

[Note: Recorded w/King County,
see recording #20170124001263]

Return Address:

City of Issaquah

City Clerk's Office

PO Box 1307

Issaquah, WA 98027

Please print or type information **WASHINGTON STATE RECORDER'S Cover Sheet** (RCW 65.04)

Document Title(s) (or transactions contained therein): (all areas applicable to your document **must** be filled in)

1. **Cluster Housing Development Agreement** 2. _____

3. _____ 4. _____

Reference Number(s) of Documents assigned or released:

Additional reference #'s on page _____ of document

Grantor(s) Exactly as name(s) appear on document

1. **City of Issaquah**, _____

2. _____

Additional names on page _____ of document.

Grantee(s) Exactly as name(s) appear on document

1. **Silverado Senior Living Holdings, Inc.**, _____

2. _____

Additional names on page _____ of document.

Legal description (abbreviated: i.e. lot, block, plat or section, township, range)

Lot B of City of Issaquah Lot Line Adjustment No. PLN 12-00027, recorded under Recording No. 20 121 213900009, in King County, Washington.

Additional legal is on page _____ of document.

Assessor's Property Tax Parcel/Account Number

2924069041

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

"I am signing below and paying an additional \$50 recording fee (as provided in RCW 36.18.010 and referred to as an emergency nonstandard document), because this document does not meet margin and formatting requirements. Furthermore, I hereby understand that the recording process may cover up or otherwise obscure some part of the text of the original document as a result of this request."

Signature of Requesting Party

Note to submitter: Do not sign above nor pay additional \$50 fee if the document meets margin/formatting requirements

**CLUSTER HOUSING DEVELOPMENT AGREEMENT BETWEEN THE
CITY OF ISSAQUAH**

AND

SILVERADO SENIOR LIVING HOLDINGS, INC.

This Agreement ("Agreement") is made this 22nd day of December, 2016 by and between the City of Issaquah ("Issaquah" or the "City"), a Washington municipal corporation, and Silverado Senior Living Holdings, Inc., a Delaware corporation ("Owner"). The City and Owner may also be referred to individually as a Party and collectively as the Parties.

RECITALS

A. Owner owns or is about to acquire certain real property (the "Property") located at 7932 Renton-Issaquah Road SE in the City of Issaquah, County of King, and State of Washington. The Property consists of King County Assessor Parcel No. 2924069041, the legal descriptions of which are attached hereto as **Attachment 1** and incorporated herein.

B. The Property consists of approximately 21.94 acres, is designated Low Density Residential in the Comprehensive Plan, and is currently zoned Single Family Estates – 1.24 du/acre.

C. Owner wishes to build a cluster housing development on the Property of up to 20 dwelling units. Two lots, to be dedicated to the City, will be deed restricted for Affordable Housing. Another parcel ("Open Space Tract") will be encumbered by a Native Growth Protection Easement (NGPE). The Open Space Tract will be owned and maintained by the Homeowners Association. Public Recreation Trail Easements, within the Open Space Tract, shall be granted to the City to accommodate public trail connections.

D. **Parking and Access.** Access shall be provided from a private road accessing from SR900. The private road shall be to the benefit of the buildable parcels and each shall have covenanted rights to its use. Parking shall meet Code Requirements and shall be provided at a ratio of two (2) stalls for each dwelling unit. An additional maximum of 2 parking stalls per unit may be added to accommodate guest parking.

E. IMC 18.07.420, the City's cluster housing ordinance, is intended to allow for the maximum density authorized by the underlying zoning while also preserving critical areas through lot and setback reductions and other adjustments to the requirements of the underlying zoning.

F. IMC 18.07.420.C requires a development agreement for cluster housing developments located on five (5) or more acres of land.

G. The City is authorized to enter into a development agreement with those who own or control property within its jurisdiction pursuant to RCW 36.70B.170-.210 and IMC 18.07.420.C.

H. The City will review the preliminary plat and the cluster housing development that is the subject of this Agreement and will issue a SEPA Determination, prepared pursuant to the State Environmental Policy Act, RCW 43.21C.

I. Subject to the implementation of the provisions of this development agreement and applicable development regulations, the proposed cluster housing development will be consistent with the general purpose, goals, objectives and standards of the Comprehensive Plan and other applicable regulations; will be served by adequate facilities; and will not have a substantial impact on adjacent properties, the community or other elements affecting the general welfare.

AGREEMENT

In consideration of the mutual benefits and agreements set forth herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The Recitals are a part of this Agreement and are incorporated herein.
2. **Cluster Housing Development.** Maximum allowable density on the Property shall not exceed 20 dwelling units. The clustered housing development will consist of individual platted lots within the developable areas identified on **Attachment 2**, including two parcels deeded to the City for affordable housing. The Open Space Tract will be owned in common by the neighborhood and encumbered by a Native Growth Protection Easement.
3. **Development Standards.** The preliminary and final plat associated with the Development Agreement will meet all of the Cluster Housing development standards per IMC 18.07.420.
4. **Open Space Tracts.** The open space tract, as shown on the Developable Area Plan (**Attachment 2**) and consisting of approximately 763,595 SF, will be preserved as a Native Growth Protection Easement. The open space tract constitutes 79.9% of the net site area.

Neighborhood Trails

Neighborhood trails through the HOA-owned open space may be required as part of the platting process.

Regional Trail Easement

A relocatable recreational trail easement (Similar to Attachment 3) through the HOA-owned open space will be conveyed to the City by the Owner as part of the platting process. The preliminary location of the easement shall be determined during the platting process but the easement shall provide that it may be relocated within the open space area at the City's discretion at such time as the City decides to construct the trail or cause the trail to be constructed and connected to other trails

as provided in this section. The easement will be conveyed to the City by language approved by the City. The easement is for a regional trail, or trails, to connect SR900 to the eastern boundary and the King County Lake Sammamish to Cedar River Trail; and/or, the northern and southern boundaries, as generally shown in Exhibit 2. The final easement shall be reviewed and approved by the City Council prior to its recording.

5. **Sensitive Area Tracts.** Approximately 11.21 acres of the Property contains wetlands, streams, steep slopes and their buffers and will be located in a Native Growth Protection Easement as depicted on the Developable Area plan (**Attachment 2**).

6. **Capital Facilities.**

- a. **Roads:** Access to the proposed plat will be provided from Renton-Issaquah Road SE (SR 900) in an easterly direction at an existing signalized intersection with NW Talus Drive existing on the opposite side (west) of Renton-Issaquah Road SE. The existing signal will be modified by the Owner to accommodate access to the new plat. Internal vehicle routes will be designated as private roads with access granted via recorded easement descriptions. Maintenance of private roads will be performed by the Homeowners Association. Payment of dues will commence upon occupancy of the residential units for the affordable housing lots. Final road and access locations will be determined in the Preliminary Plat process.
- b. **Access to lots across Tibbetts Creek:** Access to the lots on the east side of the creek will be served by a bridge. The Owner will be responsible for the construction of the bridge. The bridge will be for pedestrian and vehicular access to the eastern lots and the Open Space Tract. The bridge will be owned and maintained by the homeowner's association and will be constructed prior to final plat approval. The width of the bridge will be the minimum required to meet City standards.
- c. **Storm:** The project will meet the City's stormwater requirements, including the recently-approved NPDES and LID requirements.
- d. **Water:** Domestic and fire protection water will be supplied via a looped main with connections to the City water system within Renton-Issaquah Road SE and will be designed in accordance with City of Issaquah water system standards. All portions of the new water main will be accessible by backhoe/tracker for maintenance and/or repair. All portions of the public water main shall be contained in an easement to be conveyed to the City upon completion of the public water main and acceptance of the same by the City. Each dwelling unit (propose two per parcel) shall be individually metered for domestic use, fire sprinkler system and irrigation.

- e. **Sewer:** Sewer flow will be collected from all parcels in the plat and routed via side sewer piping to a central wet well and lift station. All portions of the common sewer collection and conveyance piping shall be contained in easements to be conveyed to the City upon completion of the sewer system and acceptance of the same by the City.
 - f. Final storm, water, and sewer locations will be determined in the Preliminary Plat process.
7. **Transportation Concurrency.** Concurrency certificate for traffic was issued on May 17, 2016.
8. **Impact Fees.** Owner shall pay transportation, fire, park, police, general government and school impact fees in the amount in effect at time of Building Permit issuance for each structure.
9. **Subdivision.** Owner's agent has submitted an application for a cluster housing subdivision, which shall be consistent with and subject to this Agreement. Lot size and setback reductions shall be allowed in accordance with IMC 18.07.420. Owner shall also set aside and record a deed restriction or covenant by which 2 of lots will be dedicated to the City and developed in the future as affordable housing. Owner shall also record a deed restriction or covenant by which these parcels shall only be made available for (a) Affordable Housing, as defined in IMC18.21.020 or, (b) housing for persons with disabilities; as solely determined by the City. Final lot layout and locations will be determined in the Preliminary Plat process.
10. **Vesting.** Except as otherwise expressly provided herein, Owner is vested to and for the term of this Agreement (including any extensions) shall have the right to develop the Property in accordance with the substantive land use ordinances, policies and regulations as set out in the IMC, the Comprehensive Plan, and all other City land use requirements and regulations that are in effect at the time of submittal of a complete preliminary plat application for a cluster housing subdivision or upon full execution of this Agreement, whichever occurs first, including, without limitation, zoning regulations, environmental and other mitigation regulations and policies, SEPA policies and regulations. Owner shall not be vested, however, against any changes in regulations enacted by the City in response to the development moratorium imposed by City of Issaquah Ordinance No. 2778, including but not limited to, regulations concerning architectural review and urban design elements, affordable housing, mixed use, parking, and the vision for each zoning district. Owner shall also not be vested to any code which the City adopts pursuant to the State Building Code authorized by Chapter 19.27 RCW. Further, notwithstanding the provisions of this Section, the City shall have the authority to impose new or different regulations to the extent that such regulations are reasonably required to address a serious threat to public health and safety.

11. **SEPA Compliance.** The Parties acknowledge that the SEPA Determination fully and completely determined that there will be no probable significant adverse environmental impacts resulting from the cluster housing development on the Property. As required in the SEPA Mitigated Determination of Nonsignificance issued on July 15, 2016, additional SEPA review of the preliminary plat will be required to include evaluation of critical area impacts, traffic, and other applicable SEPA elements.

12. **General Provisions.**

a. **Entire Agreement.** This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof. There are no other agreements, oral or written, except as expressly set forth herein. Any amendment to this Agreement shall be in writing and signed by all the Parties to this Agreement. Major revisions to the Development Agreement shall be approved by the City Council. Major revisions would include;

- i. Increasing the number of dwelling units,
- ii. Revisions to the Affordable Housing Agreement, and
- iii. Changes to the Recreational Trail Easement.

All other proposed revisions will be considered administrative amendments and shall be reviewed and decided by the Development Services Director.

b. **Covenants, Conditions and Restrictions.** The cluster housing development will include and be subject to covenant, conditions and restrictions consistent with the provisions of this Agreement.

c. **Term.** The terms of this Agreement shall remain in effect for a period of five (5) years from the date that the Development Agreement is approved by the Issaquah City Council or from the date of the final plat approval for the cluster housing subdivision, whichever is later.

d. **Agreement is Binding.** The terms of this Agreement are intended to be and shall constitute a binding agreement and a covenant running with the land. The benefits and obligations herein shall benefit and bind the Parties and their successors and assigns in interest unless otherwise terminated by the Parties hereto.

e. **Recording with King County.** This Agreement and any amendments thereto shall be filed for recording with the King County Auditor.

- f. Estoppel Certificate. Owner may, at any time, and from time to time, deliver written notice to the City requesting the City to certify in writing that, to the knowledge of the City (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments; and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. The City shall execute and return such certificate within thirty (30) days following the receipt thereof. The City shall have the right to execute any certificate requested by Owner. The City shall not have any liability to the requesting Party or to any third party for inaccurate information if it provides the estoppel certificate in good faith and with reasonable care.
- g. Captions. The captions in this Agreement are intended for reference only and shall not be constructed to expand, limit or otherwise modify the terms and conditions of this Agreement.
- h. Severability. If any provision of this Agreement is held invalid the remaining provisions shall continue in full force and effect.
- i. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Washington.
- j. Disputes. In any judicial action to enforce or determine the rights of the Parties under this Agreement the substantially prevailing Party shall be entitled to reasonable attorney's fees and costs, including fees and costs incurred in any appeal of any ruling of a lower court.
- k. Specific Performance. In the event that any Party fails to perform as set forth in this Agreement, the non-defaulting Party or Parties shall be entitled to pursue specific performance against the defaulting Party. The Parties acknowledge that money damages and remedies at law generally are inadequate and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this Agreement and should be available to the Parties for the following reasons:
1. Money damages are inadequate to compensate the Parties for the unique benefits available through this Agreement; and
 2. Due to the size, nature and scope of the development, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun.
- l. Contact Information.

For the City of Issaquah:

Development Services

P.O. Box 1307

Issaquah, WA 98027

(Contract # 31600681)

For Owner:

Any Party may, upon ten (10) days written notice to the other Parties, substitute an alternative address for that listed above, either for a particular duration or permanently.

- m. Authority to Execute. The Parties represent and warrant that they have the respective power and authority, and are duly authorized to execute, deliver, and perform all of the obligations under this Agreement.
- n. Mutual Drafting and Construction. The Parties agree that each of them participated fully in the negotiation and drafting of this Agreement and the rules of construction of ambiguities against the drafter shall not apply to any Party.
- o. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Dated: December 22, 2016

Paul Mullin
Silverado Senior Living Holdings, Inc.:

Paul Mullin

Date: 12/21/16

STATE OF WASHINGTON)
: ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that Paul Mullen, Silverado Senior Living Holdings, Inc. is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated this ____ day of _____, 2016.

see attached Notary Page
for Paul Mullin

[Signature of Notary]

[Print Name of Notary]

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

My commission expires: _____.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Orange)

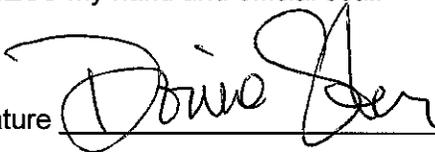
On December 21, 2016 before me, Dorine Sterner, Notary Public
(insert name and title of the officer)

personally appeared Paul Mullin -----,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

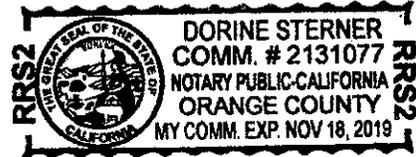
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



ATTACHMENT 1

The Property

Lot B of City of Issaquah Lot Line Adjustment No. PLN 12-00027, recorded under Recording No. 20 121 213900009, in King County, Washington.

ATTACHMENT 2

Developable Area Plan

(See Attachment)

PARCEL NUMBER
SE-29-24-6, 282406-904-1

LEGAL DESCRIPTION
LOT B ISSAQUAH U/LA #PLAN 2.00027 REC #20121213900009
S/D L/A BEING POR S 1/2 OF SE 1/4 OF SE 1/4 STR 29-24-6
LESS RD T&W POR NE 1/4 OF NE 1/4 LY ELY OF RD STR
32-24-6

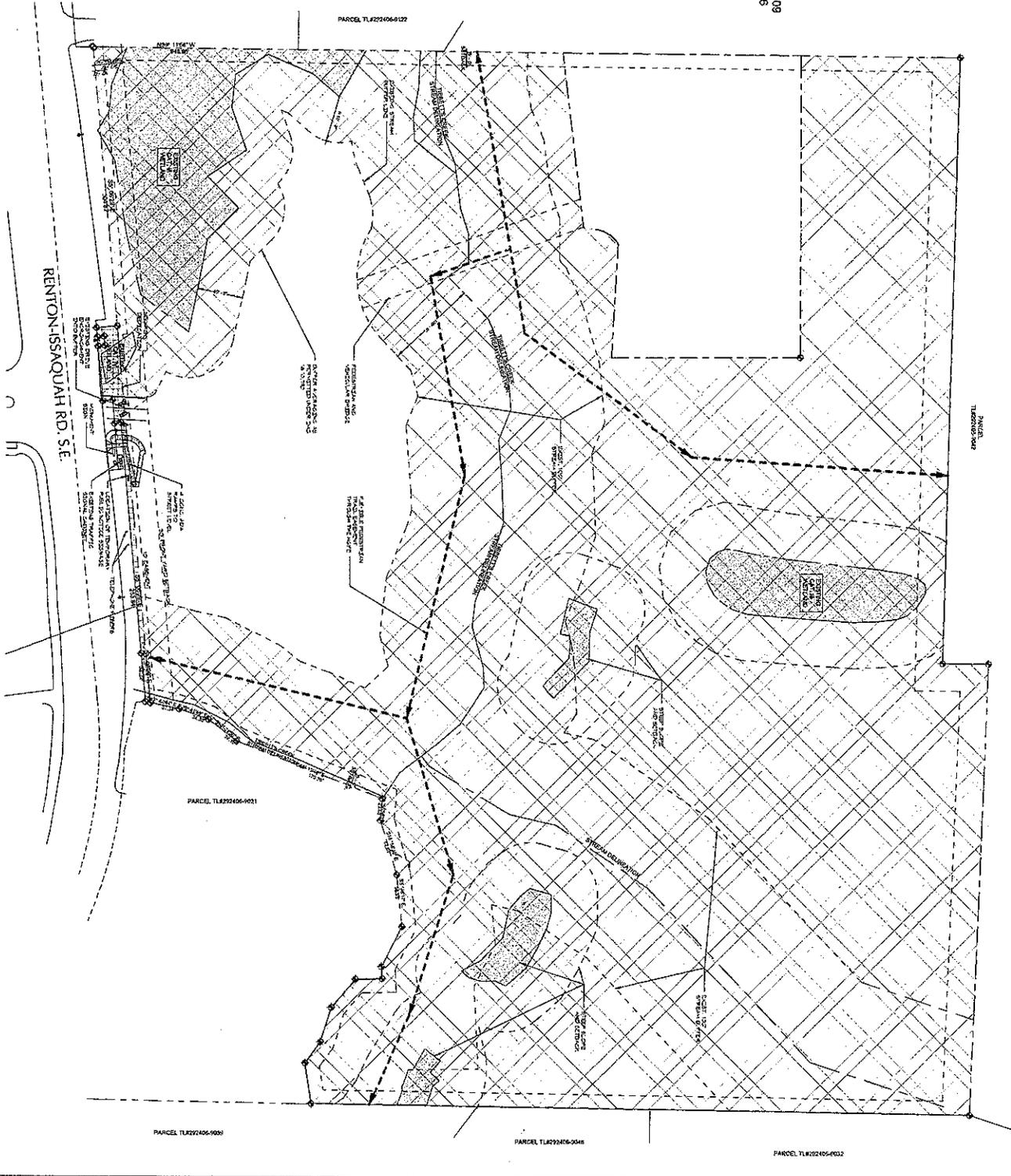
LEGEND AND NOTES

 PROPOSED NCFE
(INCLUDES ALL CRITICAL
AREAS AND THEIR BUFFERS)

 EXISTING CRITICAL AREAS

 BUILDABLE AREA

SITE AREA = 965,902 SF (21.84 ACRES)
PROPOSED DEVELOPABLE AREA = 192,307 SF (20.1%)
PROPOSED NCFE = 763,595 SF (79.9%)



DATE	12/15/12
BY	JL
CHECKED	CH
SCALE	AS SHOWN
PROJECT NO.	121413_02
SHEET NO.	A22

SILVERADO
LAND MANAGEMENT

Silverado - Issaquah
7932 Renton-Issaquah Rd SE
Issaquah, WA 98027

SITE PARCEL PLAN

NO.	DATE	DESCRIPTION
1	12/15/12	ISSUED FOR PERMIT

IAH
WATERSHED ENGINEERS

2100 12th AVENUE NORTH-EAST SEATTLE, WA 98108
206.451.5500

ATTACHMENT 3
Recreational Trail Easement

(See Attachment)

December 14, 2016

(Exhibit only)

AFTER RECORDING RETURN TO:

The City of Issaquah
Attn: City Clerk
P.O. Box 1307
Issaquah, WA 98027

WASHINGTON STATE COUNTY AUDITOR/RECORDER'S INDEXING FORM

Document Title(s) (or transactions contained therein):

Recreational Trail Easement

Grantor(s) (Last name first, then first name and initials)

Grantee(s) (Last name first, then first name and initials)

Issaquah, City of

Legal Description (abbreviated: i.e., lot, block, plat or section, township, range)

Assessor's Property Tax Parcel or Account Number: _____

Reference Number(s) of Documents assigned or released: _____

(Exhibit only)

December 14, 2016

RECREATIONAL TRAIL EASEMENT

THIS RECREATIONAL TRAIL EASEMENT, is made this ____ day of _____, 20__, by and between _____ ("Grantor"), and the CITY OF ISSAQUAH, a Washington municipal corporation ("Grantee").

WITNESSETH:

WHEREAS, Grantor owns a fee simple interest in the following real property, commonly known as _____, Issaquah, Washington, 98027, King County Tax Parcel No. _____ (the "Property"); and

WHEREAS, Grantor desires to grant to the Grantee an easement to be utilized for public recreational trail purposes;

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged,

GRANTOR HEREBY GRANTS AND CONVEYS to the Grantee, a perpetual, nonexclusive and relocatable 20-foot wide easement, for the sole purpose of constructing, reconstructing, installing, repairing, enhancing, replacing, operating, and maintaining a multi-use recreational trail for public uses that may include, at the Grantee's sole discretion, pedestrian, bicycle, and other non-motorized use over, under, on, through and across that portion of the Property as described on **Exhibit A** attached hereto and incorporated herein (the "Easement"). The Easement is shown on the Easement Location Map attached hereto as **Exhibit B** and incorporated herein.

This Recreational Trail Easement is granted subject to the following terms and conditions:

1. Fencing. Neither Grantor nor Grantee shall erect any fencing on the easement area.

2. Open Space Uses. That portion of the Parcel outside of the Easement Area may be used for other open space uses, in accordance with the Native Growth Protection Easement (NGPE). These uses may entail planting native trees and shrubs, removing invasive plant species, and creating local trails serving the neighborhood.

3. Public Trail - Construction and Maintenance. Grantee, or their designees may, but shall not be obligated to, in its sole discretion, construct, maintain, repair, enhance and perform other activities within the Easement area for the purpose of creating and maintaining a community trail any screening or other improvements placed in the

December 14, 2016

Easement area, at such time as Grantee deems it appropriate based on the connection of the Easement area and the trails, screening or other improvements with other, similar public trails and improvements in the area.

4. Notice to Neighborhood. Grantee shall, prior to first occupancy within this plat, provide signs, number, location and content as approved by the City, noticing residents of future public trail connections.

5. Recreational Use Immunity. All persons using or coming onto the Easement area shall do so at their own risk. It is not the intent of the parties to waive or abrogate any immunity afforded to them by virtue of the Washington Recreational User statute, RCW 4.24.200 and .210, and the parties hereby expressly declare their intent to avail themselves of the immunity provisions of said statutes.

6. Relocation. This easement may be relocated within the open space tract(s) of Grantor's property described on **Exhibit C** at such time as Grantee decides to construct the trail or to have the same constructed and connected to other regional trails in the vicinity. The decision to relocate the trail easement and the final location thereof shall be at the discretion of the Grantee, provided that the easement shall be of the same 20 foot width as provided above. At such time as Grantee decides that the trail easement shall be relocated, Grantee shall notify Grantor in writing of its decision and shall provide Grantor with a legal description for the relocated easement. Grantor and Grantee shall thereafter execute and record an amendment to this trail easement in order to specify the new location. Upon recording of the amendment, the location of the trail easement will be permanently fixed and the easement may be relocated thereafter only with the consent of both Grantor and Grantee.

7. Binding Effect. This Recreational Trail Easement shall be recorded in the records of King County and shall constitute a covenant running with the Property for the benefit of the Grantee, its successors and assigns.

IN WITNESS WHEREOF, the Grantor has caused this Easement to be executed this ____ day of _____, 20__.

GRANTOR:

By: _____

Its: _____

Print Name: _____

December 14, 2016

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ and _____ are the persons who appeared before me, and said persons acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the Mayor and City Clerk of THE CITY OF ISSAQUAH, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____

Printed: _____
Notary Public in and for Washington,
Residing at _____
My appointment expires: _____