

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON, APPROVING A DEVELOPMENT AGREEMENT FOR PROPERTY OWNED BY MGP XII OVERLAKE EAST LLC LOCATED ON PARCEL NOS. 644850-0010, 644850-0011, AND 644850-0020

WHEREAS, MGP XII Overlake East, LLC owns Parcel Nos. 644850-0010, 644850-0011, AND 644850-0020, which comprise an approximately 6.1-acre project site (the “Property”); and

WHEREAS, MGP XII Overlake East, LLC has requested that the City and MGP XII Overlake East, LLC 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 and use of a three-phase Master Planned Development including two eight-story mixed use buildings; one eight-story multi-family building; one eight-story multi-family or office building; and site improvements including streetscape improvements, public plaza/open space, private open space/amenities, landscaping, pedestrian walkways, and vehicular access/circulation; and

WHEREAS, pursuant to RZC 21.76.070(P), the Redmond City Council reviewed and approved the Overlake East Master Planned Development, Phase 1 Site Plan Entitlement, and Phase 2 Site Plan Entitlement applications; and

WHEREAS, pursuant to RCW 36.70B.200, the Redmond City Council held and opened a public hearing on the proposed agreement on June 18, 2024 and closed the record on June 18, 2024; and after considering all testimony presented at the public

hearing, determined that a development agreement for the 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, "Overlake East 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 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.

RESOLVED this _____th day of _____, 2024.

CITY OF REDMOND

Angela Birney, MAYOR

ATTEST/AUTHENTICATED:

CHERYL XANTHOS, CITY CLERK

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
RESOLUTION NO. _____

EXHIBIT A

OVERLAKE EAST DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (“Agreement”) is entered into this ____ day of _____, 2023 (“Effective Date”), by and between the City of Redmond (“City”), a Washington municipal corporation, and MGP XII Overlake East, 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 development of land located at 15230 NE 24th Street in Redmond, Washington and legally described on the attached Exhibit A (the “Property”). The Property consists of two parcels: Parcel 644850-0010 (the “North/Corner Parcel”) and Parcel 644850-0020 (the “East Parcel”). The Property is located in the City’s Overlake Neighborhood in Overlake Village-1 (“OV-1”) zone.

B. As required by Redmond Zoning Code (“RZC”) 21.76.070.P.2.b, Owner has prepared a master plan entitled “Redmond Overlake East” dated July 21, 2023 (“Master Plan”) to provide for coordinated development of the Property. Owner has applied for approval of the Master Plan, this Development Agreement, and Site Plan Entitlements for Phases 1 and 2 under City File Nos. LAND-2022-00206, LAND-2022-00205, LAND-2022-00207, and LAND-2022-00208, respectively. 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. The development plan includes three mixed-use residential buildings (Buildings A, B and C) located on the North/Corner Parcel that were approved under the Master Plan and Site Plan Entitlement Approvals LAND-2022-00207 and LAND-2022-00208 on _____, and two scenarios for the East Parcel (Building D)—either a mixed-use residential building or an office building (“the Project”).

D. Environmental impacts of the development proposed by the Master Plan and Site Plan Entitlements were identified and considered through the 1999 Overlake Neighborhood Plan Update and Implementation Project Final Supplemental Environmental Impact Statement (FSEIS), the 2009 Overlake SEPA Planned Action Update, and the 2012 EIS Addendum to the Overlake Neighborhood Plan Update and Implementation Project FSEIS.

E. 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 and transit hubs, emphasizing regional retail as part of mixed-use developments, encouraging public art, 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

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the Project include, but are not limited to: LU-6, LU-8, LU-40, FW-15, FW-27, NE-12, OV-07, OV-12, OV-15, OV-21, OV-36, and OV-56.

F. The City determined that Owner submitted complete building permit applications for the Phase I Building (Building A), BLDG-2023-02492, and the Phase II Buildings (Buildings B and C), BLDG-2023-02493 on June 2, 2023. Under RCW 19.27.095, the Phase I and Phase II Building are vested to the development regulations in effect on June 2, 2023, so long as the building permit applications and subsequent building permits remain valid.

G. RCW 36.70B.170 through 36.70B.210 authorize cities to enter into development agreements with property owners to create certainty in the development review process by providing assurance to a development project applicant that upon government approval the project may proceed in accordance with existing policies and regulations for the term of the agreement. 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.

H. 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 Owner 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 264,687 square feet of land located at 2560 NE 152nd Avenue, 15230 NE 24th Street, and 15340 NE 24th 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 21.12.040 and .21.12.090, 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 264,687 square feet (6.076 acres) 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 anticipated to be developed in phases. Phases I and II of the Project are located on the North and Corner Parcels and consists of two eight-story mixed-use residential buildings containing a total of 855 units, some ground-floor pedestrian oriented commercial uses and parking for 1,108 vehicles. The current Phase III is located on the East Parcel and consists of two scenarios—Site Planning Concept One consists of a mixed used multifamily building and parking; Site Planning Concept Two consists of an office building and parking. A minimum of five percent (5%) of the residential units in the Project are proposed to be three-

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bedroom units. The Project also includes a linear park plaza and pedestrian network, increased tree canopy, public art, a public bike maintenance station and added bicycle parking, family-focused amenity features, larger average unit sizes, and landscaping enhancements throughout the project site and along the urban pathway to be constructed by the Owner.

3. Conformance with Master Plan. The Redmond City Council approved the Master Plan on _____, 2024. Approval of the development shown in the Master Plan and identified in this Agreement is specifically conditioned upon provision of the public amenities and other features identified in the Master Plan and/or this Agreement, including but not limited to, the linear park/plaza and pedestrian path network, public art, urban pathway enhancements, public bike maintenance kiosk and additional bicycle parking, urban pathway enhancements, enhanced paving and lighting, three-bedroom residential units, family amenities, and larger average unit sizes. The Project shall substantially conform to the Master Plan, including amendments thereto as provided for in RZC 21.76.090.D. In the event of a conflict between the Master Plan and this Agreement, this Agreement shall control.

4. Vested Rights.

4.1 Development Regulations. The buildings permitted under Phases I and Phases II are vested to both the Building Code and the development regulations in effect on June 2, 2023, the date of submission of complete building permit applications for each building. Except as provided otherwise in this Agreement, development of the Project that is not otherwise vested to regulations prior to the Effective Date of this Agreement 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, and guidelines addressing zoning, environmental review (including 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, stormwater capital facility charges and other utility connection charges, stormwater monthly billing, 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

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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 certain 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, but may not request to be bound by a future amendment that either increases the density of the Project or does not require the Project to provide an equivalent public benefit as proposed in the Master Plan. The City's Planning and Community Development 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 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 and Community Development 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 Overlake 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 Flexibility. Detailed plans for development of the Property shall be as approved through the site plan entitlement process, the coordinated civil review process and other

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approval processes set forth in the RZC, as applicable. 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. As noted in Section 1 of this Agreement, the Master Plan includes two scenarios for development of the East Parcel—Site Planning Concept One consists of mixed used multifamily building and parking; Site Planning Concept Two consists of an office building with pedestrian oriented commercial uses and parking. 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. 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 Overlake design guidelines, codes, and standards.

6.2 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 Owner is not vested, or under those circumstances set forth in Section 4.3.

6.3 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 plazas and amenity spaces 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 a maximum of three phases that are described in the Master Plan at pages 45-84. 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 in phases as 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 pages 47-51, 56, 69 & 77 of the Master Plan. 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

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drawing approval and finalized for recording prior to the issuance of a civil SITE Permit. 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 issuance of a civil SITE Permit in the phase for which the improvement is required, whichever is sooner. 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 Right-of-Way Widths. Right-of-way dedication width and location along NE 24th Street, 152nd Avenue NE, and the Urban Pathway are depicted in 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 in phases according to the phasing schedule 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.

8. Transportation Impact Fees and Credits.

8.1 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.

8.2 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 Structure"). There are three Existing Structures on the Property. The City agrees that Owner will receive credit for the 22,500 s.f. of shopping center space in the North Building, 31,410 s.f. shopping center space in the Corner Building, and 40,000 s.f. furniture store for the East Building. Upon demolition of any 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

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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.

8.3 Credits against Transportation Impact Fees. 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 exceeds 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 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.

8.3.1 152nd Avenue NE

8.3.2 NE 24th 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 acceptable to the City for the amount of such credit. If 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 City Council has approved amendment of the TFP and the transportation improvements described above are not included, Owner shall pay the remaining traffic impact fees equal to the amount of the credit received. If the City Council has not yet voted on the TFP by the completion of the Project, Owner shall be required to extend or provide a new performance assurance device in the amount of such credit for the time period of the extension.

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9. Transportation Management.

9.1 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 anticipated with the development outlined in Master Plan, based on the methodology of the Transportation Impact Analysis accompanying the Master Plan.

9.2 Transportation Concurrency Certificate for Development Proposed on or before December 31, 2028. Pursuant to RZC 21.52.010(B)(7), development proposed in a building permit application submitted to the City on or before December 31, 2028 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.

9.3 Transportation Concurrency Certificate for Development Proposed After December 31, 2028. No building permit shall be issued for any new development proposed in a building permit application submitted to the City after December 31, 2028 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.

10. Technology Office Uses. The Parties agree that any technology office/headquarters use to be located on the Master Plan Property falls within the currently permitted Information and Communication use category listed in Table RZC 21.12.040.C. 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-1 zone.

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 and each bedroom shall be private.

12. Larger Average Unit Size. The average unit size for each multifamily building within the Project will be 800 square feet.

13. Family-Oriented Amenities. The Project will provide several family-focused elements and amenity features, such as quiet study areas, fitness, co-working areas, bike maintenance, pet areas, and gathering/socializing areas in the multifamily buildings to be constructed as part of Phases 1 and 2. The amenity features include approximately 32,500 square

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feet; the distribution, use, and size of each amenity are as noted in the Site Plan Entitlement approvals for Phases 1 and 2 (LAND-2022-00207 and LAND-2022-00208, respectively). Owner may pursue changes to the distribution, use and size of any amenity space through the Administrative Modification process described in RZC 21.76.090. Any changes approved through the Administrative Modification process would be considered an administrative amendment under this agreement. If the Project includes multifamily uses in Phase 3, the Project will provide family-focused amenity features in the Phase 3 building.

14. Enhancing Landscaping Elements and Lighting. Owner will provide enhanced landscaping elements, such as paving and street furniture, lighting, and wayfinding signage throughout the Project Site and along the Urban Pathway, as shown on pages 23, 24, and 27 of the Master Plan.

15. Linear Pedestrian Linkage Plaza. Owner shall construct, operate, and maintain an 0.75 acre multi-purpose pedestrian linkage plaza on the Corner Plaza with paths for strolling, small group gatherings and seating for larger groups, as depicted in the approved Master Plan as part of Phase 2 of the Project. Owner shall maintain the plaza in a safe, clean, and sanitary condition. The public shall be allowed access to the public plaza at all times except during periods that the plaza must be closed for any necessary maintenance or repair. Owner may establish reasonable rules for the use of the plaza as long as such rules do not unreasonably limit public access.

16. Bicycle Maintenance Facility. Owner shall construct, operate, and maintain a public bicycle maintenance facility with tools and tune-up station adjacent to the Cycle track on 152nd Avenue NE (as noted on page 23 of the Masterplan) to be used free of charge. The bicycle maintenance facility will include a bicycle repair station, water fountains, usb-charging stations, and seating. In addition, the project will incorporate 27 short-term bicycle parking spaces for the retail and food and beverage uses, in excess of Code-required bicycle parking. Owner may establish reasonable rules for the use of the Bicycle Maintenance Facility as long as such rules do not unreasonably limit public access.

17. Public Art. Owner will provide public art in the form of artwork, sculpture, water features, and/or murals. The developer will identify local artists to create public art that will enhance the proposed network of public space and plazas throughout the site. The exact locations within the project will be identified in collaboration with the city, local artists and the Owner, but will be provided in four locations on the Project site.

18. Public Benefit. The City agrees that the commitments made by Owner under this Agreement provide sufficient public benefit to meet the requirements of RZC 21.76.070.L.3.e.

19. 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, Owner 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, Owner will be required to remove or subordinate

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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.

20. Liability Insurance. For the Bicycle Repair Station, an easement shall be granted to the City prior to Phase 1 building occupancy. For the Pedestrian Linkage Plaza, an easement shall be granted to the City prior to the building occupancy of the first building in Phase 2. For each easement, Owner will be required to carry liability insurance with a coverage limit no less than \$5,000,000, and shall name the City as an additional insured.

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 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.

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. 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. Amendments to this Agreement shall be governed by Section 4.5 above.

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 - Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Washington, notwithstanding any conflicts of law provisions. Venue for any litigation under this Agreement shall be King County Superior Court.

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: Carol Helland
Director of Planning and
Community Development

MGP XII Overlake East, LLC

Attention: Merlone Geier Management, LLC
425 California Street, 10th Floor
San Francisco, CA 94104

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P.O. Box 97010
Mail Stop: 4SPL
Redmond, WA 98073-9710

Attn: Lease Administration

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

And to its Attorney:
McCullough Hill, PLLC
Attention: Katie Kendall
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 A

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. 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. 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. All development for which a permit is issued after the expiration or termination of this Agreement shall be required to comply with all applicable development regulations in effect at that time and shall be required to pay impact fees in effect at the time of permit issuance. 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.

MGP XII OVERLAKE EAST, LLC
a Delaware limited liability company

CITY OF REDMOND

By: Merlone Geier Partners XII, LLC,
A California limited liability company
Its Manager

By: _____
Angela Birney

Its: Mayor

Date: _____

Date: _____

Attest:

EXHIBIT A

Cheryl D. Xanthos, City Clerk

APPROVED AS TO FORM:

Daniel P. Kenny, City Attorney

EXHIBIT A

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 MGP XII OVERLAKE EAST, 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 Angela Birney 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

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT A

EXHIBIT B

DEPICTION OF THE PROPERTY