

**CLUSTER HOUSING DEVELOPMENT AGREEMENT BETWEEN THE
CITY OF ISSAQUAH
AND
SILVERADO SENIOR LIVING HOLDINGS, INC.**

This Agreement (“Agreement”) is made this ___ day of ___, 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 Exhibit 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 ~~12 parcels (11 lots and a Tract)~~ **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. ~~For the lot that does not abut the private road, an access easement shall be granted across an adjacent parcel.~~ Parking shall meet Code Requirements and shall be provided ~~for each parcel exceeding~~ **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. ~~This proposal is for less than the maximum allowed.~~

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 is ~~up to 24~~ **shall not exceed 20** dwelling units. The neighborhood will consist of ~~18 single family duplex dwelling units (consisting of 9 buildings), an opens space parcel, and two parcels for affordable housing~~ **individual platted lots within the developable areas identified on Exhibit 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. A conceptual site plan, which shows the general lot layout, is attached hereto as Exhibit 2 and incorporated herein.**
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, ~~including requirements for common usable open space, exterior site setbacks, gross site pervious and impervious limits, and landscaping.~~
4. **Open Space Tracts.** The open space tract, as shown on the conceptual site plan (~~Attachment~~**Exhibit 2**) and consisting of approximately ~~621,354 SF~~ **763,595 SF**, ~~will be preserved as a Native Growth Protection Easement~~ **is for common usable open space.** The open space tract constitutes ~~65%~~ **79.9%** of the net site area.

Neighborhood & Public Trails: The parcel offers several opportunities to enhance trail interconnectivity in the area. **Local trails will be explored and determined during the platting process. However, a relocatable easement will be required to be**

conveyed to the City to connect SR900 to the eastern boundary and the King County Lake Sammamish to Cedar River Trail; and, the northern and southern boundaries, as generally shown in Exhibit 2. ~~provided for such trails.~~ The exact location of this easement ~~and public trails~~ will be determined ~~in the Preliminary Plat Process~~ by the City at a future time. The uses, construction, and maintenance obligations, as defined in ~~ATTACHMENT~~**Exhibit 3, RECREATIONAL TRAIL EASEMENT**, will be recorded with the Final Plat.

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 ~~conceptual site plan~~ (~~ATTACHMENT~~**Exhibit 2**).
6. **Capital Facilities.**

- a. **Roads:** Access to the proposed plat will be provided from ~~off of~~ 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 to accommodate access to the new plat. ~~the new plat access road (Road A).~~ 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. ~~property owner(s).~~ Final road and access locations will be determined in the Preliminary Plat process.
- b. **Access to lots across Tibbetts Creek:** Access to the ~~(2) affordable lots and (2) additional market rate~~ lots on the east side of the ~~across the street creek~~ will be served by a bridge. The applicant 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.~~

~~Parties agree that road improvements described in this Agreement constitute all road improvements required by the City for the cluster housing development described herein. Owners shall not be required to construct or fund any additional on-site or off-site road improvements as part of any future City permitting for the cluster housing development, except that Traffic Impact Fees will be required at time of Building Permit issuance.~~

- c. **Storm:** The project will meet the City's stormwater requirements, ~~if possible, stormwater runoff will be controlled by use of pervious pavements in private roads and a subsurface infiltration vault for other impervious~~

~~surfaces. Water quality treatment facilities will be designed to meet City of Issaquah stormwater standards. The stormwater facilities will be located in easements and will be owned and maintained by the property owner(s) 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/trackhoe for maintenance and/or repair. All portions of the public water main shall be contained in an easement. 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 (lots 1 – 11 and routed via side sewer piping to a privately owned, operated and maintained central wet well and lift station. All portions of the common sewer collection and conveyance piping shall be contained in easements. Sewage will be pumped from this lift station location to the public sewer system in Renton-Issaquah Road SE.
- 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. ~~Minor revisions to the conceptual site plan (Exhibit 2) including, but not limited to lot size, lot width, lot coverage, building setbacks, the road section and uses of open space areas, shall be allowed during the subdivision review and approval process.~~ Owner shall also set aside and record a deed restriction or covenant by which 2 of lots, ~~on the east side of Tibbetts Creek,~~ 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 ~~to either (a) renter occupied housing affordable to a household earning no more than 80% of the King County median~~

~~income (adjusted for household size); or, (b) owner-occupied housing affordable to a household earning no more than 90% of the King County median income (adjusted for household size); or, (be) 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 – other than IBC Codes – upon 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, provided that 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 described herein and that further SEPA review may only be required if the criteria set forth in WAC §197-11-600(3)(b) (Part Six – Using Environmental Documents, SEPA Rules) are triggered.
12. **Moratorium Exemption.** The preliminary and final plat applications, and associated construction permits for the development described in this Development Agreement, are exempt from the City of Issaquah Moratorium originally adopted through Ordinance No. 2778, and amended through Ordinance No. 2784.
13. **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, but not be limited to, increasing the number of dwelling units, changes in use or modifications to the affordable housing agreement.
 - 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.

1. Contact Information.

For the City of Issaquah:

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: _____, 2016

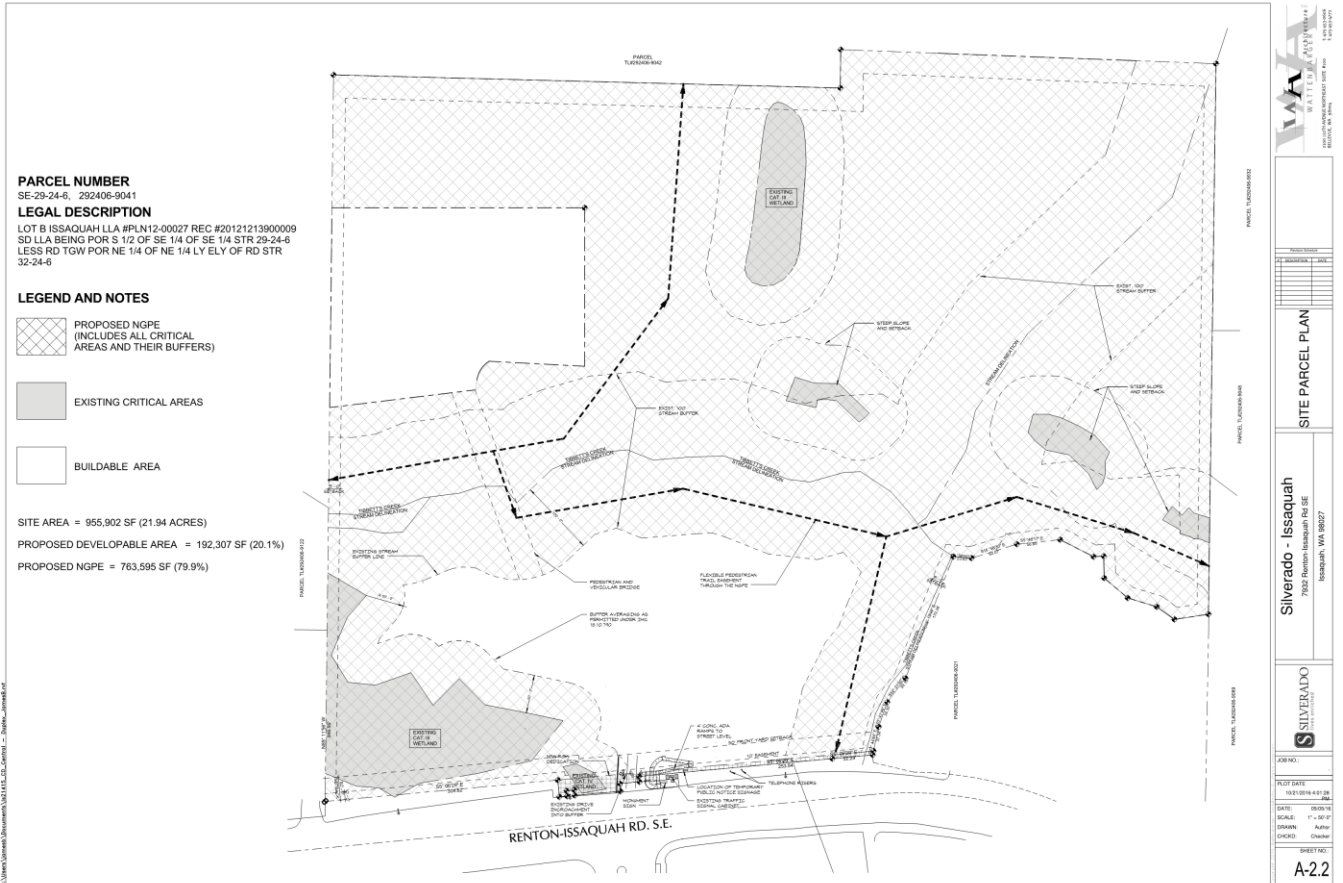
ATTACHMENT EXHIBIT 1

The Property

[INSERT LEGAL]

ATTACHMENT EXHIBIT 2

Developable Area Conceptual Site Plan



ATTACHMENT 3

Recreational Trail Easement

(See Attachment)