

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (“Agreement”) is entered into this ____ day of _____, 2018 (“Effective Date”), by and between the City of Redmond (“City”), a Washington municipal corporation, and Seritage SRC Finance, LLC (“Owner”), a Delaware limited liability company. The City and Seritage are referred to collectively as the “Parties” and individually as a “Party.”

RECITALS

A. Owner is planning the redevelopment of approximately 14 acres of the block generally located at 2200 148th Avenue NE, between NE 20th Street and NE 24th Street in Redmond, Washington and legally described on the attached Exhibit A (the “Property”). The redevelopment plan includes multifamily housing units, office, hotel, retail, market/grocery, restaurant uses, and parks and open space (“the Project”).

B. Owner has prepared a master plan entitled “Seritage Place Master Plan” dated _____, 2018 to provide for coordinated redevelopment of the Property over time (“Master Plan”). The Master Plan has been the subject of a public review process that included public review and comment at multiple neighborhood meetings and recommendations for approval by the City’s Design Review Board and Technical Committee. The Redmond City Council also conducted several study sessions and 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 considered through the Overlake Neighborhood Plan Update and Implementation Project Final Supplemental Environmental Impact Statement (FSEIS), the Overlake SEPA Planned Action Update, and an EIS Addendum to the Overlake Neighborhood Plan Update and Implementation Project FSEIS.

D. 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: LU-52, OV-5, OV-9, OV-42, OV-56, UC-6, UC-7, UC-9, UC-10, UC-22, and UC-24.

E. 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 Overlake Neighborhood.

F. 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

1. **Land and FAR.** The Property, exclusive of public right-of-way, comprises 607,827 square feet of total land area, as depicted on Exhibit A (overall basic site plan showing property boundary). As provided in RZC 21.12.090(C), 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. Allowed FAR shall thus be calculated for all purposes by using 607,827 square feet as the total gross land area. Future dedications of land for right-of-way or other public use or improvements shall not reduce the land area used for calculating FAR, the development rights provided for in this Agreement or development rights provided for through applicable land use regulations. |

2. **The Project.** The Project proposes to redevelop approximately 14 acres of the Property commonly known as the Overlake Fashion Village or Sears site. The site is located at 2200 148th Avenue NE on King County Tax Parcel #262505-9169, and may include King County Tax Parcels #262505-9275 and 262505-9276 upon completion of a Boundary Line Adjustment as depicted in Exhibit __C, within the Overlake Neighborhood of the City of Redmond. The Project consists of approximately 185,000 square feet of retail including a potential market/grocery and restaurant/food services, 500 multifamily residential units (equivalent to approximately 476,865 square feet), a 210-room hotel (equivalent to approximately 121,565 square feet), 266,800 square feet of office space, and parking for approximately 2,245 vehicles. The Project also includes approximately 2.4 acres of parks and open space areas such as urban pathways.

3. **Conformance with Master Plan and Intent.** The Redmond City Council has approved the Master Plan on _____, 2018 by Ordinance _____. 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 park, open space, street, and utility facilities identified hereafter. Existing structures, and 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 material conflict between the Master Plan and this Agreement, this Agreement shall control. The intent of this Agreement is that the Project complies with the Redmond Comprehensive Plan.

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 regulations, transportation concurrency, and other laws, ordinances,

policies, and administrative regulations and guidelines of the City governing land development.

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

- (a) Plan review, fees, inspection fees, and connection charges and the method of calculation of amount of impact fee established by schedules, charts or tables;
- (b) Stormwater and utility connection charges, general facility charges, and monthly service charges;
- (c) Amendments to building, plumbing fire and other construction codes adopted pursuant to RCW 19.27 or 19.27A; and
- (d) Other City enactments that are adopted pursuant to state or federal mandates (such as 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) and Washington law, 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, and guidelines affecting development against which Owner is vested by this Agreement.

4.5 Future Amendments to Agreement. This Agreement shall be amended administratively upon a request by the Owner if the request does not result in an increase in the aggregate square footage approved by the Master Plan, does not significantly increase impacts created by the Project, and does not include a use not approved by this Agreement and the approved Master Plan. Except for the term of this Agreement, any of the dates set forth in this Agreement may be revised administratively by agreement between the Owner and City staff.

5. Term. This agreement becomes effective upon the date all parties have signed and shall expire and be of no further effect twenty years from the date that the Redmond City Council approves this by ordinance, regardless of what date the last party signs. The term of this Agreement shall be twenty (20) 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. Under RZC 21.76.070.P.3, the City and Owner intend for the Master Plan to be in effect

for a term concurrent with this Agreement 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 Development Agreement to expire.

6. Development Approvals.

6.1 Site Plan Entitlement Process. Detailed development plans within the Property shall be approved through the site plan entitlement process and other approval processes provided for in the RZC, as applicable. The road widths, right-of-way dedications, and street and utility improvements shall be governed by the Master Plan for any future Site Plan Entitlement application. However, depictions of building footprints, shapes 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 Overlake Village design guidelines and conform with standards governing structure height and bulk and other applicable development regulations and City of Redmond engineering codes and standards. At Owner's and City's option and agreement, the City and Owner shall enter into a memorandum of understanding for each project undergoing entitlement review to set expedited review schedules.

6.2 Flexibility. The approved Master Plan is considered a conceptual guide by which development in the Project should be carried out. The Master Plan is not intended to require specific uses, square footages, building shapes, or building footprints on specific parcels, nor is it intended to require or preclude access points to/from parcels if deviations to access are sought during the Site Plan Entitlement process. The Master Plan is intended to be an overall approved development umbrella, with certain right-of-way improvements and public benefits to be delivered in certain phases. Approved uses in the Master Plan may be transferred to any parcel 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 use previously approved on that parcel as part of the Master Plan ("Prior Use"), based on the methodology of the Transportation Impact Analysis accompanying the Master Plan. Deviations from the access point locations shown in the Master Plan may be submitted for consideration during the Site Plan Entitlement process for each development pursuant to RZC 21.76.070(C). 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 this Agreement or the Master Plan except as provided in Section 4.3 of this Agreement.
- 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 creation of condominiums. Any future land division or consolidation shall not impact the ultimate size of open spaces, infrastructure, or other required public benefits or improvements, unless permitted as an administrative amendment to this Agreement and the City obtains like public benefit or infrastructure. The Property shall be deemed “classified for commercial use” as this term is used in RCW 58.17.040(4) for the purpose of legally dividing the property through administrative approval of one or more binding site plans.

7. Phasing of Development.

- 7.1 Description of Phases.** Please see pages 60, 64, and 68 of the Master Plan for a depiction of the agreed-upon phases. Amendment of the phasing plan may be administratively approved by agreement between Owner and City staff so long as all infrastructure associated with each phase remains 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 on-site street and right-of-way improvements, as shown on pages 33-55 of the Master Plan and outlined in Exhibit D to this Agreement. The on-site street and right of way improvements outlined in the Master Plan and in Exhibit D constitute the entirety of the street and right of way improvements required for the Project. 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 lesser trips as the Prior Use, based on the methodology of the Transportation Impact Analysis accompanying the Master Plan. The construction of any frontage street improvement, and the dedication to the City of each completed frontage street improvement, shall be completed prior to the occupancy of any building in the phase for which the improvement is required. Should Owner choose to construct improvements designated for future phases at an earlier time, such work shall be coordinated with the City. The improvements shall be designed and

constructed in accordance with the Master Plan and shall follow City of Redmond standards and code requirements.

7.3 Administrative Deviations for Right of Way Widths.

7.3.1 Right of Way Widths. The widths of the right of way to be constructed by Owner are shown on page 13 of the Master Plan, and specific street and right-of-way improvements are shown on pages 33-55 of the Master Plan.

7.3.2 Deviations. The City agrees that the Project may qualify for administrative design flexibility under RZC 21.76.070(C) for Administrative Engineering Deviations to the agreed-upon road widths, dedications and right of way improvements in the Master Plan. The City agrees to consider road width deviations, if the Owner requests such deviations and the deviation requirements in the RZC and the City's Administrative Engineering Deviation Procedure are met.

7.4 Utilities. Any required water mains, sewer mains, and storm drainage facilities will be installed in all major public street improvements or private roads within public right of way or in easements acceptable to the City, and be dedicated to the City. Construction of such improvements shall be in accordance with the City of Redmond Stormwater manual as well as other applicable City standards. Owner will construct and phase utility improvements as shown and stated in the Master Plan. No additional utility improvements are required. Changes to the Project that result in administrative amendments to this Agreement will not result in additional utility requirements beyond those described in the Master Plan and this Agreement provided no increase in stormwater runoff or utility demands occur that exceed the capacities of the proposed Master Plan utilities shown. Deviations from the Master Plan that provide materially equivalent utility service and comply with City standards may be proposed by the applicant and approved administratively without amendment of the Master Plan.

7.5 Permanent Parks and Open Space. The Project includes the construction of two parks, identified on the approved Master Plan as Gateway Plaza and Da Vinci Park. Gateway Plaza is approximately 1 acre in size and is proposed for passive and events-related uses. Da Vinci Park is approximately 1.35 acres in size and is proposed for active recreation uses. Owner and the City will utilize the City's park master planning process to determine the uses and features to be included the development of Gateway Plaza and Da Vinci Park. Ownership and maintenance responsibilities for the parks will be determined between the Parties through the parks master planning process.

7.5.1 Phase 1 Temporary Park. Owner will construct as part of Phase 1 a 0.9- acre temporary park as shown in the Master Plan.

7.5.2 Parks constructed in Subsequent Phases. The Master Plan outlines the phasing plan for construction of the permanent parks. The parks provided by the Owner are a public benefit and satisfy all impact fee requirements for open space and parks that may be required as part of Site Plan Entitlement for individual developments within the Master Plan. The Parties agree to cooperate in seeking and attempting to secure available additional funds for park construction or maintenance.

8. Technology Office Uses. The Parties agree that any technology office/headquarters use to be located on the Property falls within the currently permitted Information and Communication use category listed in Table RZC 21.12.040.C and will not be considered a Transitional Use or a General Sales and Services use. The Parties agree that this technology office/headquarters use directly supports the intent of this Agreement and the Comprehensive Plan vision for the Overlake Neighborhood and the OV-3 zone.

9. Boundary Line Adjustment. Owner intends to apply for a Boundary Line Adjustment (“BLA”) to allow for a land swap transaction between Owner and the neighboring property owner on the block, FW WA-Overlake Fashion Plaza, LLC (“Regency”). The Master Plan and Development Agreement apply to Owner-owned property and/or property owned by Owner’s assignees, as depicted in Exhibit C. In the event the BLA is not approved and recorded, the Master Plan and this Agreement only applies to Owner-owned property, in which case the map depicted in Exhibit C to which this Agreement and the Master Plan apply will be amended to depict the Owner-owned property. Following completion of the BLA and land swap transaction with Regency, Owner will submit a binding site plan or other appropriate land division application to create parcels on the Owner Property. The Parties agree that any remnant/non-buildable parcels created by road dedications or land divisions may be subjected to tieover agreements.

9.1 Sears Auto Center. The Sears Auto Center property, currently owned by Owner and located as legally described in Exhibit G attached to this Agreement and incorporated herein by this reference as if fully set forth herein will become part of the larger Regency parcel as part of the land swap being implemented by recordation of the BLA. Following the completion of that land swap, Regency intends to renovate or replace in kind the Sears Auto Center with up to, and not to exceed, 39,460 square feet of retail/restaurant use. The renovation or replacement in kind of the Sears Auto Center does not require a master plan under RZC 21.12.020. Rather, the Sears Auto Center renovation or replacement in kind has been conclusively determined by the City to be a distinct development which shall be processed as a Site Plan Entitlement under RZC 21.76.070.Y. To the extent that street and frontage improvements are required as a result of

tenant improvements to the Auto Center, the City agrees to allow an administrative deviation request to be submitted to waive or postpone until a future Master Plan application is submitted to the City by Regency or a subsequent owner any street improvements required along NE 20th St and 148th Ave NE.

- 9.2 Option Property.** As shown in Exhibit G, Owner will maintain ownership of approximately 18,500 s.f. of land along NE 20th Street between Lumiere Ave NE and 148th Avenue NE as a part of the land swap being implemented by recordation of the BLA (“Option Property”). The City of Redmond and the City of Bellevue have a planned westbound dual left turn lane improvement at the intersection of NE 20th Street and 148th Avenue NE. Prior to receiving a certificate of occupancy for Phase 1 development, Owner or its successor agrees to dedicate approximately ___ feet of its Option Property along NE 20th Street between Lumiere Avenue NE and 148th Avenue NE, as generally shown in Exhibit ___ (“Dedicated Property”), for the purposes of landscaping and parking. At the time this right of way dedication is recorded, the City agrees to record an exclusive easement of the Dedicated Property to Owner or its successor, the form of which is attached as Exhibit E. This easement will extinguish upon approval of a Master Plan for the property currently owned by Regency. If a Master Plan for the property currently owned by Regency is not approved by December 31, 2038, the easement will extinguish. Owner agrees to indemnify the City during the term of the easement. The City agrees that street and frontage improvements along NE 20th Street and 148th Avenue NE is not required for this development as proposed.

10. Compliance with South Overlake Neighborhood Infrastructure Plan. The street alignments and utility requirements shown in the Master Plan are compliant with the conceptual TMP and technical documents for the South Overlake Neighborhood Infrastructure Plan. Nothing in the conceptual TMP or technical documents requires the alignments and utilities approved in the Master Plan or this Agreement to be changed or superseded upon adoption of a new/updated TMP, technical documents, or South Overlake Infrastructure Plan.

11. Shared Parking. Parking for uses in one building may be shared or provided for in another building, provided that appropriate parking easements are provided if separate ownerships are involved, and provided further, that all required parking is in place at the time any building requiring such parking receives a certificate of occupancy. As an example, but not by way of limitation, commercial uses may share parking and have guest parking for residential and/or hotel uses in a nearby, but different structure, from the structure where the use is located.

12. Public Parking. At least one hundred (100) stalls of the total parking provided in the Project will be open and accessible to the public at the prevailing market rate. These 100 spaces will be approximately allocated as follows: 25 spaces within Phase I and 75 spaces within Phase II. Owner will place signage on these parking spaces that limits the parking duration to no more than four (4) hours during the day. While residents and businesses located in the Project may be able to reserve parking spaces for patrons, employees, and residents, the one hundred stalls

shall remain open to the general public. Owner agrees to execute and record a covenant on the title to the Property providing for such parking. The covenant shall be in a form approved by the City and shall be recorded prior to the issuance of any certificate of occupancy for any building on a site where parking is to be provided. If the City and the Owner agree that the 100 stalls of public parking is no longer needed in the future, this requirement may cease and the covenant shall be released.

13. Public Art. Owner will provide public art and/or street furniture in the permanent parks, the cost of which is not to exceed \$1 million for the Project. The public art and/or street furniture will be provided on an approximate pro rata share based on the square feet constructed per phase. If Owner is unable to provide the pro rata share value of all of the public art and/or street furniture in a particular phase, Owner will contribute the remaining pro rata share value to a fund to be used for public art and/or street furniture for future phases. Locations of the public art and/or street furniture will be determined through the park master planning process.

14. Affordable Housing. Owner shall, at a minimum, provide 10 percent of the units in any new housing development as affordable housing units under RZC 21.20.030. Affordable housing units are defined under RZC 21.78 as “[h]ousing reserved for occupancy by eligible households and affordable to households whose annual income does not exceed eighty percent of median income, adjusted for household size, and no more than thirty percent of the monthly household income is paid for monthly housing expenses.” If Owner elects to provide more affordable housing than the minimum the code requires, or if Owner elects to provide units at a deeper level of affordability (as measured by area median income), Owner and City shall agree administratively upon additional incentives which the City may provide in order to realize an additional level of affordable housing for the Project. Affordable housing will be memorialized via agreements and covenants as provided in the RZC.

15. Electric Car Chargers. Owner will provide a minimum of ten (10) total electric car charging stations project-wide to be located in the below-grade garages. Specific locations will be determined through the Site Plan Entitlement process for each phase of development.

16. Public Benefit. The Parties acknowledge that approximately 50% of the Owner’s property is being dedicated to public uses, as outlined in the Master Plan. The dedicated property benefits the City by enhancing public and pedestrian experiences, by allowing the largest parcel in the South Overlake neighborhood to develop consistently with the Redmond Comprehensive Plan, by creating connectivity in the City of Redmond, by turning what was previously an auto-oriented development into a mixed-use pedestrian development consistent with the City’s vision for the neighborhood, and by building out the City’s infrastructure in a large portion of the South Overlake Neighborhood. The City agrees that this dedication of land to public purposes, in addition to the other public benefits provided by the Project (parks, open space, roads, public parking, affordable housing, electric car charging stations, *etc.*) and stated herein provide sufficient public benefit to meet the requirements of RZC 21.76.070.L.3.e.

17. State Environmental Policy Act (“SEPA”) Planned Action. The Overlake Neighborhood Plan was adopted pursuant to an Environmental Impact Statement (“EIS”) and is considered a SEPA Planned Action, see RZC 20C.45.090. The Parties agree that the

environmental impacts stemming from this Development and Agreement and the Master Plan have been analyzed by the Overlake SEPA Planned Action. An addendum to the SEIS has been prepared addressing differences between the Project and the original proposal. The addendum has been reviewed and accepted by the City of Redmond. Individual projects implementing the Master Plan and this Agreement, consistent with the addendum, are considered to have been reviewed pursuant to SEPA and no individual SEPA determinations for individual project site plan entitlements are required. SEPA checklists for individual projects will be required to confirm consistency with the previous SEPA documents and analysis.

18. Transportation Management.

18.1 Transportation Mitigation. On-site street and right of way improvements required either to align with City-proposed transportation system improvements or mitigate the transportation impacts associated with the Project are outlined in the Master Plan and in Exhibit D of this Agreement. All remaining off-site transportation mitigation required for the Project is outlined in Exhibit D. 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.

18.2 Transportation Concurrency Certificate for Development Proposed on or before December 31, 2023. Pursuant to RZC 21.52.010(B)(7), development proposed in a building permit application submitted to the City on or before December 31, 2023 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 Prior Use, 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.

18.3 Transportation Concurrency Certificate for Development Proposed After December 31, 2023. No building permit shall be issued for any new development proposed in a building permit application submitted to the City after December 31, 2023 until the transportation concurrency requirements set forth in RZC 21.52.010 as of the date of this Agreement have been satisfied. Consistent with the City of Redmond's Multimodal Plan-Based Concurrency System Administrative Guidelines in effect at the time of this Agreement, the Owner may choose, at the time of site plan entitlement, to

use the City's standard Mobility Unit demand rates, or have an independent study conducted to develop unique Mobility Unit demand rates. Other than the concurrency review, no additional analysis shall be required to construct subsequent phases of development proposed as part of a building permit application submitted to the City after this date.

18.4 Transportation Impact Fees. The City procedure for calculating net new project demand for mobility units for purposes of transportation concurrency and impact fees shall be modified for development within the Master Plan Area to account for demolition of 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 Area, or may be assigned to another owner or developer of property within the Master Plan Area. Credits may only be used in the calculation of net new mobility unit demand for development within the Master Plan Area and may not be used in connection with any development located outside of the Master Plan Area. 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.

18.5 Credits against Transportation Impact Fees. In consideration of Owner constructing the transportation improvements as set forth in this Agreement, the City shall credit the total project cost (including land value, design, permit fees, construction, and right-of-way dedications) of each such improvement made and listed in the Redmond Transportation Facilities Plan (TFP) against all transportation impact fees due to the City. 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. 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. The following system improvements shown in the Master Plan are identified as eligible transportation impact fee credits at the time of construction and if necessary the City Council agrees to consider amending the TFP to include them:

- a. NE Alhazen Street

- b. Da Vinci Avenue NE south of NE Alhazen Street
- c. Da Vinci Avenue NE north of NE Alhazen Street (if dedicated as public right-of-way)
- d. 148th Ave NE widening and frontage improvements
- e. NE 24th Street widening and frontage improvements
- f. 148th Ave NE/NE Alhazen Street (additional northbound through lane, intersection, and signal modifications)
- g. 148th Ave NE/NE 24th Street (intersection improvements and signal modifications on SE corner of intersection)
- h. 148th Ave NE/NE 20th Street (northbound right-turn lane)

19. Other Impact Fee Credits. In acknowledgement of the dedication of Owner's property for public good, including parks, roads, open space, utilities and fire lanes, the Owner is entitled to impact fee credit as calculated by RMC 3.10.130. Construction and/or dedication of land for permanent parks and the temporary park described in Section 7.5.1 shall qualify as a credit against park, recreation, open space or trail facilities impact fees. If the amount of the credit exceeds the amount of the impact fee Owner is required to pay in a particular phase, the amount of the credit which exceeds the impact fee for that phase may be carried over to future phases.

20. 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 is necessary to complete a public City street, lies within a proposed development, the fee owner of the property shall be required to dedicate the right-of-way 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.

21. 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 insure 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.

22. Miscellaneous Provisions.

22.1 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.

- 22.2 Recording.** This Agreement shall be recorded with the King County Department of Records and Elections following recording of the Boundary Line Adjustment described in Section 2 to achieve the land swap. 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.
- 22.3 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 under Section 4.5. A “Minor Amendment” is defined as an amendment that does not increase the density of the Project or increase its adverse impacts on surrounding properties to a level of significant adverse impacts.
- 22.4 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.
- 22.5 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.
- 22.6 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

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

Seritage SRC Finance, LLC

Attention: Kacy Keys
10960 Wilshire Blvd. #1420
Los Angeles, CA 90024

Attention: Matt Fernand, General Counsel
500 Fifth Avenue #1530
New York, NY 10110

And to its Attorney:
McCullough Hill Leary, P.S.
Attention: Jessica M. Clawson
701 Fifth Avenue, Suite 6600
Seattle, WA 98104

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.

- 22.7 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.

22.8 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.

22.9 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.

22.10 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.

22.11 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.

22.12 Exhibits. This Agreement includes the following Exhibits:

Exhibit A: Legal Description of the Property

Exhibit B: Depiction of the Property

Exhibit C: Boundary Line Adjustment necessary to achieve land swap

Exhibit D: On-Site and Off-Site Street and Right of Way Improvements

Exhibit E: Form of Easement for 20th Street between Lumiere Avenue NE and NE 148th Street. **** draft note Final form and dimensions to be included once determined by preliminary Bellevue design.**

22.13 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, including but not limited to, the Memorandum of Understanding for the Overlake Plaza Project executed by the Parties on _____, 2018. 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

22.14 Effect of Expiration or Termination. **** Draft note, this section will continue to be refined to ensure RMC 3.10 is met.* 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 and park impact fees created by this Agreement shall expire and any development for which a permit is issued after expiration or termination of this Agreement 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 land dedication, conveyance, or construction 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 pursuant to the terms 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.

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

APPROVED AS TO FORM:

City Attorney

DRAFT

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 Manager of SERITAGE SRC FINANCE, 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

EXHIBIT C

BOUNDARY LINE ADJUSTMENT NECESSARY TO ACHIEVE LAND SWAP

DRAFT