

Proposed Shoreline Place Development Agreement - Attachment E

DEVELOPMENT AGREEMENT

THIS AGREEMENT is entered this ____ day of _____, 2019 by and between MGP XII SB Aurora, LLC, a Delaware limited liability company (“**Developer**”), or its assignee, and the City of Shoreline, a Washington municipal corporation (“**City**”). Developer and the City are each a “**Party**” and collectively the “**Parties**” to this Agreement.

RECITALS

1. The City has authority to enact laws and enter into agreements to promote the health, safety and welfare of its citizens and thereby to regulate the use and development of the Property.
2. The City has the authority to enter into development agreements with those who own or control property within its jurisdiction, pursuant to RCW 36.70B.170 through 36.70B.210. This Agreement is entered into under the City’s police power, general contracting authority, and RCW 36.70B.170 through 36.70B.210.
3. In 2012, the City designated the Aurora Square area as a Community Renewal Area (“**CRA**”) where economic renewal would deliver multifaceted public benefits. On August 10, 2015 it passed Ordinance 705 adopting the Aurora Square CRA Planned Action.
4. Developer owns approximately 17.31 acres of real property formerly known as Shoreline Sears lying between N. 160th Street and Westminster Way N. in the CRA (“**Property**”). The Property is legally described on **Exhibit A** and depicted on **Exhibit B**.
5. Both the City and Developer find it desirable to enter into this Agreement to plan for the orderly redevelopment of the Property that is consistent with the CRA, Planned Action, and the City’s Comprehensive Plan and which provides the public benefit items in the Public Benefit Matrix, outlined in **Exhibit C**.
6. Developer proposes construction of up to 1,358 multifamily residential units, approximately 75,610 square feet of commercial land use (including approximately 3,450 square feet of existing commercial land use), and approximately 2.75 acres of publicly-accessible open space on the Property as depicted in the Conceptual Guide Plan **Exhibit D** and the Open Space System, **Exhibit E**. The project components as described in Section 2 *Project Components* and depicted on the Conceptual Guide Plan are the result of extensive market research, community outreach, and planning efforts.
7. The Planned Action seeks to act as a catalyst for public and private partnership investment that will renew and revitalize Aurora Square creating a compact, more intense, mixed-use, pedestrian friendly, and transit-supportive land use. The Planned Action contemplates providing residents and visitors greater access to a mix of housing, retail and commercial opportunities that meets a range of needs. The Planned Action goals that will be achieved through implementation of this Agreement include:

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- A. Revitalizing the CRA and Facilitating Growth of the City's Employment and Tax Base: The Agreement allows Developer to redevelop a functionally obsolete department store while at the same time creating a new tax base for the City.
- B. Housing: The Agreement will provide needed housing adjacent to goods, services and transit while also activating the CRA at all times of the day, every day of the week.
- C. Entertainment: While perhaps at a different scale than what was contemplated in the CRA Vision due to various market factors, the Agreement will provide entertainment options including a permanent home for the Farmer's Market, summer time concerts and movies in the park and restaurant/dining options at a scale that is not found elsewhere in the City.
- D. Goods and Services: The Agreement fosters access and viability for the existing goods and services offered at Aurora Square such as Central Market, Marshall's, and Bank of America. New retailers will capture sales leakage currently leaving the trade area.
- E. Significant Open Space: The Agreement supports a significant open space system accessible to the public that will provide family/community gathering places, opportunities for outdoor entertainment, farmer's market, pedestrian connections, and enhanced conductivity to restaurants and retail shops.
- F. Continuity: The Agreement provides an opportunity for a partnership that allows the City to develop an identifiable neighborhood that is mixed-use, pedestrian friendly, and transit-supportive consistent with the CRA vision.
- G. Infrastructure: The Agreement will improve existing motorized and non-motorized transportation, utility, sanitary sewer, and stormwater infrastructure.
- H. Resource and Land Use Efficiency: The Agreement will maximize the effectiveness of public and private planning and financial resources and will further certainty and predictability.
- I. Connectivity: The Agreement will promote connectivity to and from Westminster Way N., the Interurban Trail, transit, and between and within the upper and lower parts of Aurora Square.
- J. Westminster Way N. Connection: The City and private applicants have invested resources to create a more pedestrian friendly environment on Westminster Way N. The Project will leverage these public and private investments in Westminster Way, providing for enhanced pedestrian connections and introducing gathering areas and retail space within the buildings along Westminster Way.
- K. Quality Development: The Agreement will allow the City and Developer to expand both commercial and residential opportunities at the Property and enhance the "on-ground" experience consistent with the CRA.

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- L. Reduce Uncertainty: The Agreement will reduce the risk to Developer due to the changes in development regulations and processes and reduce uncertainty for the City as the Agreement contains a unified development vision.
 - M. Developer and City Relationship: The Agreement allows Developer and the City to establish a mutually supportive relationship that enables them to work directly with one another to implement this Agreement.
 - N. Implementation of Plans: The Agreement will implement the Planned Action, CRA, and the City's Comprehensive Plan.
- 8. The Parties intend that this Agreement specify the regulatory fees and mitigation that will be required for Developer, or its successors and assigns, to construct the development contemplated herein. Nothing in this Agreement is intended to limit Developer's ability to propose additional development beyond the Project addressed in this Agreement, or modifications to the Project, provided that such development shall be consistent with the then-applicable SMC and Comprehensive Plan unless otherwise provided in this Agreement.
 - 9. All Recitals and Exhibits (A - M) referenced in this Agreement are hereby incorporated by reference and shall be considered as material terms of this Agreement.
 - 10. The City has determined that the Project is a Planned Action Project and has issued a Determination of Consistency pursuant to Section 4 of the Planned Action Ordinance.
 - 11. The Parties intend that they shall take further actions and execute further documents, either jointly or within their respective powers and authority, necessary or appropriate to implement the intent of this Agreement. The Parties intend to work cooperatively to achieve the mutual goals of this Agreement, subject to the City's and Developer's independent exercise of judgment.

NOW THEREFORE, in consideration of the mutual benefits and agreements contained herein, as well as other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

- 1. Definitions.
 - A. "Agreement" shall mean this Development Agreement.
 - B. "Approvals" shall mean this Agreement and the Site Development Permit.
 - C. "Approvals Process" shall mean the process for reviewing and approving the Approvals.
 - D. "City Council" shall mean the City Council of the City of Shoreline.

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- E. “**Code Amendment**” shall mean amendments to the SMC or other regulations, affecting the development of the Project adopted after January 4, 2019.
- F. “**Conceptual Guide Plan**” shall mean the Development Agreement Conceptual Design Submittal dated December 21, 2018 and summarized in the Conceptual Guide Plan depicted on **Exhibit D**.
- G. “**CRA**” shall mean the Aurora Square Community Renewal Area.
- H. “**CRA EIS**” shall mean the CRA Draft and Final Environmental Impact Statement and as addended on March 8, 2019.
- I. “**CRA Trip Budget**” shall mean the trip budget of 808 net new PM peak hour trips generated by uses within the CRA through the year 2035.
- J. “**Developer**” shall mean MGP XII SB Aurora, LLC, a Delaware limited liability company and/or its successor or assignees.
- K. “**Effective Date**” shall mean _____, 2019 as the date upon which the Agreement is fully executed.
- L. “**GMA**” shall mean the Growth Management Act, Chapter 36.70B RCW.
- M. “**Open Space System**” shall mean the publicly-accessible open space system within the Project as depicted on **Exhibit E**.
- N. “**Parks Impact Fee**” shall mean the impact fee for parks, open space, and recreation facilities adopted in Chapter 3.70 SMC.
- O. “**Planned Action**” shall mean the Aurora Square CRA Planned Action.
- P. “**Planned Action Ordinance**” shall mean the City of Shoreline Ordinance 705.
- Q. “**Planned Action Project**” shall mean a project which qualifies as a Planned Action Project under the Planned Action Ordinance.
- R. “**Project**” shall mean the Project and Project Components described in Section 2 *Project Components* and depicted on **Exhibit D**.
- S. “**Property**” shall mean the property legally described on **Exhibit A** and depicted on **Exhibit B**.
- T. “**PROS Plan**” shall mean the Parks, Recreation, and Open Space Plan adopted by Council Resolution 412.
- U. “**SEPA**” shall mean the State Environmental Policy Act.
- V. “**SMC**” shall mean the Shoreline Municipal Code.

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- W. “**Status Report**” shall mean the written status report provided by Developer to the City documenting efforts related to the Project required by Section 6, *Status Report*.
- X. “**Supplemental Site Design Guidelines**” shall mean the Supplemental Site Design Guidelines, attached hereto as **Exhibit F**.
- Y. “**Transportation Consistency Analysis**” shall mean the April 5, 2019 Transportation Consistency Analysis prepared by TENW and approved by the City.
- Z. “**Vested Code Provisions**” shall mean the Planned Action, Comprehensive Plan elements, the applicable land use regulations, environmental regulations (including SEPA procedural and substantive policies), building and site design, utilities, transportation concurrency standards, as they may be modified by Section 12, *Modification of Land Use Regulations*, of this Agreement. Applicable provisions of Title 20 SMC are attached as **Exhibit L**.
2. Project Components. The Project will be comprised of the following components as further depicted in **Exhibit D**, the Conceptual Guide Plan:
- A. Approximately 1,358 multifamily residential units.
 - B. Approximately 75,610 square feet of commercial land use (including 3,450 square feet of existing commercial land use). Commercial land use shall not include storage facilities.
 - C. Parking for the residential and commercial land uses.
 - D. Transportation improvements as described in Section 7, *Off-Site Transportation Improvements*.
 - E. On-site motorized and non-motorized circulation as described in Section 8, *On-Site Motorized and Non-Motorized Circulation*.
 - F. Publicly-accessible open space as described in Section 9, *Open Space System*.
 - G. Utilities improvements as described in Section 10, *Utilities*.
3. Development Approvals. Developer shall have the right to develop the Property with up to 1,358 multifamily residential units and 75,610 square feet of commercial land uses (including 3,450 square feet of existing commercial land use). Residential units may be multifamily apartments or residential condominiums. Commercial land uses may include office, professional office, medical office, retail, entertainment, restaurant uses, and other uses as authorized by the SMC but may not include storage facilities. Detailed development plans will be approved through the site development permit and other approval processes provided for in the SMC, as applicable. Any additional development on the Property beyond 1,358 multifamily residential units and 75,610 square feet of commercial land uses shall require an amendment to this Agreement as described in

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Section 33 (*Amendment of Agreement*) or shall be developed outside this Agreement and be consistent with the City's then-applicable regulations.

4. Flexibility. As a component of this Agreement, the Planning Commission has recommended, and City Council has approved the Conceptual Guide Plan which is considered a conceptual guide to which development of the Project will generally conform. It is not intended to require specific uses, square footages, building massing, building design, or specific buildings on specific parcels. Depictions of building footprints, bulk and scale drawings, and number of stories in the Conceptual Guide Plan are illustrative only. The Conceptual Guide Plan is intended to be an overall approved development envelope, with certain right-of-way improvements and public benefits to be delivered with respective project phases.
 - A. Project Components may be located on any parcel on the Property and the unit count of residential units may be modified so long as the City determines the modification generates the same or lesser net new PM peak hour trips as the use previously approved in the Approvals, based on the trip generation methodology in the Transportation Consistency Analysis and otherwise complies with the SMC and regulations or to this Development Agreement to the extent that certain provisions of the SMC are amended herein. Subsequent development phases shall be allowed to be flexible to achieve the CRA Vision. Modifications shall be done by mutual agreement of the Parties as set out in Section 33, *Amendment of Agreement*.
 - B. Deviations to the location, capacity or layout of the ingress/egress locations shown in the Conceptual Guide Plan may be requested, and if approved, modified through a Deviation from the engineering standards process.
5. Phasing. The Parties agree that the Project may be undertaken over multiple phases and the timing of each phase and its final configuration will be at the sole election of Developer in response to its development goals, business judgment, and market dynamics. The Parties agree that the 20-year vesting in Section 17, *Vesting*, is based on a shared intent and motivation for the Conceptual Guide Plan to be accomplished as expeditiously as possible with the goal that certain components related to commercial/retail/restaurant space, the Open Space System, and the Westminster Way connections occur within the first 10 years of the Agreement term. The following Project Components depicted in the Conceptual Guide Plan, **Exhibit D**, are priorities the City has identified for the realization of the Planned Action.
 - A. Commercial, Retail, and Restaurants. The Parties recognize the need to redevelop a functionally obsolete department store while at the same time creating a new tax base for the City. Developer, as an industry recognized leader in owning, operating and leasing retail and retail-driven mixed-use properties has identified the current appropriate retail and restaurant configuration based on the adjacency to Central Market and other market factors. These retail spaces and restaurants will generally follow the Conceptual Guide Plan, with the first phase including approximately 17,000 square feet of commercial space for a café, brew pub, restaurant and dessert

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shops clustered around the Open Space System and connecting to Westminster Way.

- B. Open Space System. Developer acknowledges the importance of there being publicly accessible open space incorporated into the Project. The Conceptual Guide Plan depicts Developer's approach to creating a series of these spaces spread throughout the Project. These spaces vary from green lawns for summer day picnics, outdoor movies and concerts in the park areas, to intimate plazas and paseos adjacent to lively restaurants and retail shops, well-appointed with comfortable seating areas and creative landscape and hardscape elements. **Exhibit E** refines the Open Space System. Subject to Section 4, *Flexibility*, and the Supplemental Site Design Guidelines, Open Space System components shall be provided as follows:
- i. Westminster Plaza - with the construction of Block E.
 - ii. East Plaza - with the construction of Block D.
 - iii. West Plaza- with the construction of Block C.
 - iv. Community Open Space – with the construction of Blocks A and B.
 - v. Pedestrian Shared Street - with the construction of Block C.
- C. Westminster Way Connection. The City has identified Westminster Way as a key component of the CRA and, in connection with the Alexan project, is investing City resources towards the creation of a more pedestrian-friendly environment. The City expects the Project to leverage enhancements along Westminster Way, providing for enhanced pedestrian connections and introducing gathering areas and retail spaces within the buildings along Westminster Way.
- D. Supplemental Site Design Guidelines. Each phase of the Project shall comply with the applicable Supplemental Site Design Guidelines.
6. Status Report. Developer will provide a regular Status Report to the City documenting its efforts related to the Project generally structured as follows:
- A. Annual Reporting. Developer shall provide a written Status Report annually every calendar year in January to the City Economic Development Program Manager until completion of the Project or the Development Agreement expires, whichever occurs first.
 - B. Contents. The Status Report shall include, but is not limited to, updates on:
 - i. Construction, including public benefits, completed to date.
 - ii. Phases, including Project Components addressed in the Supplemental Site Design Guidelines, currently in development but not completed.

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- iii. Net new PM Peak hour trips generated by the Project.
 - iv. Conditions, including economic, regulatory and/or other factors that may impact current or future phases of the Project.
 - v. Developer efforts to market the Project.
 - vi. Developer shall not be obligated to disclose any proprietary or confidential information regarding the Project's financial status or potential tenants/partners.
 - vii. Any other factors that Developer identifies as relevant to the success of the Project.
- C. The City may, but is not obligated to, provide comments on the Status Report. As appropriate, Developer and the City shall meet and confer about any issues arising in the Status Report.
7. Off-Site Transportation Improvements. Ordinance 705 Exhibit A Section 1.2 Transportation provides that, as part of a voluntary agreement, the City may reduce the share of cost of frontage improvements that would otherwise be required of a project within the CRA if the City determines that other improvements implement high priority street improvements in place of lower priority improvements or meet other objectives that advance the CRA. As part of the Transportation Consistency Analysis, the Parties identified the Project's offsite transportation improvements. Developer shall be responsible for the following improvements:
- A. Westminster Way N. frontage improvements: Developer is responsible for its proportionate share of the cost of the improvements shown on **Exhibit G**, Westminster Way Frontage Improvements, as adjusted for Developer's cost for relocating the Existing Stormwater Line as provided in Section 11, *Relocation of Existing Stormwater Line*. Developer's proportionate share is due at the time of the first building permit for a building in the E block of the Conceptual Guide Plan. The relocation of the Existing Stormwater Line is to be more fully addressed in a separate agreement to be approved in by the City Council prior to or concurrent with approval of this Agreement.
 - B. N. 155th Street and Westminster Way Intersection: Completed with proportionate share contributions from the Project as adjusted for Developer's cost for relocating the Existing Stormwater Line as provided in Section 11, *Relocation of Existing Stormwater Line*. The proportionate share at the intersection for Developer shall be 50 percent of the cost of the improvements based on the Developer's percentage of responsibility as set out in Exhibit G. Developer's proportionate share is due at the time of the first building permit for a building in the E block of the Conceptual Guide Plan.
 - C. N. 160th Street Mid-Block Pedestrian Crossing with Rectangular Rapid-Flashing Beacons (RRFB) or similar treatment acceptable to the City Traffic Engineer at the

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east leg of the N. 160th Street and Fremont Place N. This improvement will be made at the time of the first building permit for a residential building.

- D. N. 160th Street Rechannelization: Rechannelization of N 160th Street with approximately 1,200 lineal feet of frontage on both sides of 160th (from Dayton Ave N. to Linden Ave N. with transitions beyond) to provide 3 travel lanes and bike lanes on both sides of the street as demonstrated in the Transportation Consistency Analysis. The rechannelization shall be provided at the first building permit for a residential building.
- E. Deviation for N. 160th Street Amenity Zone and Pedestrian Facility. If the Developer modifies A Street as shown in the Conceptual Guide Plan (Exhibit D), the Developer may apply for and the City will grant a deviation from the Engineering Development Manual to allow the eight-foot wide ADA accessible pedestrian facility to be located on the Property within an easement rather than dedicate Right of Way and construct the standard pedestrian facility behind the existing curb in the right-of-way and has determined that it will provide an equivalent function. In connection with the associated phase of the Project (the areas shown as Buildings A1 and B1 page 9 of the Conceptual Guide Plan), Developer will provide a minimum eight-foot wide separated pedestrian and bicycle path that meets ADA standards and grant an easement to the public for its use as a pedestrian and bicycle path. The existing sidewalk within the N. 160th Street right-of-way will remain.
- F. Greenwood Avenue N./NW Innis Arden Way and Greenwood Avenue N./N. 160th Street. The City has entered into a Transportation Mitigation Agreement with Shoreline Community College which requires the College to complete mitigation improvements at Greenwood Avenue N./NW Innis Arden Way and Greenwood Avenue N./N. 160th Street within 6 years of a certificate of occupancy for the College's student residence hall (Building Permit MFR 17 – 1322). Developer shall pay at building permit issuance for the first building in the Project following the City's issuance of permits for construction of the mitigation improvements its proportionate share based on 3 new PM Peak hour trips at these intersections out of a total of 58 PM peak hour trips generated by the College, provided that Developer's cost shall not exceed 5.2% of the cost of the mitigation improvements. The City expects to have identified a preferred alternative and cost estimate by Fall, 2019.
- G. Carlyle Hall Road/Dayton Avenue N./N.165th Street. The City's Transportation Mitigation Agreement with Shoreline Community Colleges requires the College to complete mitigation improvements at Carlyle Hall Road/Dayton Avenue N./N. 165th Street within 6 years of the City's receipt of an enrollment report showing a Full Time Equivalent enrollment of 5,340 or greater unless an updated traffic study demonstrates that mitigation is no longer necessary. Developer shall pay at issuance of the first building permit for the Project following the City's issuance of permits for construction of the mitigation improvements its proportionate share of the improvements based on 3 new PM Peak hour trips out of a total of 21 trips generated

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by the College, provided that Developer's cost shall not exceed 14.3% of the cost of the improvements.

8. On-Site Motorized and Non-Motorized Circulation. Developer shall provide on-site motorized and non-motorized circulation as generally shown on **Exhibit D** using the Street Section and Design Plans in **Exhibit H** and will coordinate location and easements as necessary with adjacent property owners. N. 157th Street shall include a sharrow lane with markers and wayfinding signs to provide a bicycle connection from the Interurban Trail to the new N. 160th Street bicycle lane, the timing of which shall occur with the construction of Block C or D, whichever occurs first.
9. Open Space System.
 - A. As a component of the Project, Developer shall construct the Open Space System generally as shown on **Exhibits D and E** with the operations and maintenance according to **Exhibit I**, including the four open space components identified in this subsection. Each component shall include at least the minimum number of design elements required by the Supplemental Site Design Guidelines. While only the minimum number of design elements specified in the Supplemental Site Design Guidelines are required, Developer may propose as many of the design elements as may be feasible in an effort to create a unique sense of place that will enhance the probability of success for the Project.
 - i. The Central Plaza (East and West Plazas) is approximately 0.66 acres and will provide for informal active and passive recreation as well as more prescribed uses such as festivals, community gatherings, concerts or other event staging.
 - ii. The Community Open Space is approximately 0.9 acres and will have a park-like character and allow for active play and lounging. It will act as a pedestrian gateway from the more residential upper areas of the site to the retail core.
 - iii. The Pedestrian Shared Street is approximately 0.7 acres and includes paths that will serve residents, visitors, pedestrians and cyclists as a web knitting the site together through a series of spaces allowing for moments of active and passive recreation including the Farmer's Market.
 - iv. The Westminster Way Plaza is approximately 0.49 acres and will provide a gateway from Westminster Way N. inviting people into the Open Space System. Wide open pedestrian paths create space for outdoor dining and gathering.
 - B. Maintenance and Operations. The Open Space System shall be private property. Developer shall be responsible for the maintenance and operation of the Open Space System. However, Developer shall make the Open Space System available for reasonable public access and enjoyment subject to the guidelines provided in the Open Space System Operations & Maintenance Plan, **Exhibit I**.

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- C. Multifamily Open Space. In addition to the Open Space System, pursuant to SMC 20.50.240.G, Developer will provide for each multifamily development within the Project the greater of 800 square feet of open space per development or 50 square feet of open space per dwelling unit. The Multifamily Open Space is not considered part of the Open Space System.
- D. Public Places for Commercial Portions of Project. Pursuant to SMC 20.50.240.F, for commercial portions of the Project, Developer will provide 4 square feet of public place per 20 square feet of net commercial floor area up to a maximum of 5,000 square feet. This requirement may be divided into smaller public places so long as each public place is a minimum of 400 square feet. These public places shall be considered part of the Open Space System.
- E. Credits Against Parks Impact Fees. Those components of the Open Space System for which the City grants credit against parks impacts fees shall be subject to covenants or other legally binding provisions mutually agreed upon by the Developer and the City to assure that the components are open and accessible to the public with agreed upon operations and maintenance as provided in **Exhibit I**. The purposes of these components of the Open Space System shall be for open space, landscape/hardscape, recreation, pedestrian and access by the public.
10. Utilities. Developer will construct the requisite water, sanitary sewer, and stormwater facilities onsite and pay any connection fees and impact fees due for utility facilities located offsite as part of the buildout of the Project. The City has determined that the Project qualifies as a Planned Action Project and that no off-site utility improvements within the City's control are required. However, Developer remains responsible for the costs associated with alteration or extension of on-site utility infrastructure necessary to connect to the City's infrastructure and will coordinate as necessary with adjacent property owners.
11. Relocation of Existing Stormwater Line. An existing City stormwater line is located on the Property adjacent to the Westminster Way N. right-of-way. No easement of record exists for the stormwater line which primarily serves Property other than Shoreline Place. The City is also in the process of investing into various modifications to Westminster Way N. to advance the CRA vision calling for a more pedestrian-friendly environment on Westminster Way N. with enhanced pedestrian connections and gathering areas and retail and residential frontage along Westminster Way N. To resolve this encroachment, Developer will relocate the City stormwater line from the Property to the Westminster Way N. right-of-way in coordination with the Alexan project. Relocation will benefit both Parties by implementing the CRA vision, activating the pedestrian environment on Westminster Way N., and resolving the encroachment. Developer will pay for the cost associated with the Stormwater Line relocation, the cost of which will be credited against any contribution to the City's proposed N. 155th Street and Westminster Way N. improvements and against Developer's proportionate share of Westminster Way frontage improvements identified in **Exhibit G**. To the extent that the actual cost of the Stormwater Line relocation project exceeds what would have been the Developer's proportionate share of costs for the N. 155th Street and Westminster Way N. improvements and costs for the Westminster Way frontage improvements, said overage in costs shall be applied as a

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credit against any future Developer-required fees, including, but not limited to, impact fees and building permit fees, due and payable at the time of building permit issuance beginning with the first phase of the Project. To the extent that the actual cost of the Stormwater Line relocation project is less than Developer's proportionate share of costs for the N. 155th Street and Westminster Way N. improvements and Developer's proportionate share of the cost for Westminster Way frontage improvements, Developer shall pay the City the shortfall in costs at the time of issuance of the first building permit for a building in the E Block of the Conceptual Guide Plan. The relocation and related costs of the Stormwater Line shall be more fully addressed in a separate Stormwater Relocation Agreement that will implement this provision and will be approved prior to or concurrent with City Council's approval of this Agreement.

12. Modifications to Land Use Regulations. Pursuant to RCW 36.70B.170 *et. seq.*, the City has approved through this Agreement the modifications to the Vested Code Provisions specified in this Section. All other Vested Code Provisions shall apply.

A. Dimensional Requirements:

i. Table 20.50.020(3) is modified as follows: Base Height shall be 80 feet.

B. Site Design:

i. Site Frontage. SMC 20.50.240.C.1.e is modified as follows:

A building's primary entry shall be located on a street frontage and recessed to prevent door swings over sidewalks, or an entry to an interior plaza or courtyard from which building entries are accessible. For buildings adjacent to Westminster Way N. or N. 160th Street, the primary entrance may be from an internal open space with a pedestrian connection to the public right-of-way or from onsite circulation roads. See, **Exhibit J.**

ii. Internal Site Walkways. SMC 20.50.240.E.1.c is modified as follows:

c. Raised walkways at least eight feet wide shall be provided for every three, double-loaded aisles or every ~~265~~ 200 feet of parking area width provided that no parking stall is more than 100 feet from a walkway. Walkway crossings shall be raised a minimum three inches above drive surfaces. Walkways shall be identified to motorists and pedestrians through the use of one or more of the following methods: changing paving materials, patterns, or paving color; change in paving height; decorative bollards; painted crosswalks; raised median walkways with landscaped buffers; or stamped asphalt.

C. Building Design:

i. Building Articulation. SMC 20.50.250.B.3 is modified as follows:

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Multifamily buildings or residential portions of a commercial building shall provide the following articulation features at least every ~~35~~ 80 feet of façade along the street, park, public place, or open space. Parking structure façades fronting public streets shall apply to this subsection only as material, color, texture, or opening modulations and not as offset modulations:

- a. Vertical building modulation 18 inches deep and four feet wide, if combined with a change in color or building material. Otherwise, the minimum depth of modulation is 10 feet and the minimum width for each modulation is 15 feet. Balconies may be used to meet modulation; and
 - b. Distinctive ground or first floor façade, consistent articulation of middle floors, and a distinctive roofline or articulate on 35-foot intervals.
- ii. SMC 20.50.250.B.5 is modified as follows:
- Every 150 feet in building length along the street front shall have a minimum 30-foot-wide section that is offset by at least 20 feet throughout floors above the ground level floor.

D. Parking:

- i. Table 20.50.410F is modified as follows:

A	B	C	D	E	F		
Parking Angle	Stall Width (feet)	Curb Length (feet) (No modification)	Stall Depth (feet)	Aisle Width (feet)		Unit Depth (feet)	
				1-Way	2-Way (No modification)	1-Way	2-Way (No modification)
90	8.0 <u>7.5*</u>	8.0*	16.0 <u>15.0*</u>	23.0	23.0	**	**
	Min. 8.0	8.5	20.0 <u>16.0</u>	23.0	23.0	63.0	63.0
	Desired 9.0	9.0	20.0 <u>18.0</u>	23.0	23.0	63.0	63.0

* For compact stalls only. No more than 50 percent of the required minimum number of parking stalls may be compact spaces.

- ii. SMC 20.50.410.H is modified as follows:

Any parking spaces abutting a landscaped area on the driver or passenger side of the vehicle shall provide an additional 18 inches to provide a place to step other than in the landscaped area. The required 18-inch step – off may be satisfied by a 12-inch paving strip behind a 6-inch curb. See Exhibit J. In a parking garage, any space abutting a wall shall provide an additional 18 inches.

13. Process.

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- A. The Parties understand that, during its review of development applications, the City will likely provide correction comments. To streamline review and achieve the CRA Vision in a timely fashion, the City will strive to provide all its correction comments in its first set of review comments on an application, provided that the Applicant for the relevant development application may request preliminary comments. After the completion of two review cycles (not including preliminary comments), the City shall expedite a meeting to address any remaining correction comments.
14. Short Subdivision or Binding Site Plan. The Parties agree that a Short Subdivision or Binding Site Plan is necessary for the development of the Project. Developer acknowledges that any Short Subdivision or Binding Site Plan for the Project shall be required to comply with the applicable SMC provisions and review procedures. A Short Subdivision may be phased as follows:
- A. The first phase and each subsequent phase other than the final phase shall include a conceptual utility/infrastructure plan showing how future phases can be served.
- B. For each phase, the Developer phase must provide the transportation, Open Space System, and utility improvements necessary to support the current phase as well as cumulative impacts of previous phases so that the current phase can stand alone. A current phase may not be dependent on construction of improvements to be provided in a future phase unless specifically authorized in this Agreement.
- C. If a Short Plat is processed, then consistent with SMC 20.30.450 and RCW 58.17.140, a final plat for the first phase must be submitted to the City for approval within 5 years of the approval of the preliminary short subdivision. A final plat for each subsequent phase must be submitted to the City Council for approval within 5 years of approval of the final plat for the prior phase.
15. Critical Areas. Boeing Creek is a piped stream within the Property, requiring a 10-foot buffer. SMC 20.80.274.C.4 permits clearing and grading within the buffer. The Project will provide the required 10-foot buffer. There are no other critical areas on the Property. SMC 20.30.355.C.6 is satisfied.
16. Public Benefits. Parties acknowledge that the Project is advancing the CRA, including but not limited to the policies and goals identified on pages 7 and 17 of the Conceptual Guide Plan. Parties agree that the proposed public benefit items in the Public Benefit Matrix, outlined in **Exhibit C**, are consistent with the SMC, Shoreline Comprehensive Plan, CRA, and Planned Action. The City will not request or require any additional public benefits as part of the Project so long as the application is consistent with the Agreement.
17. Vesting. Developer shall be entitled to develop Conceptual Guide Plan projects under the Vested Code Provisions. Vesting will occur as of January 4, 2019, the date that a complete application for a Development Agreement was filed and shall run for a term of twenty (20) years.

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- A. Except as provided in Section 18, *Impact Fees*, vesting does not apply to impact fees; plan review/inspection fees; connection charges; building code changes; or City, state, or federal stormwater requirements which are generally applicable throughout the City.
- B. Developer acknowledges the City reserves all rights to impose new or different regulations as authorized by RCW 36.70B.170(4).
- C. Due to the length of the vesting term, the Parties understand that allowing some future amendments to Vested Code Provisions to apply to the Project may provide public and Developer benefit. The Parties recognize that neither Party is prescient enough to anticipate all of the potential changes in technology or Developer's business needs, lease matters, construction techniques, economic cycles or architectural design that may occur during the vesting period. The Developer, in its sole discretion, may request and City may allow application of Code Amendments to Conceptual Guide Plan projects, including but not limited to changes in parking regulations. For example, technologies related to parking (autonomous vehicles, ride-share enhancements, etc.) may change resulting in a decreased parking demand in the Project from that currently required. The City may approve the use of such amended Code provisions administratively only if it determines the following criteria are met:
 - i. The Code Amendment does not permit new uses prohibited under the Vested Code Regulations.
 - ii. The Code Amendment does not authorize an increase in the number of residential units proposed.
 - iii. The Conceptual Guide Plan project will satisfy the City's traffic concurrency standards.
 - iv. The City concludes that application of the Code Amendment provides an overall benefit to the public.

The application of a Code Amendment shall not affect Developer's vesting to other Vested Code Provisions.

18. Impact Fees.

- A. Transportation Impact Fee.
 - i. Transportation Impact Fee Calculation. Pursuant to SMC Chapter 3.80, Transportation Impact Fees shall be calculated at the rates set forth in SMC Chapter 3.01 applicable at the time of submittal of a complete application for a building permit or upon an independent fee calculation consistent with SMC Chapter 3.80 and approved by the City Traffic Engineer. Transportation Impact Fees shall include credit for prior land uses identified by Developer to be demolished or repurposed at time of

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building permit application as provided in SMC 3.80.050, as amended. All fees shall be paid in full prior to building permit issuance. The following modifications apply to the calculation of Transportation Impact Fees:

- a. In the event demolition associated with a credit is not completed prior to the request for temporary occupancy for the permit for which the credit was applied, the Developer shall pay the City the full amount of the credit before the City will issue a Temporary Certificate of Occupancy.
 - b. In the event the new vehicle trips for a building permit application are less than the trips associated with those that serve as the basis for the credit for that application, resulting in surplus trips, the surplus trips may be applied to future building permit applications within the Project, thereby reducing the transportation impact fees on future building permit applications. The surplus trips shall be reported and tracked in the Status Report, *Section 6*.
- B. Fire Protection Facility Impact Fee Credit. The City has entered into an Interlocal Agreement with the Shoreline Fire Department to collect impact fees for fire protection facilities. SMC 3.75.060.B.2 provides that, if no impact fee was paid for the immediately preceding use, the impact fee for the new use shall be reduced by an amount equal to the current impact fee for the immediately preceding use. Approximately 330,617 square feet of Commercial 1 retail uses previously operated on the Property.
- C. Parks Impact Fee Credit. The City has determined that certain components of the Open Space System within the Project (**Exhibits E and M**) support the goals of the City's 2017-2023 PROS Plan for public-private partnerships to provide access to recreational and public open space. The Aurora Square CRA Plan similarly speaks to private investment in outdoor amenities available for public use and the Aurora Square Planned Action EIS further recognizes that redevelopment will increase the demand for open space. Despite this, the Rate Study for Impact Fees for Parks, Open Space and Recreation Facilities, City Clerk Receiving No. 8871, did not include a park capacity project specifically near or within Aurora Square so as to entitle Developer to a park impact fee credit pursuant to SMC 3.70.080 at this time.

To effectuate the above objectives, City staff will present for City Council consideration an amendment to the Rate Study and the City's Capital Facilities Plan to identify the CRA and include components of the Open Space System authorized by this Agreement and that provide perpetual access to recreational and public open space. Upon an amendment to the Rate Study and Capital Facilities Plan, Developer shall be entitled to a credit against applicable parks impact fees as provided for herein, in **Exhibit M**, and pursuant to SMC 3.70.080 for those projects that meet the credit requirements. The Developer shall be responsible for notifying the City in a timely manner for those portions of the Open Space System for which it would like inclusion in the Capital Facilities Plan by the City Council.

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The Developer shall request a credit prior to issuance of the building permit for the relevant component of the Open Space System to be constructed by the Developer that is required by the City as a condition of approving the development activity as set forth in this Agreement. Credits shall be calculated at the time of submittal of a complete application for a building permit based on the City's current forms and impact fees at that time and shall be based upon the property acquisition costs as set out in the most current Rate Study and eligible improvements.

19. Transportation Capacity and Infrastructure; Parking Management.
 - A. The Transportation Consistency Analysis demonstrates that, with the completion of roadway improvement projects identified in Section 7: A-D, *Off-Site Transportation Improvements*, there will be sufficient motorized and non-motorized capacities (roads, sidewalks, bike lanes) to meet the City's adopted level of service standards to safely support the Project in all phases. SMC 20.30.355.C.3 is satisfied.
 - B. With each building permit application for a new structure, Developer shall demonstrate adequate parking and a parking management plan based on all of the uses of the Property at the time of permit application.
20. Concurrency Reservation. The City's transportation concurrency regulations, SMC 20.60.140, were adopted in accordance with the GMA (see, RCW 36.70A.060(6)(b)). Their purpose is to ensure that the City's transportation system is adequate to serve future development at the time the development is available for occupancy without decreasing current service levels below establish minimum standards. The City has determined that development of up to 1,358 residential units and 75,610 square feet of commercial space through the year 2039 passes the concurrency test and agrees that no further concurrency review will be required. Within thirty (30) days of the effective date of this Agreement, the City shall issue a Certificate of Concurrency for Developer's Conceptual Guide Plan, with an expiration date that is the same as the expiration date of this Agreement.
21. Accounting for Project Net New PM Hour Trips. The total net new PM peak hour trips shall not be allowed to exceed 160 at any point in time. To ensure that Project-generated net new PM Peak hour trips remain within the CRA Trip Budget, the City shall maintain an accounting of the Project's net new PM peak hour trips using the methodology in **Exhibit K** and an accounting tool consistent with **Exhibit K**. The calculation of net new trips shall be completed on a building permit-by-building permit basis and will utilize the City's estimation forms or an independent fee calculation consistent with SMC 3.80.060, and approved by the City Traffic Engineer.
22. Stormwater Detention and Treatment.
 - A. General Standards. All stormwater facilities shall meet current City, state, and federal regulations in effect at the time of application for the permit triggering the need for stormwater facilities. Said compliance includes adherence to the terms of the then-current Western Washington Phase II NPDES Municipal Stormwater

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Permit issued by the Department of Ecology that is in effect at the time of application for the implementing entitlement permit.

- B. Use of Future Technologies. The Parties recognize that stormwater treatment science is evolving. Developer shall have the option, but not the requirement, to use any treatment options contained in current or future Department of Ecology stormwater manuals and corresponding City stormwater technical manuals that are approved for general use by the City so long as the resulting use of technology would lead to stormwater treatment equivalent to, or better than, other authorized stormwater treatment technologies and so long as such technologies are consistent with federal and state law, including Ecology's Phase II permit, as it now exists or as may hereafter be amended.
- C. Acknowledgement of Sufficient Stormwater Capacity. The City's consultant has indicated that the existing downstream conveyance is sized appropriately for current site conditions. Redevelopment of the Property will decrease future peak discharge rates through use of on-site detention in accordance with applicable local and state requirements.
23. Acknowledgement of Sufficient Water Supply and Capacity to Serve Future Development. As explained in the CRA EIS, the City of Seattle was provided with a description of the growth planned for the CRA and indicated that the water system has capacity for this growth. The Developer shall provide the City with a Water Availability Certificate with all building permit applications requiring the provision of potable water and/or fire flow.
24. Acknowledgment of Sufficient Sanitary Sewer. The Ronald Wastewater District (District) has analyzed its existing and future sanitary sewer capacity and infrastructure. Based on its review for the next 25 years, the District has acknowledged that there is sufficient local sanitary sewer capacity and infrastructure in place or planned to serve the Project and that Developer may construct on-site capacity and connect to the District's sanitary sewer system to serve the Project subject to review and approval of a Developer Extension Agreement.
25. State Environmental Policy Act Compliance. To create an incentive for and to streamline development within the CRA, the City prepared the CRA EIS and adopted the Planned Action Ordinance. The CRA EIS Preferred Alternative evaluated the impacts of adding 1,500,000 square feet to the existing 582,725 square feet in the CRA through the year 2030, including adding 250,000 square feet of additional retail, 250,000 square feet of additional commercial/office and 1,000 residential units. The City addended the CRA EIS on March 8, 2019. The CRA Planned Action authorizes this amount of commercial space, retail space, and dwelling units. Section 3.C(2)(b) of the Planned Action Ordinance allows shifting development between these land uses when: (a) total build out is less than the aggregate amount of development reviewed in the CRA EIS; (b) the CRA Trip Budget (808 net new PM Peak hour trips within the CRA by the year 2030) is not exceeded; and (c) development impacts identified in the CRA EIS are mitigated consistent with Exhibit A of the Planned Action Ordinance. The City has determined that:

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- A. With the Project, the Alexan Apartments, and existing land uses, total build out in the CRA is less than the aggregate amount of development reviewed in the CRA EIS.
 - B. The Transportation Consistency Analysis demonstrates that, with the Project, the Alexan Apartments and other existing land uses, the CRA Trip Budget is not exceeded.
 - C. The Transportation Improvements provided for in Section 7, *Off-Site Transportation Improvements*, fully mitigate the transportation impacts of the Project consistent with the Planned Action Ordinance and the Transportation Consistency Analysis.
 - D. The shift of development amounts between land uses within the Project satisfies Section 3.C(2)(b) of the Planned Action Ordinance thereby allowing 1,358 residential units.
 - E. The Project is within both the geographic and development intensity scope of the redevelopment contemplated in the CRA Planned Action, which adequately addressed the significant environmental impacts of the Project and has been utilized to formulate the conditions on the Project.
 - F. The Project qualifies as a Planned Action Project pursuant to SMC 20.30.357.
 - G. Compliance with the Approvals shall constitute complete mitigation of the environmental impacts of the Project.
26. Consistency with Comprehensive Plan. As outlined in this Agreement and required by SMC 20.30.355.C.1, the Project is consistent with the goals and policies of the Comprehensive Plan.
27. Confirmation of Consistency and Future City Interpretations. City approval of this Agreement evidences its consistency with the SMC.
28. Sustainability. As required by SMC 20.30.355.C.2, the Project will provide innovative, aesthetic, energy-efficient and environmentally sustainable architecture and site design as demonstrated in the Conceptual Guide Plan.
29. Transitions. Property on the north side of N. 160th Street (across the right-of-way from Building B1) is zoned R-6. The architectural design and site design elements along N. 160th Street, including landscaping, open space, retention of significant trees, parking/traffic management, and multimodal transportation improvements will create necessary transitions and minimize conflicts with the R-6 properties to the North. SMC 20.30.355.C.5 is satisfied.
30. Permit Review and Processing. Developer agrees to obtain all required permits, pay all permitting/review fees as established by the City. Permitting and land use review fees will

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adjust over time and Developer agrees to pay the fees in place at the time of application for construction of each phase of the Project.

31. Agreement to Run With the Land. For the term of this Agreement, the benefits and obligations of this Agreement shall run with the land and continue following the subdivision, leasing, or transfer of ownership to Developer's successors and assigns.
32. Term. The term of this Agreement shall be twenty (20) years from the Effective Date of this Agreement. The City and Developer may mutually agree to extend the term of the Agreement in writing.
33. Amendment of Agreement. Amendment of Agreement. Amendment of this Agreement is subject to the provisions of Section 56 (*Final and Complete Agreement*). Amendments to the Agreement shall be designated as either minor or major amendment by the Director of Planning and Community Development, in consultation with affected City Departments.
 - A. Minor Amendments. A minor amendment is an amendment that is not defined below as a major amendment.
 - B. Major Amendments. A major amendment shall require an amendment to the Agreement and expressly includes:
 1. Changing the term of the Agreement as set forth in Section 17 *Vesting*;
 2. Modifying the Open Space requirements set forth in Section 5.B *Phasing* or Section 9, *Open Space System*;
 3. Increasing the square footage or the number of residential dwelling units set forth in Section 3 *Development Approvals* by more than ten percent (10%);
 4. An amendment that would cause an exceedance of the "CRA Trip Budget" as defined in the Agreement;
 5. Proposing a land use that is not allowed in the zone;
 6. An amendment to any of the modifications set forth in Section 12 *Modifications to Land Use Regulations*; or
 7. An amendment creating new significant environmental impacts not evaluated in the Aurora Square Planned Action FEIS.
 - C. Processing of amendments.
 1. Major Amendments shall be processed as set forth in SMC 20.30.355(E)(1), requiring notice, a public hearing before the Planning Commission and City Council approval by ordinance or resolution, except that such amendments are not required to conform to SMC 20.30.355(B) Development Agreement Contents and will only be subject to the applicable Decision Criteria in SMC 20.30.355(C) based on the subject matter of the proposed amendment.

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2. Minor Amendments shall be administratively reviewed and approved by the Director of Planning and Community Development following the procedures for a Type A decision as set forth in SMC 20.30.040 without notice, public hearing, or city council approval. In reviewing such amendments, the Director shall consult with affected City departments.
 3. The Director's decision classifying an amendment as major or minor is final and not subject to reconsideration or administrative appeal.
 4. The City's decision to approve a minor or major amendment is discretionary. The City may impose reasonable conditions of approval on any amendment.
 5. The fee for processing of a minor or major amendment shall be the hourly rate set forth in SMC 3.01.010 for a development agreement at the time of the amendment.
 6. If approved, the Developer shall record the executed amendment as provided in SMC 20.30.355(E)(2).
34. Additional Parcels. In the event that Developer acquires additional parcels adjacent to the Property and/or within the CRA, Developer may apply to have the additional parcels made subject to this Agreement as a minor amendment and the Project elements adjusted accordingly so long as the proposed uses of the additional parcels are consistent with the Planned Action and do not cause an exceedance of the CRA Trip Budget. All other terms and conditions of the Approvals would apply.
35. Construction of Documents. In the event there are any conflicts or ambiguities between the terms of the body of this Agreement and the terms in any of the Exhibits, the terms of the body of this Agreement shall control.
36. Indemnification. Except as otherwise specifically provided elsewhere in this Agreement and any exhibits hereto, each Party shall protect, defend, indemnify and hold harmless the other Party and their officers, agents, and employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, which are caused by or result from any negligent act or omission of the Party's own officers, agents, and employees in performing services pursuant to this Agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against a Party, the Party whose sole negligent actions or omissions gave rise to the claim shall defend the other Party at the indemnifying Party's sole cost and expense; and if final judgment be rendered against the other Party and its officers, agents, and employees or be rendered jointly against the Parties and their respective officers, agents, and employees, the Party whose sole negligent actions or omissions gave rise to the claim shall satisfy the same; provided that, in the event of concurrent negligence, each Party shall indemnify and hold the other Party harmless only to the extent of the indemnifying Party's negligence. The indemnification to the City hereunder shall be for the benefit of the City as an entity, and not for members of the general public.

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37. Agreement Consistency with RCW 82.02.020. The mitigation requirements established by this Agreement are consistent with the requirements of RCW 82.02.020 and mitigate the direct impacts that have been identified as a consequence of the Project.
38. Recording. This Agreement shall be recorded with the King County Recorder's Office.
39. Binding Effect; Assignability. This Agreement shall bind and inure to the benefit of the Parties hereto and their respective successors, heirs, legatees, representatives, receivers, trustees, successors, transferees and assigns. Developer shall have the right to sell, transfer, mortgage, hypothecate, convey or take any other similar action regarding the title to or financing for all or any portion of the Property, provided however that any such transfer, sale, etc. shall be subject to the terms and conditions, rights and obligations of this Development Agreement and all attachments thereto. At least 30 days prior to the effective date of any such transfer, the Developer or any other transferor shall (1) formally notify the transferee of this Development Agreement, and (2) formally notify the City of the intended transfer.
40. Interpretation. This Agreement has been reviewed and revised by legal counsel for both Parties, and no presumption or rule construing ambiguity against the drafter of the document shall apply to the interpretation or enforcement of this Agreement. Nothing herein shall be construed as a waiver of the City's constitutional and statutory powers. Nothing herein shall be construed or implied that the City is contracting away its constitutional and statutory powers, except as otherwise authorized by law.
41. Authority. Each signatory to this Agreement represents and warrants that he or she has full power and authority to execute and deliver this Agreement on behalf of the Party for which he or she is signing, and that he or she will defend and hold harmless the other Parties and signatories from any claim that he or she was not fully authorized to execute this Agreement on behalf of the person or entity for whom he or she signed. Upon proper execution and delivery, this Agreement will have been duly entered into by the Parties, will constitute as against each Party a valid, legal and binding obligation that will be enforceable against each Party in accordance with the terms herein.
42. Delays. If either Party is delayed in the performance of its obligations in this Agreement due to Force Majeure, then performance of such obligation shall be excused for the period of delay. Force Majeure means extraordinary natural events or conditions such as war, riot, labor disputes, or other causes beyond the reasonable control of the obligated party. The City's or Developer's inability to fund, or decision not to fund, any of its obligations shall not be an acceptable reason for delay.
43. Notices. All notices, requests, demands, and other communications called for or contemplated by this Agreement shall be in writing, and shall be duly given by mailing the same by certified mail, return receipt requested; or by delivering the same by hand, to the notice in the manner aforesaid:

Developer:

MGP XII SB AURORA, LLC

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c/o Merlone Geier Partners
Attn: Jamas Gwilliam
4365 Executive Drive, Suite 1400
San Diego, CA 92121
Phone: 858-259-9909
Email: jgwilliam@merlonegeier.com

And to its Attorney:

Alison Moss
Schwabe Williamson & Wyatt
1420 5th Avenue, Suite 3400
Seattle, WA 98101

City of Shoreline:

And to its Attorney:

44. Dispute Resolution. The Parties shall follow the procedures in this section to address disputes. For the purpose of this Section, any written request or notice shall be sent to the Parties as set forth in Section 43, Notices. Performance of each Party's obligations and responsibilities of this Development Agreement, not subject to the dispute, shall continue during any dispute resolution or mediation proceedings. If the Parties are unable to resolve the dispute after utilizing the methods set forth in this Section, then either Party may seek to enforce the provisions of this Development Agreement through any method afforded by law.

A. **Informal Resolution.** It is the Parties' intent to work cooperatively and in good faith to resolve any disputes in an efficient and cost-effective manner. In the event of any dispute as to the interpretation or application of the terms or conditions of this Agreement, Developer and the City, through their designated representatives, shall meet within ten (10) working days after the receipt of a written request from the other Party for the purpose of attempting, in good faith, the prompt resolution of the dispute. Such a meeting may be continued by mutual agreement of the Parties to a date certain to include other persons or parties, or to obtain addition information.

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B. **Mediation.** In the event that such a meeting does not resolve the dispute, or the meeting is not held within ten (10) working days, prior to commencing any litigation, except for a request for a temporary restraining order or preliminary injunction, the Parties shall first attempt to mediate the dispute. The Parties shall mutually agree upon a mediator to assist them in resolving their differences. If the Parties cannot agree on a mediator, a mediator shall be designated by the American Arbitration Association. Any mediator so designated must be acceptable to the Parties. The mediation will be conducted in King County, Washington. Any Party may terminate the mediation at any time. All communications during the mediation shall be confidential and shall be treated as settlement negotiations for the purpose of applicable rules of evidence, including Evidence Rule 408. However, evidence that is independently admissible shall not be rendered inadmissible by nature of its use during the mediation process. The mediator may not testify for either Party in any subsequent legal proceeding related to the dispute. No recording or transcript shall be made of the mediation proceedings. The cost of any mediation proceedings shall be shared equally by the Parties. Any cost for a Party's legal representation during mediation shall be borne by the hiring Party.

C. **Arbitration.** The Parties may voluntarily agree to Arbitration. If the Parties have agreed to arbitration, within fifteen (15) days of the receipt of a written request from the other Party of Default, the Parties shall confer and seek to agree upon a single arbitrator. If the Parties cannot agree on a single arbitrator, then the arbitration will be referred to Judicial Arbitrators and Mediators Seattle ("JAMS"). Each Party shall select a representative from JAMS, the representatives shall then meet, confer and select one of their colleagues to serve as the arbitrator, but if JAMS is not in existence or not able to hear the matter, then either Party may apply to the Washington Superior Court for appointment of a single arbitrator pursuant to RCW 7.04.050. The arbitrator shall establish the procedures and allow presentation of written and oral information but shall render its final decision within thirty (30) days after the matter is referred to arbitration, unless the Parties agree to additional time in writing. The Parties shall pay equally the cost of the arbitration.

45. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any judicial action arising out of or relating to this Agreement shall lie in King County Superior Court.

46. 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 compel specific performance of all material terms of this Agreement by any Party in default hereof. All terms and provisions of this Agreement are material.

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47. Attorneys' Fees. In any arbitration or judicial action to enforce or determine a party's rights under this Agreement, the prevailing party (or the substantially prevailing party, if no one party prevails entirely) shall be entitled to reasonable attorneys' fees, expert witness fees, and costs, including fees and costs incurred in the appeal of any ruling of a lower court.
48. No Third-Party Beneficiary. This Agreement is made and entered into for the sole protection and benefit of the parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.
49. No Partnership. Nothing in this Agreement is intended to create any type of partnership or joint venture relationship between the Parties as to the Property or its development.
50. Waiver. No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party giving such waiver and no such waiver shall be deemed a waiver of any prior or subsequent breach or default.
51. Severability. This Agreement does not violate any federal or state statute, rule, regulation or common law known; but any provision which is found to be invalid or in violation of any statute, rule, regulation or common law shall be considered null and void, with the remaining provisions remaining viable and in effect.
52. Cooperation in Execution of Documents. The Parties agree to properly and promptly execute and deliver any and all additional documents that may be necessary to render this Agreement practically effective. This Section shall not require the execution of any document that expands, alters, or in any way changes the terms of this Agreement.
53. Exhibits. This Agreement includes the following exhibits which are incorporated by reference herein:
 - A. Exhibit A - Legal Description of Property.
 - B. Exhibit B – Property.
 - C. Exhibit C – Public Benefit Matrix.
 - D. Exhibit D – Conceptual Guide Plan.
 - E. Exhibit E – Open Space System.
 - F. Exhibit F -Supplemental Site Design Guidelines.
 - G. Exhibit G –Westminster Way Improvements.
 - H. Exhibit H – Street Sections and Design Plans.
 - I. Exhibit I - Open Space System Operations & Maintenance Plan.
 - J. Exhibit J - Illustrations of Modifications to Land Use Regulations.

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- K. Exhibit K - Net New PM Peak Hour Trip Accounting Tool.
- L. Exhibit L – Vested Provisions of Title 20 SMC.
- M. Exhibit M – Shoreline Place Open Space Potential Credit Calculations.

- 54. Counterparts. This Agreement may be signed in any number of identical counterparts, each of which shall be considered an original even if it is transmitted by electronic means and taken together those identical counterparts will be considered to constitute one and the same instrument. The Effective Date of this Agreement shall be the date when the last representative of the City and/or Developer executes and transmits a copy of the signed Agreement.
- 55. Full Understanding. 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.
- 56. Final and Complete Agreement. This Agreement is integrated and constitutes the final and complete expression of the Parties on all subjects relating to the development of the Project. This Agreement may not be modified, interpreted, amended, waived or revoked orally, but only by a writing signed by all Parties. This Agreement supersedes and replaces all prior agreements, discussions and representations on all subjects discussed herein, without limitation. No 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.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

Developer:
MGP XII SB AURORA, LLC,
a Delaware limited liability company

By: Merlone Geier XII, LLC,
a California limited liability company

By: _____
Its: _____

City of Shoreline
A Washington municipal corporation

By: _____

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Its: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF WASHINGTON

ss.

COUNTY OF KING

On this day personally appeared before me _____, to me known to be _____ of MGP XII SB Aurora, LLC that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that _____ is authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said corporation.

GIVEN under my hand and official seal this ____ day of _____, 2019.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)
Notary public in and for the State of Washington,
residing at _____
My appointment expires _____

STATE OF WASHINGTON

ss.

COUNTY OF KING

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On this day personally appeared before me _____, to me known to be _____ of the CITY OF SHORELINE, a Washington municipal corporation, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that _____ is authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said corporation.

GIVEN under my hand and official seal this _____ day of _____, 2019.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington,
residing at _____

My appointment expires _____

DRAFT