement shall run with the land and title to the Property and inure to the benefit of, and be binding upon, each person having any right or title or other legal interest in the Property with respect to that party's interest in the Property. This Agreement shall be deemed to create privity of contract and estate with and among all persons and entities acquiring any interest in the Property subsequent to the date hereof.

20. Miscellaneous Provisions.

20.1 Code Citations. All citations and references to the Redmond Zoning Code and Redmond Municipal Code in this Agreement shall refer to those provisions in force as of the date of this Agreement.

20.2 Recording. This Agreement shall be recorded with the King County Department of Records and Elections. The provisions of this Agreement shall run with the land and be binding upon and inure to the benefit of the Parties, their successors in interest and assigns.

20.3 Amendments. Major amendments to this Agreement shall require review and approval by the Redmond City Council. City staff shall be entitled to administratively approve minor amendments to this Agreement. A "Minor Amendment" is defined as an amendment that does not increase the density of the Project or significantly increase its adverse impacts on surrounding properties.

20.4 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 specific performance of all terms of this Agreement by any Party in default hereof.

20.5 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Washington, notwithstanding any conflicts of law provisions.

20.6 Notices. All notices and other communications required or otherwise provided for by this Agreement shall be in writing and shall be given to the following persons:

City of Redmond:
Attention: Director of Planning and
Community Development
P.O. Box 97010
Mail Stop: 4SPL
Redmond, WA 98073-9710

Lennar Multifamily Communities, LLC
Attention:

And to its Attorney:

And to its Attorney:

Ogden Murphy Wallace, P.L.L.C.
Attention: James E. Haney
901 Fifth Avenue, Suite 3500
Seattle, WA 98164-2008

The Parties may, from time-to-time, notify each other in writing of changes in the names and addresses of persons to receive notices and communications and such changes shall become effective upon receipt by the non-notifying Party. Notices shall be deemed received within three days after being placed in the United States Mail, properly addressed and postage prepaid, or upon personal delivery.

20.7 Full Understanding – Construction. The Parties each acknowledge, represent and agree that they have read this Agreement, that they fully understand the terms thereof; that they have had the opportunity to be fully advised by their legal counsel and any other advisors with respect thereto; and that they are executing this Agreement after sufficient review and understanding of its contents.

20.8 Attorney's Fees. If either Party institutes litigation against the other Party to enforce any provision of this Agreement or to redress any breach thereof, the prevailing Party shall be entitled to recover its costs and reasonable attorney's fees incurred in such litigation.

20.9 Severability. If any section, sentence, clause or phrase of this Agreement is determined to be invalid or unconstitutional by any court of competent jurisdiction, the remaining sections, sentences, clauses and phrases shall remain viable and in full force and effect.

20.10 Counterparts. This Agreement may be executed in counterparts, with each Party sending a .pdf of its signature to the other Party via email transmission. This Agreement, when fully executed and signature pages exchanged as provided herein shall be effective as the original document.

20.11 Equal Opportunity to Participate in Drafting. The Parties have participated and had an equal opportunity to participate in the drafting of this Agreement. No ambiguity shall be construed against any Party based upon a claim that such Party drafted the ambiguous language.

20.12 Exhibits. This Agreement includes the following Exhibits:

- Exhibit A:** Legal Description of the Property
- Exhibit B:** Depiction of the Property
- Exhibit C:** Location of Live/Work Units
- Exhibit D:** Street Improvements and Right-of-Way
- Exhibit E:** Sound Transit Concurrency Letter

20.13 Final and Complete Agreement. This Agreement constitutes the final and complete expression of the Parties on all subjects relating to the development of the Property. This Agreement supersedes and replaces all prior agreements, discussions and representation on all

subjects relating to the development of the Property. Neither Party is entering into this Agreement in reliance on any oral or written promises, inducements, representations, understandings, interpretations or agreements other than those contained in this Agreement and the exhibits hereto.

20.14 Effect of Expiration or Termination. Upon expiration or sooner termination of this Agreement, all rights and obligations of the Parties under this Agreement shall terminate and be of no further effect. Any unused credits against transportation impact fees created by this Agreement shall expire upon expiration or termination of this Agreement or six (6) years from the date the credit is awarded, whichever is later. Any development for which a permit is issued after expiration or termination of this Agreement and after six years from the date any impact fee credit is awarded shall be subject to the payment of impact fees as provided in City ordinances applicable to such development, notwithstanding any credit created by this Agreement for any design, engineering, dedication, conveyance, or construction of improvements during the effective period of this Agreement. All development for which a permit is issued after expiration or termination of this Agreement shall be required to satisfy any applicable concurrency requirements notwithstanding the issuance of any concurrency certificate during the effective period of this Agreement. All development for which a permit is issued after the expiration or sooner termination of this Agreement shall be subject to SEPA review if not previously completed and may be conditioned to mitigate any environmental impacts of such development, notwithstanding any mitigation provided during the term of this Agreement and the City shall not be required to credit any mitigation provided during the term of this Agreement against any mitigation subsequently determined necessary to mitigate the environmental impacts of any development for which a permit is issued after expiration or sooner termination of this Agreement. It is the intent of the Parties that the requirements of this Agreement shall apply only during its term and that once this Agreement has expired or is terminated, all rights created by the terms of this Agreement will have expired or terminated. All conditions of any permit approvals shall continue to apply, however, as long as the development approved by such permits remains on the Property.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

SERITAGE SRC FINANCE, LLC

CITY OF REDMOND

By: _____
Its: _____
Date: _____

By: _____
John Marchione
Its: Mayor
Date: _____

Attest:

Michelle M. Hart, City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

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

DATED: _____

Printed: _____
NOTARY PUBLIC in and for Washington
Residing at: _____
My appointment expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that John Marchione 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 Mayor of the CITY OF REDMOND, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____

Printed: _____
NOTARY PUBLIC in and for Washington
Residing at: _____
My appointment expires: _____

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

DRAFT

EXHIBIT B
DEPICTION OF THE PROPERTY

DRAFT

DRAFT

EXHIBIT C
LOCATION OF LIVE/WORK UNITS

DRAFT

EXHIBIT D
STREET IMPROVEMENTS AND RIGHT-OF-WAY

DRAFT

EXHIBIT E
SOUND TRANSIT CONCURRENCY LETTER

DRAFT