

PROCTOR WILLOWS DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (“Agreement”) is entered into this ____ day of _____, 2019, by and between the City of Redmond (“City”), a Washington municipal corporation, and The Quadrant Corporation (“Owner”), a Washington for profit corporation. The City and Owner are referred to collectively as the “Parties” and individually as a “Party.”

RECITALS

A. Owner is planning the development of approximately 13 acres of a 15.6-acre parcel of land located on the southwest corner of NE 124th Street and Willows Road NE in Redmond, Washington and legally described on the attached Exhibit A (the “Property”). The development plan includes 369 multifamily dwelling units, consisting of 174 attached townhomes in 31 buildings and 195 apartments and ground floor nonresidential uses in one building, one acre of open space, and 2.6 acres of wooded preserve (“the Project”). The Project is commonly known as Proctor Willows. The Property is located in the City’s Willows Rose Hill Neighborhood and was recently rezoned to Northwest Design District (“NWDD”) by the Redmond City Council by Ordinance No. 2951, adopted on March 5, 2019.

B. As required by Redmond Zoning Code (“RZC”) 21.76.070.P.2.b, Owner has prepared and applied for approval of a master plan entitled “Proctor Willows Master Plan” dated _____, 201__ (“Master Plan”) to provide for coordinated development of the Property. The Master Plan application has been assigned City File No. LAND-2019-00349. Owner has also applied for approval of a Development Agreement and the Development Agreement application has been assigned City File No. LAND-2019-00351. The Master Plan and Development Agreement have 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 Development Agreement.

C. Environmental impacts of the development proposed by the Master Plan and this Agreement were identified and the City issued a Determination of Nonsignificance (“DNS”) for the Master Plan on August 28, 2019, under City File No. SEPA-2019-00807.

D. Completion of the Project in accordance with this Agreement will promote the goals and policies of the Redmond Comprehensive Plan, including Housing, Natural Environment and Land Use Goals; the Willows/Rose Hill Neighborhood Plan; and the Affordable Housing, Transportation and Sustainable Green Infrastructure objectives of the City’s Strategic Plan.

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 Willows Rose Hill 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

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. The Property. The Property governed by this Agreement, exclusive of public right-of-way, consists of approximately 15.6 acres of land located at the southwest corner of NE 124th Street and Willows Road NE, Redmond, Washington, 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 21.14.080, 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 15.6 acres of total gross land area. The applicable FAR for the Property is 1.13, base and up to 2.0 with the use of Green Building program or TDRs. 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 development of the Property with 369 multifamily dwelling units, consisting of 174 attached townhomes in 31 buildings and 195 apartments and ground floor nonresidential uses in one building, together with associated parking, internal roadways and utility infrastructure. The Project also includes approximately one acre of open space and 2.6 acres of wooded preserve. The approximate square footage of buildings being added is 1,050,000 square feet and the approximate amount of pavement added is 120,000 square feet.

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 streets and utility facilities identified in the Master Plan. 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. 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 April 18, 2019 (the “Effective Date”), which is the date that the City determined Owner’s Master Plan and Development Agreement application for the Project to be

complete. 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.

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 changes to the site plan are proposed that will result in peak hour vehicle trips or development intensity beyond what was evaluated in the SEPA review for the Master Plan, and no reduction in the infrastructure and public benefits required by this Agreement or the Master Plan conditions of approval is proposed. 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. Under RZC 21.76.070.P.3, the Owner may elect to have the term of a Master Plan coincide with the term of an associated Development Agreement, so the term of the Master Plan is also 10 years. No further extensions of the Agreement or Master Plan shall be granted.

6. Development Approvals.

6.1 Flexibility. Detailed plans for development of the Property will be 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. 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 NWDD design guidelines, codes, and standards. 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 and complies with all regulations to which the Project is vested by this Agreement. Subsequent developments within the Master Plan shall be allowed to be flexible to achieve the intent of this Agreement, to allow the City to obtain its public benefits, easements, and rights-of-way, and to allow for administrative flexibility and amendments permitted in Section 4.5. This Agreement may be administratively amended pursuant to Section 4.5 to reflect changes to the Project permitted by this Section.

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. Additional legal lots or development parcels within the Property may be created if approved by the City without amendment of the Master Plan through boundary line adjustments, binding site plans, short plats, subdivisions, unit lot subdivisions and/or the creation of condominiums. Any future land division 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. Development in Phases – Amendments to Phasing Plan. Owner will develop the Property in phases as described in Appendix G of the Master Plan at pages 25 - 28 (“Phasing Plan”). Owner anticipates completing construction of the buildings, amenities, and infrastructure as described in the Phasing Plan, but adjustment may be required. Amendment of the phasing plan may be administratively approved by agreement of Owner and 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. The

approved Master Plan notes that Phase 1.B, the “Critical Area Tract,” will be developed as soon as practicable after required environmental approvals are obtained, given seasonal work limitations and other physical considerations.

8. Public Benefits and Infrastructure Improvements. Owner will construct the following improvements and provide the following public benefits as shown in the Master Plan and required by the Master Plan conditions of approval:

8.1. Street and Sidewalk Improvements. Owner shall construct street and sidewalk improvements as provided in the Master Plan and Master Plan conditions of approval. These improvements include, but are not limited to: a new traffic signal and crosswalk at the property entrance driveway on NE 124th Street allowing for safe connection to the proposed Cross-Kirkland Corridor Trail and Phase III of the Redmond Connector Trail; sidewalks along NE 124th Street and along the internal spine road extending from Willows Road NE; and a multi-modal pathway along NE 124th Street from the Willows Road intersection to the proposed intersection linking the proposed Cross-Kirkland Corridor Trail and Phase III of the Redmond Connector Trail. Steep slopes that are determined by staff to be man-made during site plan entitlement review may be modified to accommodate these improvements without approval of a deviation. The improvements and associated right-of-way are generally shown on Exhibit C to this Agreement. The improvements shall be designed and constructed in accordance with the Master Plan. The improvements as designed and depicted provide a public benefit because they exceed Redmond standards and code requirements in effect on the Effective Date and will enhance public safety and mobility in the area. All necessary right-of-way dedications to the City and all design, engineering, and construction shall be at the sole cost and expense of Owner.

8.2 Internal Circulation. Vehicular circulation within the Project shall be via private drive aisles as shown in the Master Plan. All such drive aisles shall be constructed in accordance with the Master Plan and shall comply with Redmond standards and code requirements in effect on the Effective Date. Such drive aisles shall remain unobstructed at all times to ensure emergency vehicle access and an Emergency Vehicle Access Easement will be granted to the City if required by the City Fire or Police Departments. If an Emergency Vehicle Access Easement is required, the drive aisles shall be constructed and maintained to meet City requirements for emergency vehicle access, including but not limited to, construction sufficient to support the weight of emergency vehicles. All drive aisle construction and maintenance, including construction and maintenance of emergency vehicle access, shall be at the sole cost and expense of Owner.

8.3 Water, Sewer, and Stormwater. Water, sewer, and stormwater lines and appurtenances to serve the Project shall be constructed in accordance with the Master Plan and shall comply with all Redmond standards and code requirements, including but not limited to, the City’s standard construction details and the City of Redmond Stormwater Manual, in effect on the Effective Date. If utility easements are required for any public utilities outside of City right-of-way, such easements shall be granted to the City by Owner in a width and according to terms acceptable to the City. If any such utility easements are not readily accessible from the public right-of-way, Owner agrees to construct and maintain utility access as required by the City for utility vehicle access. All utility construction shall be at the sole cost and expense of Owner.

8.4 On-site Nature Trail. Owner shall construct and maintain an on-site soft surface perimeter trail, as shown on the Master Plan site plan, connecting Willows Road NE and NE 124th Street. Pet waste stations and benches shall be constructed along the trail and trailheads shall be constructed and clearly marked and connected to parks within the Property. Interpretive/educational signage in compliance with the City's sign regulations and native plantings shall be installed along the trail. The trail shall be located and constructed as shown on Exhibit D to this Agreement. The trail shall be constructed in accordance with all Redmond standards and code requirements in effect on the Effective Date, but Exhibit D shall govern with respect to the dimensions of the trail. The portion of the trail adjacent to the mixed-use apartment parcel may be constructed as hard-surface, if approved by staff during the site plan entitlement process. An easement shall be granted to the City for public use of the trail. The trail constitutes a public benefit as the City code does not require such a trail. All trail construction and easement conveyance shall be at the sole cost and expense of Owner.

8.5 Buffer Enhancement. Owner shall provide on-site enhancement of the site's critical area buffers as part of Phase 1.B of the Project.. A buffer enhancement proposal was submitted with the Master Plan and is attached to this Agreement as Exhibit E. Enhancement shall be accomplished generally in accord with the proposal, but detailed buffer enhancement drawings shall be submitted and approved at the time of Phase I site plan entitlement. The buffer enhancement provides a public benefit and was voluntarily made.

8.6 Gateway Element. Owner shall design and install a gateway element at the intersection of NE 124th and Willows Road to mark the City of Redmond boundary as part of Phase 1 of the Project. The gateway element shall include landscaping and thematic elements approved the City. The gateway element is a public benefit that will inform the public in an innovative and stylistic way that this is a point of entry to into the City of Redmond.

8.7 Additional Public Infrastructure. No additional public infrastructure improvements will be required, except as provided in 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 peak hour vehicle trips as the Project prior to the amendment, based on the methodology of the Transportation Impact Analysis accompanying the Master Plan. 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, except where the utility demands of the amendment exceed the capacity of the proposed Master Plan utilities or the City utility system used by the Project. Changes may be necessary to meet state or federal mandates against which Owner is not vested under Section 4.2 and may be required by the City under circumstances described in Section 4.3.

9. Wooded Preserve. The existing wooded ravine, streams and wetlands in the southeastern portion of the Property shall be preserved as a native growth protection area as shown in the Master Plan. An appropriate instrument requiring such preservation and providing

enforcement rights to the City shall be executed by the Owner and recorded against the title to the Property.

10. Parking. Parking will be provided for the Project meeting the City's standards and requirements on the Effective Date.

11. Model Homes. Owner may construct up to two townhome buildings per phase to serve as "model homes" prior to completion of site infrastructure and development. Certificates of occupancy for such buildings shall be issued only upon satisfaction of site plan entitlement conditions. Owner shall post a bond or other suitable security at the time of building permit issuance in an amount approved by the Planning and Community Development Director or her designee and in a form approved by the City Attorney or his designee in order to ensure completion of such site plan entitlement conditions, including but not limited to completion of the necessary infrastructure to serve the model home buildings and the phase of which such buildings are part. No sales of units within such model home buildings shall be closed until all necessary infrastructure is completed and all required final plat or other development approvals have been received for the phase and certificates of occupancy have been issued.

12. Transportation Impact Fees and Credits. Owner shall pay transportation impact fees for the Project in effect at the time building permits are issued for each building, subject to any applicable credits.

13. 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.

14. Early Rough Grading and Civil Construction Drawing Review. After completion of the first round of Coordinated Civil Review for Phase 1 of the Project, the City will allow Owner to submit a rough grading permit application for the entire Project in order to allow for coordinated grading and infrastructure implementation, consistent with Redmond Municipal Code ("RMC") 15.24.070. Civil construction drawings for any phase of the Project may be submitted prior to approval of site plan entitlement permit as authorized by RZC 21.76.020.G.

15. 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.

16. Miscellaneous Provisions.

16.1 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 Effective Date.

16.2 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.

16.3 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 meeting the requirements of Section 4.5. All other amendments are Major Amendments.

16.4 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.

16.5 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.

16.6 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

The Quadrant Corporation

Attention: Bonnie Geers
Senior VP Community Development
15900 S.E. Eastgate Way, Suite 300
Bellevue, WA 98008

And to its Attorney:

McCullough Hill Leary, P.S.
Attention: Courtney E. Flora
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.

16.7 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.

16.8 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.

16.9 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.

16.10 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.

16.11 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.

16.12 Exhibits. This Agreement includes the following Exhibits:

Exhibit A: Legal Description of the Property

Exhibit B: Depiction of the Property

Exhibit C: Street and Sidewalk Improvements, Right-of-Way, and Multi-modal path

Exhibit D: On-site Nature Trail

Exhibit E: Buffer Enhancement Proposal

16.13 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.

16.14 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 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.

THE QUADRANT CORPORATION

By: _____
Its: _____
Date: _____

CITY OF REDMOND

By: _____
John Marchione
Its: Mayor
Date: _____

Attest:

Cheryl Xanthos, City Clerk

APPROVED AS TO FORM:

City Attorney

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 The Quadrant Corporation, 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

STREET AND SIDEWALK IMPROVEMENTS, RIGHT-OF-WAY, AND MULTI-MODAL PATHWAY

DRAFT

EXHIBIT D
ON-SITE NATURE TRAIL

DRAFT

EXHIBIT E
BUFFER ENHANCEMENT PROPOSAL

DRAFT