DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT ("**Agreement**") is entered into the _____ day of _____, 2023, by and between the City of Issaquah, a Washington municipal corporation ("**City**") and IHIF Commercial, L.L.C., a Washington limited liability company ("**Owner**"), collectively the "**Parties**". This Agreement applies to approximately 21.46 acres of Owner's land located in the Issaquah Highlands as shown on the map attached to this Agreement as **Attachment 1**; and, as legally described in **Attachment 2** (the "**Property**").

RECITALS

A. The City is a non-charter Optional Municipal Code city incorporated under the laws of the State of Washington. 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 property. The City also has the authority to enter into development agreements with those who own or control property within its jurisdiction, pursuant to the Development Agreement Statutes, RCW 36.70B.170 through 36.70B.210. This Agreement is intended to constitute a development agreement governed by the terms and conditions of the Development Agreement Statutes and Chapter 18.218 of the Issaquah Municipal Code ("**IMC**").

B. On June 19, 1996, the City and Owner's predecessor-in-interest executed the former Grand Ridge Annexation and Development Agreement, which this Agreement refers to as the Issaquah Highlands Development Agreement ("**IHDA**"). The Property remains subject to the IHDA, inclusive of all amendments and supplements thereto, because Owner submitted complete applications for Implementing Approvals (a Site Development Permit, two Administrative Site Development Permits, and a subdivision) that are vested to the IHDA.

C. The purpose of this new Agreement, which supersedes the IHDA, is to create new Property-specific regulations that are based on the IHDA and the IMC, but that allow development of the Property with a "Project," as that term is defined in this Agreement, in a manner that furthers the interests of the City and Owner and that provides greater public benefit.

D. There are numerous public benefits of the Project. Examples of the public benefits of the Project include: completion of the Issaquah Highlands community with an economically viable project; consistency with the greater Issaquah Highlands community by utilizing development standards that are based on and consistent with those that governed the existing build out of the area; additional housing to help address the current housing crisis, including opportunities for age-restricted housing and affordable housing; limitations on the size of residential units to minimize the impacts of the Project on schools; additional restaurants, retail, medical offices, and other services to accommodate the Issaquah Highlands community, as well as the City more generally; pedestrian-friendly connections between property to the west of the Property and existing retail in the area; transit-oriented development with proximity to the Issaquah Highlands transit center; and greater community gathering and recreation opportunities in the Issaquah Highlands, including a sizable community recreation

element, and a missing trail connection to connect High Street Linear park to Discovery Drive.

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

AGREEMENT AND PROPERTY-SPECIFIC REGULATIONS

1. The Project.

1.1. The "**Project**" is a phased development that includes Commercial, Residential, and Mixed-use uses, as those terms are defined in Appendix I. As further explained in this Agreement, the Project includes up to three hundred twenty-five thousand (325,000) square feet of Commercial uses and up to one thousand two hundred fifty (1,250) Residential units in Mixed Use buildings, including affordable housing and community/recreational elements.

1.2. The Property is approved to be divided into ten (10) lots, arranged in five (5) blocks (blocks A through E) created by a preliminary subdivision that the City approved on September 18, 2023. The Property may be further divided by land divisions processed pursuant to this Agreement.

1.3. The development of each specific portion of the Project pursuant to this Agreement is a "**Project Phase**". The Owner shall determine the location and scope of each Project Phase based on market factors, subject to the agreed controls set forth in this Agreement.

1.4. This Agreement relates to and governs the applications for approval to develop each Project Phase (RCW 36.70B.200).

1.5. Commercial Development.

1.5.1. Owner shall reserve one (1) or more lots of the Property solely for Commercial use, and such lot or lots shall be large enough and otherwise appropriate to support the development of at least one hundred fifty thousand (150,000) square feet of Commercial space under the Development Standards in this Agreement, to be constructed consistent with market demand.

1.5.2. In addition to the Commercial uses identified in Section 1.5.1, all buildings on lots 1-5 along 9th Avenue that contain Non-Restricted Residential Units shall be Mixed-use buildings. Collectively, lots 1-5 will include a target of at least one hundred thousand (100,000) square feet or more of ground-floor or standalone Commercial uses.

1.5.3. Buildings on lots 6-10 may be Commercial, Mixed-use, Residential, or community/recreational.

1.5.4. At least one Commercial space shall be designed to accommodate an

entertainment-based tenant, including by way of example and without limitation: rock climbing, table tennis, arcade, pickle ball, bowling or mini-golf.

1.6. Residential Development.

1.6.1. Residential development shall primarily be in vertical Mixed-use buildings.

1.6.2. The Project is limited to a maximum of one thousand two hundred fifty (1,250) Residential units.

1.6.3. No more than one hundred twenty-five (125) units will have three (3) or more bedrooms. A bedroom is a room of at least seventy-five (75) square feet of habitable floor space with a closet and a window.

1.6.4. If all 1,250 of the Residential units are built, at least two hundred (200) of the Residential units shall be either Age-Restricted or Assisted Living units. Units that are neither Age-Restricted nor Assisted Living units are "**Non-Restricted Residential Units**".

1.7. Affordable Housing.

1.7.1. For purposes of this Agreement "**Affordable Housing**" means Residential Units affordable to households making eighty percent (80%) of the "King County median income," as such income is defined in IMC 3.09.030 and is referred to herein as the "**Area Median Income**" or "**AMI**".

1.7.2. If the City adopts the amendments to its MFTE Code set forth in **Attachment 3** ("**MFTE Amendment**") making the Property eligible for the City's MFTE program and any extension allowed by State law, then any building containing at least ten (10) Non-Restricted Residential Units shall be developed pursuant to the City's MFTE program to include twenty percent (20%) of the Non-Restricted Residential Units as Affordable Housing; provided that the building must be eligible for the MFTE program as contemplated by this section at the time the complete application for a building permit is submitted.

1.7.3. Owner may elect to build up to one hundred (100) Non-Restricted Residential Units as condominiums that will be sold to private owners and are exempt from the Affordable Housing requirements of this section.

1.7.4. Owner is vested by this Agreement to Chapter 3.09 IMC as it exists on the Effective Date, without the need to submit an application. Effective on the date of the City's adoption of an amendment to Chapter 3.09 IMC to include the Property within a Residential targeted area and add the terms in Attachment 3, Owner vests to Chapter 3.09 IMC as amended, without the need to submit an application. No Affordable Housing requirement shall apply to a building containing Non-Restricted Residential Units if, at the time of complete building permit application, the MFTE Amendment is not in effect or the MFTE program is otherwise unavailable for the Property on the terms required by this

Agreement.

1.7.5. Upon approval of an application for tax exemption, the City and Owner shall enter into an MFTE Contract for the project in the form provided as **Attachment 4** to this Agreement.

1.7.6. The form of Final Certificate of Tax Exemption to be used in connection with MFTE on the Property is provided as **Attachment 5** to this Agreement.

1.7.7. This Affordable Housing requirement applies on a building-by-building basis and not to the Property as a whole, and no building shall be required to include more than twenty percent (20%) of the units as Affordable Housing.

1.7.8. Affordable Housing constructed or vested during the term of the Agreement shall be allowed to continue as a permitted use of the Property after termination of the Agreement. If Owner qualifies for an extension of the exemption period, as is authorized by RCW 84.14.020(6) as of the Effective Date, the City will approve such an extension without adding additional requirements to those imposed by statute. Termination of the Agreement is not grounds for cancellation or denial of an exemption or extension for the Project through the City's MFTE program.

1.8. Community Recreation Element.

1.8.1. The Project shall include a Community Recreation Element ("**CRE**") located on a parcel of at least twenty-five thousand (25,000) square feet that Owner shall develop with areas for active outdoor recreation, as detailed in this Section 1.8. Owner shall also construct an Additional Community Recreation Element ("**Additional CRE**") of at least fifteen thousand (15,000) square feet, with areas for active recreation, that may be located either as part of the CRE parcel, or in a different location in the Project at Owner's discretion.

1.8.1.1. The CRE and Additional CRE shall each be located on property that is relatively flat in its finished condition (at least seventy-five percent (75%) of the property is not greater than a five percent (5%) grade).

1.8.1.2. The CRE and Additional CRE may include amenities for active recreation such as: interactive water features, sports courts, climbing walls, adaptive playground equipment and outdoor fitness equipment. All active recreation amenities shall meet the applicable requirements in Appendix F, including applicable ADA requirements.

1.8.1.3. The CRE and Additional CRE must include general park amenities, such as greenspaces and landscaping, lighting that complies with Appendix H, and general fixtures such as picnic tables, benches, drinking fountains, garbage/recycling facilities, and/or public art.

1.8.1.4. A portion of the CRE must be covered and designed to allow for year-round use. For purposes of this section, "covered" means that the property is

situated underneath or within an attached or free-standing outdoor structure with open sides that provides shade or protection from the elements.

1.8.1.5. Owner shall engage the services of a licensed Washington State landscape architect to design the CRE and Additional CRE. Prior to submitting a plan for the CRE to the City, Owner shall hold at least one (1) open house either in-person or virtually to receive input on the development of the CRE and shall offer to meet and consult with the Issaquah Highlands Community Association ("**IHCA**") and City regarding the design.

1.8.2. Owner shall complete construction of the CRE before issuance of Certificates of Occupancy for more than six hundred twenty-five (625) residential units on the Property. Owner may complete construction of the Additional CRE at any time during the term of this Agreement.

1.8.3. The square footage of the CRE and Additional CRE shall count toward the Project's Community Amenity Space for all development on the Property, regardless of whether the CRE is constructed before or after each Project Phase. Owner may obtain credit for Community Amenity Space before completing construction of the CRE and Additional CRE by designating the area of the lot or lots to be developed for the CRE and Additional CRE use.

1.8.4. Prior to construction of the CRE and Additional CRE, Owner may relocate the CRE and Additional CRE within the Property by making a new written designation of the CRE and Additional CRE area, which shall replace the prior designation.

1.8.5. Owner shall convey the constructed CRE and Additional CRE to the IHCA to operate and maintain as a community amenity. If IHCA declines to accept the conveyance, Owner shall convey the CRE and Additional CRE to the City to operate and maintain as public recreation areas.

1.8.6. Before conveyance, Owner shall create separate lots for the CRE and for the Additional CRE if located in a different location from the CRE, by means of a boundary line adjustment or short plat. Owner may reserve an easement within the CRE and Additional CRE to install and maintain underground stormwater facilities and utilities that serve any portion of the Property, provided that such facilities do not prohibit Owner from designing and constructing a CRE and Additional CRE that meet the requirements of this section 1.8.

2. Development Standards and Processes.

2.1.1. The development standards that apply to the Project are those set forth in this Agreement and in the Appendices to this Agreement ("**Development Standards**"). These Development Standards are primarily those of the IHDA and IMC, updated to reflect changed circumstances and to address this specific Project. The Development Standards are found in the following Appendices:

2.1.1.1. Appendix A: Procedures

2.1.1.2. Appendix B: Land Use Standards

2.1.1.3. Appendix C: Parking Standards

2.1.1.4. Appendix D: Road Standards

2.1.1.5. Appendix E: Landscape Standards

2.1.1.6. Appendix F: Community Amenity Space and Trail Standards

2.1.1.7. Appendix G: Signage Standards

2.1.1.8. Appendix H: Lighting Standards

2.1.1.9. Appendix I: Definitions

2.1.2. The Development Standards and processes in this Agreement replace and supersede the development standards and processes in IMC Title 18 and reflect a carefully negotiated compromise of disputed claims, the resolution of which provides a significant public benefit. In accordance with RCW 36.70B.180, during the term of this Agreement the City shall not modify or impose new or additional Development Standards. To the extent this Agreement does not address or establish Development Standards covering a certain subject, then the IMC in effect upon the date of this Agreement shall be applied consistently with this Agreement. In the event a subject is not addressed in this Agreement and Owner disagrees that the IMC is being applied consistently with this Agreement, the Parties shall meet and confer in good faith to negotiate a resolution. If a resolution cannot be reached in a timely manner, Owner may appeal and/or initiate the dispute resolution process set forth in Section 21 herein.

3. Environmental Review.

3.1. In June and September of 1995, the King County Department of Development and Environmental Services issued Draft and Final Environmental Impact Statements for the Grand Ridge Planned Community (collectively the "**EIS**"). The EIS analyzed the environmental impacts of development of the Grand Ridge Planned Community upon its annexation into the City.

3.2. After issuance of the EIS and before annexation, the City entered into the IHDA with the two owners of the land that comprised the Grand Ridge Planned Community: Grand Ridge Limited Partnership and Glacier Ridge Limited Partnership. Upon annexation the City adopted the EIS as provided in Subsection 3.22.2.2 of the IHDA: "The City's annexation of the Property shall constitute the City's adoption of the County Grand Ridge EIS for purposes of review of Implementing Approvals after annexation."

3.3. The IHDA authorized a certain amount of development called the "**Allowable Development**", as that term is defined in the IHDA, the impacts of which had been analyzed in the EIS. Owner purchased the Property and 1,858,587 square feet of this Allowable Development for commercial and retail use of the Property along with three (3) residential units. In 2017, Owner submitted a plat application that vested the Property to this Allowable Development. The City's Department of Community Planning and Development ("**Department**") determined that the proposed development of the plat was within the scope of the impacts analyzed in the EIS and that no additional analysis under the State Environmental Policy Act ("**SEPA**") was required.

3.4. This Agreement authorizes the conversion of a portion of the Property's Allowable Development from commercial use to residential use to enable the construction of up to one thousand two hundred fifty (1,250) Residential units together with up to three hundred twenty-five thousand (325,000) square feet of Commercial use, and this conversion required additional SEPA review before the City entered into this Agreement.

3.5. The Owner prepared a SEPA checklist, and after reviewing this checklist and supporting documentation, the Department analyzed the environmental impacts of this Agreement and the Project and determined that the impacts of this Agreement and the Project _____.

3.6. On ____ the Department adopted the EIS pursuant to WAC 197-11-600(4), approved an Addendum to the EIS that provides additional information and analysis regarding the non-significant impacts of this Agreement and the Project, and issued a _____.

3.7. This additional SEPA review creates a project-specific envelope of environmental impacts identified in the SEPA checklist and Addendum and referred to herein as the High-Street Collection Project Envelope ("**HSC Project Envelope**"). The HSC Project Envelope includes the Commercial, Residential, Mixed Use, and recreational uses on the Property at the maximum densities and intensities allowed under the Agreement. Additional SEPA review is required for Project Phases only if Owner proposes a development that the Department determines will create additional environmental impacts beyond those in the HSC Project Envelope, which is a Major Modification.

3.8. To ensure that the Project remains within the HSC Project Envelope, Owner agrees to provide this mitigation for this Agreement and the Project:

3.8.1. [*add mitigation if required with threshold determination*]

3.9. The Department also determined that there are no environmentally critical areas on the Property, except that the Property is currently mapped as a Class 3 Critical Aquifer Recharge Area ("**CARA**"). Accordingly, the CARA regulations in effect upon the date of this Agreement at Chapter IMC 18.802 are the only critical area regulations that apply

to the Project under existing Code. The City has determined that all applicable additional standards for development in a CARA set forth in IMC 18.802.390 have been satisfied by the Hydrogeological Critical Area Assessment; provided, however that the requirement in IMC 18.802.390(B)(5) will apply if temporary dewatering is proposed. No additional critical area studies are required. The Department has further determined that the Hydrogeologic Critical Areas Assessment submitted by Owner demonstrates that the Property should not be subject to a CARA 3 classification based on current conditions. Pursuant to IMC 18.802.370, the City intends to initiate an update to the CARA map that replaces the CARA 3 classification with a CARA 4 classification, or no classification if applicable, for the Property within one (1) year after the Effective Date of this Agreement pursuant to IMC 18.106.020(2). The Department commits to supporting such adoption based on the Hydrogeological Critical Areas Assessment submitted by Owner. The Department has determined that the land uses and activities allowed for the Project by this Agreement are permitted in a CARA 3 or 4 designation subject to the conditions for such uses in Table IMC 18.802.380(A).

4. Review and Approval Processes.

4.1. Standards for review and processing permits and other approvals are contained in Appendix A. The framework of this Appendix is similar to that set forth in Appendix L to the IHDA, but in many cases extends the amount of time the City has under the IHDA to review permit applications.

4.2. Processing Fees.

4.2.1. Processing fees for the Project shall be the fees set forth in the Fee Schedule in Appendix A.

4.3. Administrative Decisions.

4.3.1. Each Project Phase must obtain administrative approval from the Department under this Agreement in the form of a "**Certification of Consistency**", as that term is defined in Appendix I. A Project Phase may also require or Owner may elect to pursue a "**Land Use Approval**", as defined in Appendix A, but only one Certification of Consistency is required for each Project Phase no matter how many building permits or other regulatory decisions may also be required. The Certification of Consistency and Land Use Approvals are collectively referred to in this Agreement as "**Administrative Decisions**".

4.3.2. The Owner, or the Owner's successors and agents, including consultants, may apply for Administrative Decisions.

4.3.3. The procedures and standards for City review of applications for Certifications of Consistency and Land Use Approvals (including without limitation Minor Modifications), building permits, preliminary plats, final plats, and Major Modifications are set forth in Appendix A.

4.3.4. The review and approval process for such applications shall be completed within

the time periods provided in Appendix A. If the process is not timely completed within the time periods provided in Appendix A, the Dispute Resolution provisions in Section 21 of this Agreement apply.

5. Major Modifications.

5.1. The terms of this Agreement may not be modified except by means of a Major Modification, except the Development Standards set forth in the Appendices may be modified as Minor Modifications, as set forth in section 6.

5.2. A Major Modification requires an application by Owner and approval by the City Council after a public hearing pursuant to the procedures in Appendix A.

5.3. SEPA review is required before Council action if the Major Modification would result in the Project being outside the HSC Project Envelope.

6. Minor Modifications.

6.1. The Parties recognize that over the life of this Agreement new technologies will become available; additional information will become known; environmental, social, and market conditions will change; and issues will arise that are not anticipated by the Development Standards adopted by this Agreement. In order for the City and Owner to respond to such changes, to benefit from new technologies and additional information, and to address unanticipated issues, the Department is authorized to approve Minor Modifications to the Development Standards in the Appendices as follows:

6.1.1. Owner's application for a Minor Modification shall propose specific language to modify one or more subsections of an Appendix but not an entire Appendix. The application shall explain the reason for the Minor Modification and demonstrate that, if approved, the Minor Modification will:

6.1.1.1. achieve the same or similar purpose as the Development Standard sought to be modified;

6.1.1.2. not significantly reduce the public benefit or mitigation provided by the Development Standard sought to be modified; and

6.1.1.3. to the extent that an Appendix includes additional criteria for a Minor Modification to a Development Standard within that Appendix, demonstrate that such additional criteria are met.

6.1.2. The Department shall review an application for a Minor Modification in accordance with the procedures in Appendix A and shall approve a Minor Modification if Owner's application makes the demonstration required by subsection 6.1.1.

7. Vesting.

7.1. Complete applications for Certifications of Consistency, Land Use Approvals, preliminary plats, final plats and building permits submitted during the term of this Agreement vest to this Agreement, so that such vested rights survive termination of this Agreement. Owner shall have the right to complete any vested Project Phase after the expiration of this Agreement using the Development Standards and mitigation provided by this Agreement.

7.2. A Certification of Consistency is the only land use decision required for a Project Phase. Land Use Approvals and preliminary plats will be applied for only if needed for a Project Phase.

7.3. Appendix A sets forth the requirements for a complete application for a Certification of Consistency. Owner shall maintain the vested right created by a complete application by:

7.3.1. submitting a complete application for a building permit within three (3) years of obtaining the Certification of Consistency; and

7.3.2. beginning construction of the Project Phase within two (2) years of building permit issuance and then maintaining the construction permit consistently with the City's Construction Administrative Code until completion.

7.4. The vested right created by a complete application for a Certification of Consistency, Land Use Approval, preliminary plat, final plat or building permit shall continue until the City makes a decision on the application and, once a decision is made, until an issued permit terminates pursuant to the standards in the IMC; *provided* that the City will extend the term of an issued permit as reasonably necessary to authorize the completion of a Project Phase. The City may deem abandoned an application that remains inactive for more than six (6) months, provided however, the City must give at least sixty (60) days written notice to Owner prior to the date of abandonment including an explanation of what additional actions are needed to keep the application active.

7.5. Owner's vested right to a Minor Modification shall continue for so long as the document, condition, or decision being modified is in effect.

7.6. Owner also shall vest to the International Building Code, International Fire Code, and to all other construction and technical codes in effect in the City and State of Washington on the date on which Owner files a complete application for a building permit. All sustainability issues under this Agreement will be addressed through building code and energy code requirements at the time of application.

7.7. Nothing in this Agreement changes Owner's right to also vest pursuant to RCW 19.27.095 and RCW 58.17.033.

8. Transportation Concurrency.

8.1. As stated in Section 11.2 of the Master Transportation Financing Agreement, Appendix J to the IHDA, all "applicable County, City and State level of service standards and concurrency requirements" were satisfied by the original developers' compliance with this Master Transportation Financing Agreement.

8.1.1. The Project satisfies concurrency because the transportation analysis submitted in support of the SEPA checklist demonstrates that fewer PM Peak hour trips will be generated by the Project than by the original mix of uses to which Owner is vested by means of its plat application.

8.1.2. The three hundred twenty-five thousand (325,000) square feet of Owner's Additional Commercial/Retail Development also satisfy concurrency because section 5.2 of the Mitchell Hill Amendment states that currency for this additional development is satisfied so long as the PM Peak Hour trips remain at or below 6,816 trips, and the transportation analysis demonstrates that the PM Peak Hour trips for the Project will be fewer than the 1,661 trips allocated to the Property as the Owner's share of these 6,816 trips.

9. Impact Fees.

9.1. The impacts of the Project do not exceed the mitigation already provided pursuant to the IHDA for the original mix of uses to which Owner is vested, including the "Amendment to Grand Ridge/Issaquah Highlands Annexation and Development Agreement [2 Party Agreement]," commonly referred to as the "**Mitchell Hill Amendment**". Accordingly, the only impact fees to be paid are those set forth below.

9.2. The Mitchell Hill Amendment increased the amount of commercial Allowable Development by five hundred thousand (500,000) square feet, which the amendment characterizes as "Additional Commercial/Retail Development." The Mitchell Hill Amendment states that the Additional Commercial/Retail Development shall provide mitigation for Police, Fire and General Government Services and no transportation mitigation or transportation impact fee is required. The rate for commercial/office uses shall be $0.07, $0.17, and $0.03 per/sq. ft. respectively. The rate for retail uses shall be $0.15, $0.38 and $0.03 per/sq. ft. These fees shall be paid in cash at the time of building permit issuance or credited through improvements acceptable to the City.

9.2.1. The Project includes three hundred twenty-five thousand (325,000) square feet of this Additional Commercial/Retail Development.

9.2.2. Owner shall pay these rates at building permit issuance for the Commercial portions of Project Phases that use a portion of the 325,000 square feet of Owner's Commercial Development. The Retail uses listed in Appendix B, which are included in the definition of Commercial uses under this Agreement, shall pay the rate for retail uses under the Mitchell Hill Amendment, and all other Commercial uses shall pay the rate for commercial/office uses under the

Mitchell Hill Amendment.

9.3. Owner shall pay school impact fees as required by Chapter 3.63 IMC at the time of issuance of building permits for residential units, or as agreed-to in a separate lawful agreement between Owner and the School District.

9.4. Owner shall not pay impact fees for any Project Phase or development on the Property except for the fees expressly identified in Sections 9.2 and 9.3 of this Agreement.

10. Water Service and Regional Capital Facilities Charges.

10.1. The City shall provide water sufficient for the Project. The Project shall make connections to existing water mains located on or adjacent to the Property. Any water extensions proposed as part of the Project shall be designed in accordance with City standards.

10.2. Owner shall pay the Regional Capital Facilities Charge and any regional Surcharge in effect at the time of connection to the City water system, but Owner shall connect to the City system without paying a charge for City facilities.

11. Sewer Service.

11.1. The City shall provide sewer sufficient for the Project. The Project shall make connections to existing sewer lines. Any sewer extensions or side sewer services proposed as part of the Project shall be designed in accordance with City standards.

11.2. Owner shall connect to the City system without paying a charge for City facilities.

12. Stormwater.

12.1. Owner shall comply with the current Stormwater Management Manual for Western Washington issued by the Washington State Department of Ecology that is in effect at the time Owner submits a complete application for a Certification of Consistency or a master stormwater plan covering multiple parcels.

12.2. Owner shall connect to the City stormwater system without paying any fees or charges for City facilities.

13. Land Use Standards.

13.1. The land use standards including zoning shall comply with the Development Standards in Appendix B. These land use standards generally follow Appendix B and Appendix N to the IHDA, with some updates to achieve consistency with current conditions in the Highlands.

14. Community Amenity Space and Trail Standards.

14.1. Community Amenity Space and Trails for the Project shall comply with the Development Standards in Appendix F. Community Amenity Space, as defined in Appendix F, means the areas of a site that are intended for use and enjoyment of the residents, tenants and users of the development. These standards fill a hole in the IHDA, which did not set a requirement for Community Amenity Space at the project level and instead provided such space to support development of all properties collectively pursuant to a master plan for the entire area subject to the IHDA, including the Allowable Development allocated to the Property. The Development Standards contained in this Appendix ensure that new parks, amenities, and open spaces to serve the Project are provided on a Project-wide basis, in addition to the community and recreation space already provided for the Property under the IHDA. Owner may obtain credit for Community Amenity Space constructed at any Project Phase and apply that credit to any future Project Phase by designating developed areas of the Property as Community Amenity Space in an application for a Certification of Consistency.

15. Signage Standards.

15.1. Signage for the Project shall comply with the Development Standards in Appendix G. While this Appendix generally follows the approach of the IHDA, it has been simplified and streamlined to apply to only the Project and updated to reflect modern signage options.

16. Landscape Standards.

16.1. Landscaping for the Project shall comply with the Development Standards in Appendix E. This Appendix is generally consistent with Appendix P to the IHDA but has been simplified and tailored to apply to the Property.

17. Road Standards.

17.1. Project Road standards in included in Appendix D and are based on the IHDA. The majority of public roads on or adjacent to the Property are already constructed and open to the public. However, there are two road sections that are to be constructed as part of the Project. The approved High Street Collection preliminary plat specifies the applicable road standards from the IHDA that are applicable to those sections.

18. Parking Standards.

18.1. Parking for the Project shall comply with the Development Standards contained in Appendix C. These standards generally follow the approach of the IHDA Appendix O; however, the standards have been updated to reflect more modern parking utilization, types and sizing requirements, which are based largely off the IMC.

19. Lighting Standards.

19.1. Lighting for the Project shall comply with the Development Standards contained in Appendix H. These standards generally follow the approach of the IHDA and are modeled off the light standards for other development agreements in the Issaquah Highlands to provide consistency in lighting and aesthetics.

20. Procedures.

20.1. Appendix A contains the processing procedures and timelines for the Project. These are based on IHDA Appendix L, which included an expedited permit review process for Issaquah Highlands. However, this Appendix in most cases extends the amount of time the City has to review permit applications as compared to the timelines required by the IHDA.

21. Dispute Resolution, Judicial Relief, and Agreed Upon Damages.

21.1. In the event of a dispute relating to this Agreement, the first step in resolving such dispute shall be for either Party to request a meeting to resolve the dispute, which shall occur within ten (10) days of a written request for such meeting unless both Parties agree otherwise. At such meeting each Party shall send a representative with decision-making authority. If one Party intends to bring its attorney to the meeting, it shall notify the other Party which shall also bring its attorney. This notification shall be made as early as possible to avoid scheduling conflicts with attorneys. Each Party shall have a duty to make a good-faith effort to resolve the dispute promptly and without need for judicial intervention or damages.

21.2. A Party that breaches this Agreement and does not attend a meeting requested under Section 20.1, or does not cure its breach within thirty (30) days of the meeting, shall be in default. In such event the other Party shall have all rights and remedies provided by law, including without limitation the right to seek specific performance, injunctive relief, and writs, and also to seek damages, subject to Section 21.3. The prevailing or substantially prevailing party shall be awarded its reasonable attorney fees and costs.

21.3. Agreed-Upon Damages for Failure to make Timely Permit Decisions.

21.3.1. The Parties agree that the 90-day time periods for Administrative Decisions and the 120-day time periods for building permits required in Appendix A and this Agreement (the "**Permit Processing Periods**") are material terms of this Agreement, and the City has an obligation to make such "**Timely Permit Decisions**". If the City breaches this Agreement by failing to make Timely Permit Decisions and such breach is not cured pursuant to Sections 21.1 and 21.2, Owner shall be entitled to the following "**Agreed-Upon Damages**" enumerated in subsections 21.3.2-5:

21.3.2. If the permit decision is not made within the Permit Processing Period required in Appendix A but is made within thirty (30) days following that time period,

Owner shall not be required to pay the Additional Administrative Costs (as defined in Appendix A) for the application at issue that are incurred after the Permit Processing Period;

21.3.3. If the permit decision is made between thirty-one (31) and sixty (60) days following the Permit Processing Period in which Appendix A required the decision to be made, Owner also shall not be required to pay Additional Administrative Costs for the application at issue that are incurred prior to expiration of the Permit Processing Period and the City shall refund Additional Administrative Costs previously paid for the application at issue; and

21.3.4. If the permit decision is made more than sixty (60) days after the Permit Processing Period in which Appendix A required the decision to be made, Owner shall not be required to pay any fees for City review of the application at issue and the City shall refund all fees previously paid for the application at issue.

21.3.5. The City shall not be in default for a breach of its obligation to make Timely Permit Decisions until more than 60-days after the Permit Processing Period in which Appendix A required the decision to be made and, in addition, the City does not cure the default per subsection 21.2, at which time Owner may pursue any and all legal and equitable remedies, including without limitation delay damages that exceed the Agreed-Upon Damages.

21.3.6. This section applies only to City breaches of the obligation to make Timely Permit Decisions and does not limit or in any way restrict the damages Owner may recover for any other breach of this Agreement.

22. Notice.

22.1. Any notice required in this Agreement or any notice regarding a Party's performance of its obligations under this Agreement shall be delivered both by electronic mail and by either personal service or U.S. Mail to the following party representatives:

TO CITY: City Clerk, City of Issaquah
P.O. Box 1307
Issaquah, WA 98027

with a copy to: Madrona Law Group
14205 SE 36th Street
Suite 100, PMB 440
Bellevue, WA 98006
Attn: Rachel Turpin
rachel@madronalaw.com

TO OWNER: Shelter Holdings
11624 SE 5th Street
Bellevue, WA 98005
Attn: Tia Heim and Derek Straight
tia.heim@shelterholdings.com
derek.straight@shelterholdings.com

with a copy to: Foster Garvey
1111 Third Avenue, Suite 3000
Seattle, WA 98101
Attn: Pat Schneider and Steve Gillespie
pat.schneider@foster.com
steve.gillespie@foster.com

with a copy to: Tharsis Law P.S.
323 26th Avenue
Seattle, WA, 98122
Attn: Jacqueline Quarre
jacquie@tharsis.land

22.2. Notice is deemed to be given on the date of electronic mail provided that on the same day notice is also given for delivery to a commercial courier or placed in the U.S. Mail. Either Party may update or change the person and addresses for the receipt of notices under this section from time-to-time by delivering written notice to the other Party designating the new person or address, at least five (5) days prior to the name and/or address change.

23. Estoppel Certificate. Within thirty (30) days following any written request Owner may make from time to time, the City shall execute and deliver an estoppel certificate certifying that: (1) this Agreement is unmodified and in full force and effect, or stating the date and nature of any modification; (2) to the best knowledge of the City, (a) no notice of default has been sent under this Agreement or specifying the date(s) and nature of the notice of such default and (b) no written notice of infraction has been issued in connection with the Project; and (3) any other reasonably requested information. Failure to deliver such statement to Owner within the thirty (30) day period shall constitute a conclusive presumption against the City that this Agreement is in full force and effect without modification (except as may be represented by the Owner) and that there are no notices of default nor infraction (except as may be represented by the Owner). The delivery of estoppel certificate on behalf of the City pursuant to this section shall be deemed an administrative matter and shall not require legislative action. The City agrees to act in good faith, at no expense to the City, with regard to any reasonable information requests made by any future developer, tenant or lender with whom Owner has a contractual relationship with or who may be involved in the Project.

24. Binding Effect and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns. The provisions of this Agreement

shall be covenants running with the land and shall be binding to the fullest extent permitted by law and equity on the Parties, their successors and assigns, and every successor-in-interest to the Property or any part of it or right to it. To the extent Owner conveys the Property, part of the Property, or any interest in the Property, Owner may in its sole discretion retain or assign some or all of Owner's rights and obligations under this Agreement to the third-party acquiring the Property, a portion of the Property, or an interest in the Property. Owner shall notify the City in writing of any such assignment of rights and obligations, and the City shall recognize such assigned rights and obligations only to the extent that Owner notifies the City of them.

25. Amendment. In addition to Major Modifications and Minor Modifications, this Agreement also may be amended in other ways by written agreement of the City and Owner. The City's approval of such amendment shall follow the process established by RCW 36.70B.170 *et seq*. for adoption of a development agreement.

26. Reservation of City Authority. As required by RCW 36.70B.170(4), and notwithstanding any other term of this Agreement, the City reserves the right to establish and impose new or different additional regulations to the extent required to address a serious threat to public health and safety.

27. Force Majeure.

27.1. A "**Force Majeure Event**" is, for purposes of this Agreement, any event or condition that: (a) is beyond a Party's control, (b) prevents the Party's performance of this Agreement, and (c) that the Party could not have reasonably foreseen and protected itself against. For purposes of this Agreement, economic downturns, loss in value of Owner assets, or inability to obtain or retain financing do not constitute force majeure events. If the Parties do not agree about the existence or duration of a Force Majeure Event, they shall resolve their disagreement by Dispute Resolution.

27.2. The time periods in Appendix A within which the Department is required to act shall be extended for each day of a Force Majeure Event that has an actual impact on the Department's ability to perform.

27.3. The term of this Agreement shall be extended for each day in which a Force Majeure Event has an actual impact on Owner's ability to prepare and submit applications for Certifications of Consistency and other permits needed to develop Project Phases.

28. Definitions. The definitions in this Agreement are defined either in this Agreement, its Appendices or Appendix I.

29. Waiver. The waiver by a Party of a breach of any provision of this Agreement by the other Party shall not operate or be construed as a waiver of any subsequent or other breach by that Party.

30. No Presumption Against Drafter. The Parties have each participated in the negotiation and drafting of this Agreement, and each has been represented by counsel. In the event a court determines a provision of this Agreement to be ambiguous, such ambiguity shall not

be construed against a Party based on the claim that such Party drafted the ambiguous language.

31. **No deference to City Interpretation.** In the event of a disagreement between the Parties about the interpretation of this Agreement, the City's interpretation shall not receive deference. This Agreement is a contract that shall be interpreted so as to give effect to the intent of both Parties, in accordance with contract law.

32. **No Third-Party Beneficiaries.** This Agreement is made and entered into for the sole benefit of the signatory Parties and their successors and assigns, as stated in Section 24. No other person or entity shall have any right of action based on any provision in this Agreement, and no other person or entity shall have any third-party beneficiary status, except as conveyed or assigned by Owner.

33. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Washington, and venue for any action shall lie exclusively in King County Superior Court.

34. **Severability.** Should any court of competent jurisdiction find any provision of this Agreement to be invalid under Chapter 36.70B or otherwise, the remainder of the Agreement shall remain in full force and effect. Provided, however, if the invalidation would deprive either Party of material benefits derived from this Agreement, or make performance under this Agreement unreasonably difficult, then the Parties shall meet and confer and shall make good faith efforts to amend or modify this Agreement in a manner that is mutually acceptable.

35. **Section Headings.** Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants, or conditions of this Agreement.

36. **Final and Complete Agreement.** This Agreement constitutes the final and complete expression of the Parties with regard to its terms. This Agreement supersedes and replaces all prior agreements, discussions and representations on all subjects addressed herein, without limitation. No Party is entering into this Agreement in reliance on any promises, inducements, representations, understandings, interpretations, or agreements other that those stated herein.

37. **Counterparts.** This Agreement may be executed in more than one counterpart, each of which shall be deemed an original, and all of which shall constitute one and the same Agreement. Facsimile signatures on this Agreement shall constitute original signatures of the Parties.

38. **Effective Date and Term.** The term of this Agreement shall be fifteen (15) years from the effective date of its approval by the City Council by ordinance or resolution.

39. **Recording.** Owner shall record an executed copy of this Agreement with the King County Auditor, pursuant to RCW 36.70B.190, no later than fourteen (14) days after the effective date of the City Council ordinance or resolution approving the Agreement, and shall

provide the City with a conformed copy of the recorded document within fourteen (14) days of its recording.

[*Signature Page Follows*]

The Issaquah City Council conducted a public hearing regarding this Agreement on _____, 2023 and approved this Agreement by _____, which authorizes the Mayor to execute this Agreement after its execution by Owner.

By their signatures below, the persons executing this Agreement each represent and warrant that they have full power and authority to bind the entity on whose behalf such person signs, and that such entities have full power and actual authority to enter into this Agreement and to carry out all actions required of them by this Agreement.

[*signature blocks*]