

## **WOODSIDE DEVELOPMENT AGREEMENT**

This DEVELOPMENT AGREEMENT (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Redmond (“City”), a Washington municipal corporation, and Polygon WLH, 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 7041 196<sup>th</sup> Avenue NE in Redmond, Washington and legally described on the attached Exhibit A (the “Property”). The development plan includes 170 condominium dwelling units, consisting of 118 townhomes in 20 buildings and 52 stacked flats in 8 buildings (“the Project”). The Property is located in the City’s Northeast Design District (“NDD”) 1 zone.

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

C. Environmental impacts of the development proposed by the Master Plan were identified and the City issued a DNS for the Master Plan on March 25, 2020, under City File No. SEPA-2020-0092.

D. Completion of the Project in accordance with this Agreement will promote the goals and policies of the Redmond Comprehensive Plan, including \_\_\_\_\_.

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 Southeast Redmond 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. Land and FAR.** The Property governed by this Agreement, exclusive of public right-of-way, consists of approximately 520,106 square feet (11.94 acres) located at 7309 196<sup>th</sup> Avenue 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 21.13.020, 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 520,106 square feet of total gross land area. The applicable FAR for the Property is 0.50. Future dedications of land for right-of-way or other public use or improvements and future acquisitions of right-of-way by 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 170 condominium dwelling units consisting of 118 townhouses and 52 stacked flats in 8 building type, together with associated parking and utility infrastructure. The Project also includes a series of open spaces, a connection to the existing neighborhood through a pedestrian trail, and the construction of a 24-foot wide corridor containing the continuation of the Evans Creek Trail along the eastern boundary of the Property.

**3. Conformance with Master Plan.** The Redmond City Council approved the Master Plan on \_\_\_\_\_, 2020. 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 Evans Creek Trail extension, 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 \_\_\_\_\_, 2020 (the “Effective Date”), which is the date that the City determined Owner’s Development Agreement and Master Plan resolution and ordinance have been approved by City Council.. 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, Capital Facility Charges, Cascade Water Alliance charges, Metro charges, and monthly service charges;
- 4.2.3** Amendments to building, plumbing, mechanical, fire, and other construction codes adopted pursuant to RCW 19.27 and 19.27A; and
- 4.2.4** Other City enactments that are adopted pursuant to state or federal mandates (such as, but not limited to, the City's NPDES Municipal Stormwater Permit) that preempt the City's authority to vest regulations.

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

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

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

**5. Term.** The term of this Agreement shall be ten (10) years, except as provided in this Section. The City and Owner may agree to extend the term of this Agreement, provided that such extension is approved by the Redmond City Council, which extension shall not be unreasonably withheld. The Redmond Zoning Code currently limits the term of a master plan

approval in the Northeast Design District to ten (10) years, with the potential for a five (5) extension. The City and Owner intend for this Agreement to be in effect for a term concurrent with the Master Plan and intend that any request for extension of the Master Plan will be processed concurrently with an extension of this Agreement, and that any expiration of the Master Plan shall cause this Agreement to expire. The City and Owner agree that if the Master Plan is extended, the term of this Agreement shall likewise be extended for the term of the Master Plan.

## **6. Development Approvals.**

**6.1 Flexibility.** Detailed plans for development of the Property shall be approved through the site plan entitlement process and other approval processes set forth in the RZC, as applicable. Road widths, onsite and offsite easement and right-of-way dedications, public open spaces, and street and utility improvements shall be governed by the Master Plan for any future site plan entitlement application and reviewed under the Vested Regulations as provided for under Section 4, above. However, depictions of building footprints, shapes, square footage, and number of stories in the Master Plan are illustrative only. Such graphics and text in the Master Plan shall not constrain the process of designing and approving individual developments, which shall address applicable city-wide and special NDD1 design guidelines, codes, and standards. Modifications may be made administratively, and shall exclude the following; changes in density, changes to housing type, impacts to critical areas, diminishing public benefits, reduction of open space, increase in height, and reduction of retained trees.

**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 binding site plans, short plats, subdivisions 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 Multiple Phases.** Owner may construct the buildings in multiple phases, with building completion, sale, and occupancy as certificates of occupancy are issued with the City's approval. Developer shall have the ability to determine the number of phases and units within each phase based on market demand.

**8. Infrastructure Improvements.** Owner will construct the following improvements as shown in the Master Plan and required by the Master Plan conditions of approval as part of the first phase of development, irrespective of how many development phases Owner ultimately develops for the Property:

**8.1. Street Improvements.** The street improvements shall include paving, curbs, sidewalks, storm drainage, street lights, and underground utilities, conforming to the City's standards. Owner shall extend 191<sup>st</sup> Avenue NE north from its current terminus in the Woodbridge Development to the south of the Property to a new roundabout. The roundabout at 192<sup>nd</sup> Ave NE and NE 70<sup>th</sup> St shall be included as part of the street improvements. Owner shall also extend NE 70<sup>th</sup> Street between 188<sup>th</sup> Avenue NE to the project site main entrance. Owner shall dedicate any necessary offsite and onsite right of way and easements for such improvements. The improvements and associated right-of-way and easements are generally shown on Exhibit C to this Agreement. The improvements shall be designed and constructed in accordance with the Master Plan and shall comply with all Redmond standards and code requirements in effect on the Effective Date. All onsite and offsite right-of-way and easements dedications and 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 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 extended from the existing facilities in 188<sup>th</sup> Ave NE or within the Woodbridge development. All such utilities 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 on the date construction permits for such utilities are applied for. The utilities should comply with the standards in effect at the time of their review and approval for construction. 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 Evans Creek Trail.** Owner shall construct an extension of the Evans Creek Trail along the eastern boundary of the Property and shall grant the City a trail easement upon completion of construction. The trail shall be located as shown on Exhibit D to this Agreement. The trail shall be constructed in accordance with the City's PARCC Plan and shall comply with all Redmond standards and code requirements in effect on the Effective Date. All trail construction and easement conveyance shall be reimbursed to Owner by crediting the value of such easements and the cost of construction against Park Impact fees. Costs will be determined during Civil Plan Review.

**8.5 Woodbridge Pedestrian Connector.** Owner shall construct a pedestrian connection at the southern boundary of the Property in order to connect the Project with existing pedestrian facilities in the Woodbridge development. The location of the pedestrian connection is shown in the site plan attached as Exhibit D to this Agreement. Owner shall dedicate right of way or grant an easement to the City for the pedestrian connection upon completion of construction. The pedestrian connection shall be constructed in accordance with the Master Plan and shall comply with Redmond standards and code requirements in effect on the Effective Date. All construction and right of way dedication shall be at the sole cost and expense of Owner.

**8.6 Bus Shelter and Picnic Area.** Owner shall construct a bus shelter and picnic area in the open space located in the southwest corner of the Property. The location of the bus shelter and picnic area is shown in the site plan attached as Exhibit D to this Agreement. All construction shall be at the sole cost of the Owner. Maintenance of the structures shall be the responsibility of the Condo Owners Association.

**8.7 Additional Public Infrastructure.** No additional public infrastructure improvements will be required, except as provided in this Section 8.6. 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. 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 Tree Preservation.** All landmark trees on the Property shall be retained and 38% of the significant trees on the Property shall be preserved as described in the Owner's Arborist Report dated November 7, 2018. All significant trees removed from the site shall be replaced at a ratio of 1:1 as further specified in the Arborist Report.

**10 Active and Passive Open Space.** Twenty percent (20%) of the site will be open space, both common and private, as shown on the site plan attached as Exhibit D to this Agreement.

**11 Grading.** The site will be regraded from its current contours as a former gravel mining pit. The Project will reduce the man-made slope, resulting from pit operations, along the east edge of the site and rebuild as necessary. The man-made slopes on the south and west will be reduced and a new sound attenuation berm will be built north of the new NE 70<sup>th</sup> Street. All grading shall be according to plans approved by the City and shall meet all City codes and requirements in effect on the Effective Date, provided, that upon submittal of a grading plan, the City will consider, and if reasonably justified approve, a deviation to allow grading of greater than eight feet vertical. The City may impose reasonable conditions on any such deviation approval.

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**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. No other mitigation fees will be assessed under SEPA.

**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 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.

**15 Miscellaneous Provisions.**

**15.2 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.

**15.3 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.

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

**15.5 Specific Performance.** During the Term of this Agreement as provided for in Section 5, above, 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. No party shall be in default under this Agreement unless it has failed to perform following written notice of default from the other party. Notice of default shall allow the defaulting party thirty (30) days to cure or commence cure where thirty (30) days is insufficient for a complete cure. Each notice of

default shall specify the nature of the alleged fault and the manner in which the default may be cured satisfactorily. A party not in default under this Agreement shall have all rights and remedies provided by law or equity, including without limitation: issuance of a stop work order, injunction, damages, action for specific performance, or to require action consistent with this Agreement. Nothing herein will operate to prevent either party from taking legal action regarding noncompliance that threatens public health, safety or welfare prior to the expiration of the thirty (30) day cure period following notice of default. No such action or preceding will operate to automatically terminate this Agreement, nor shall it release either party from any promise or obligation herein nor shall it release either party from any liability or obligation with respect to any breach of this Agreement occurring prior to the commencement of any legal action by a party.

**15.5 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.

**15.6 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

**Polygon WLH, LLC**

Attention:  
Nick Abdelnour  
11624 SE 5<sup>th</sup> St, Suite 100  
Bellevue, WA 98005

And to its Attorney:

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

And to its Attorney:

Johns Monroe Mitsunaga Kolouskova, PLLC  
Attn: Duana Kolouskova  
11201 SE 8<sup>th</sup> Street, Suite 120  
Bellevue, Washington

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.

**15.7 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.



**15.8 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.

**15.9 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.

**15.10 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.

**15.11 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.

**15.12 Exhibits.** This Agreement includes the following Exhibits:

- Exhibit A:** Legal Description of the Property
- Exhibit B:** Depiction of the Property
- Exhibit C:** Street Improvements and Right-of-Way
- Exhibit D:** Evans Creek Trail and Woodbridge Connector
- Exhibit E:** Approved Woodside Master Plan

**15.13 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.

**15.14 Effect of Expiration or Termination.** Upon expiration as provided for in Section 5, all rights and obligations of the Parties under this Agreement shall terminate and be of no further effect. All development applied for 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 applied for 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 to any permits or approvals applied for 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.

**POLYGON WLH, LLC**

**CITY OF REDMOND**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Angela Birney

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 POLYGON WLH, LLC, a Delaware, 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**

**EXHIBIT B**  
**DEPICTION OF THE PROPERTY**

**EXHIBIT C**  
**STREET IMPROVEMENTS AND RIGHT-OF-WAY**

**EXHIBIT D**

**EVANS CREEK TRAIL AND WOODBRIDGE CONNECTOR**