

Attachment A

When Recorded Return to:

City of Bellevue
City Attorney's Office
PO Box 90012
Bellevue, WA 98009-9012
Attn: Matt McFarland

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

Grantor(s):	<u>WR-SRI 120th LLC, a Delaware limited liability company</u>
Grantee(s):	<u>City of Bellevue, a Washington municipal corporation</u>
Legal Description (abbreviated):	<u>Blocks 15, 1, 2, 3-B, 4-A, 4-B, 5-B and 6-B, 7th Amended City of Bellevue Binding Site Plan, No. 21-104423 LF, Vol. 320 of Condominiums, Pgs. 70-75, Record No. 20210429001060, King County, Washington</u>
Full Legal Description:	<u>See EXHIBIT A</u>
Assessor's Tax Parcel Identification No(s):	<u>793330-0170, 067100-0020, 067100-0030, 067100-0040, 067100-0080, 067100-0100, 067100-0120; 7933300200</u>
Reference No. of Related Documents:	<u>20090911000269</u>

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (“First Amendment”) is entered into as of the effective date, by and between the **CITY OF BELLEVUE**, a Washington municipal corporation (the “City”), and **WR-SRI 120TH LLC**, a Delaware limited liability company (the “Owner”). The City and the Owner may be referred to herein individually as a “Party” and together as the “Parties.”

RECITALS

A. The City and the Owner began discussing the possibility of a catalyst development project in the City’s BelRed neighborhood in 2007.

B. The Owner proposed a significant development that was ultimately named “The Spring District” (“TSD”) and that qualified as a “Catalyst Project” under the City’s Land Use Code (“LUC”) section 20.25D.035.

C. The Owner and the City executed a Development Agreement on July 10, 2009, supporting TSD by providing long-term certainty in regulatory approvals and incentive fees-in-lieu over a 15-year time horizon. A true and correct copy of the Development Agreement is attached hereto as Exhibit B.

D. A condition of the Development Agreement was application for a Master Development Plan (“MDP”) that outlined the development program and project phases. The City approved a MDP for TSD on May 3, 2012 under permit number 11-125943-LP. Since then, the City and the Owner have amended the MDP eight (8) times to support continued development of TSD in response to evolving market conditions. To date, nineteen (19) parcels in TSD have been developed, and eight (8) parcels remain as future development sites.

E. The vested status of the MDP under the LUC and the Development Agreement will expire on May 3, 2027. In order to complete the anticipated development and commitments in the Development Agreement, Owner has requested an additional 10 years of vesting for the undeveloped parcels in TSD.

F. The Owner originally estimated that TSD represented over a \$1 billion dollar investment in the City. To date, development has exceeded that expectation. Ultimately, TSD is expected to be a more than \$2.6 billion total investment.

G. The Catalyst Project criteria also required the Owner to provide developer funded infrastructure in excess of \$300,000 per acre of land in the TSD. LUC 20.25D.035.A.1.e. The City and the Owner agreed to a reduced incentive fee-in-lieu rate based on this significant public infrastructure investment.

H. With respect to the fee-in-lieu rate, the Development Agreement granted the Owner a reduced incentive fee-in-lieu rate of \$3.75 per square foot for the first 750,000 square feet and a rate of \$4.00 per square foot thereafter. This represented an approximately 75% reduction in the Tier 1

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incentive fee-in-lieu rate compared to the rate in the LUC on the effective date of the Development Agreement. Because of inflation increases in the LUC incentive fee-in-lieu rate that did not apply to the alternative rate, the reduced rate is now an approximately 83% adjustment from the current rate.

I. Development constructed in TSD has exceeded 750,000 Tier 1 square feet, and to date, has contributed more than \$10.7 million in fee-in-lieu payments. The Owner's actual funded and completed public infrastructure investment is more than \$1.3 million per acre as of January 2023, which is more than four times the required developer-funded infrastructure investment for a Catalyst Project under LUC 20.25D.035.A.1.e.

J. Owner will benefit from the execution of this First Amendment, will continue to receive the benefit of a reduced fee-in-lieu rate, and will gain an additional 10 years of vesting for the undeveloped parcels in TSD. The City agrees that an additional 10-year vesting term, when combined with the terms included in this First Amendment and the Owner's past and continuing commitment to invest in public infrastructure, is in the spirit of the original Development Agreement and will provide a benefit to the City.

K. Subsequent to approval of the Development Agreement, certain parcels in TSD have been sold. This First Amendment is recorded against the undeveloped parcels in TSD and is signed by the entity that owns or controls the undeveloped parcels as required by state law. Nothing in this First Amendment is intended to affect the benefits conferred by the Development Agreement on the totality of properties in TSD, nor is this First Amendment intended to affect development standards that are calculated based on the full TSD as set forth in the Development Agreement.

L. As set forth in the August 7, November 20, and December 11, 2023 City Council agenda materials, supporting this First Amendment, the following terms of the Development Agreement have been satisfied: all Catalyst Project criteria, all open space minimums, and all residential minimums.

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M. RCW 36.70B.170 authorizes the City and Owner to enter into this First Amendment and requires this First Amendment to be consistent with applicable development regulations adopted by the City. Section I of the Development Agreement authorizes this First Amendment, if approved by both Parties in writing.

N. This First Amendment is subject to review under SEPA with the opportunity for public comment; and after public notice and during its regularly-scheduled meetings, the City Council considered, negotiated, and approved the terms included in this First Amendment on August 7, November 20, and December 11, 2023.

Deleted: RCW 36.70B.200 requires that the City hold a public hearing prior to approving the First Amendment by ordinance or resolution.

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

AGREEMENT

1. **Vesting Period Extension.** Section B.2 of the Development Agreement is hereby replaced in its entirety by the following:

“2. **Subsequent Land Use Review.** If the MDP application is approved, then such approval shall be vested for a period of twenty-five (25) years from the date of the final decision (as defined in Section 20.35.045 of the LUC) on the MDP (the “Vesting Period”). During the Vesting Period and subject to Section T, the City shall not impose any modification of or new or additional Governing Regulations on the MDP or any LUC approvals required for TSD unless consistent with this Agreement and the MDP. To the extent that neither this Agreement nor the Governing Regulations and Revised Governing Regulations specified below address a certain subject, element or condition of the Project, then the Project shall be governed by the City’s then-existing LUC.”

2. **FAR Amenity Bonus System.** Section F.1 of the Development Agreement is hereby replaced in its entirety by the following:

“1. **Adjustment of Tier 1 Fee-in-lieu Rate.** From the date of execution of this First Amendment until May 3, 2027 and for a Catalyst Project on the Property, the Owner may choose to comply with the LUC 20.25D.090 requirements for Tier 1 amenities by paying a fee-in-lieu at a rate of \$4.00 for each square foot of floor area of development under the MDP and any associated Administrative Design Review. Consistent with LUC 20.25D.090.C.6, now or as hereafter amended or renumbered, the reduced fee-in-lieu rate of \$4.00 per square foot shall be assessed and collected at building permit issuance and shall not be available subsequent to May 3, 2027.

Between May 4, 2027 and May 3, 2031, Owner may choose to comply with the requirements for Tier 1 amenities by paying a fee-in-lieu rate that is equal to 55 percent of the Tier 1 fee-in-lieu rate required by the LUC on the date that is the earlier of:

- (a) Approval of the Administrative Design Review for the applicable MDP Phase, or
- (b) Submittal of a complete building permit application for the applicable MDP Phase.

After May 4, 2031 and for the life of the approved MDP (No. 11-125943-LP) for TSD, Owner may choose to comply with the requirements for Tier 1 amenities by paying a fee-in-lieu rate that is equal to 60 percent of the Tier 1 fee-in-lieu rate required by the LUC on the date that is the earlier of:

- (a) Approval of the Administrative Design Review for the applicable MDP Phase, or

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(b) Submittal of a complete building permit application for the applicable MDP Phase.

In the event the City no longer maintains a Tier 1 fee-in-lieu rate, then the Owner may choose to comply with the requirements for Tier 1 amenities by paying above-required percent of the last Tier 1 fee-in-lieu rate published by the City as adjusted for inflation annually on January 1st of each year from the last publication date based on the current published annual change in the Seattle Consumer Price Index for Wage Earners and Clerical Workers. For all Tier 1 fee-in-lieu amenity payments made by Owner after the effective date of this First Amendment, the City may apply the payment to support the development of affordable housing. The Development Agreement and this First Amendment shall not bar the Owner, at its choice, from utilizing the LUC 20.25D.090 standards to provide required amenities. All Tier 1 fee-in-lieu rates shall be assessed as stated in this Section F.1, but shall be collected at building permit issuance.”

3. **Concurrency.** Section G (Concurrency) of the Development Agreement is deleted in its entirety, and the Multimodal Concurrency Code, chapter 14.10 BCC, shall govern any development application submitted for City land use approval.
4. **Governing Regulations.** The Parties agree that Section C (Governing Regulations) of the Development Agreement will remain in effect for the life of the Development Agreement. Consistent with RCW 36.70B.180 and during the time period that this Development Agreement remains in effect, TSD shall not be subject to an amendment to the Governing Regulations except as authorized by Section C of the Development Agreement and this First Amendment.
5. **Development Standards Measurement.** For purposes of clarity, the Parties agree that all future development projects and MDP Phases will continue to use the boundaries of the TSD as the basis for calculating compliance with any development standards that are measured across the MDP project limit, including, but not limited to, FAR averages, impervious surface limits, and lot coverage ratios.
6. **Final and Complete Agreement.** The Development Agreement, as modified and amended by this First Amendment, constitutes the final and complete expression of the Parties. With the exception of the modification and amendment included in this First Amendment, the terms of the Development Agreement have not otherwise been modified, amended, waived or revoked the Parties. Except as modified and amended by this First Amendment, Sections A through X of the Development Agreement are attached hereto and expressly incorporated by reference herein.
7. **Definitions.** Any capitalized terms in this First Amendment not defined herein shall have the meaning ascribed to them in the Development Agreement.
8. **Reservation of City Authority.** As required by RCW 36.70B.170(4) and notwithstanding any other term of the Development Agreement and this First

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Amendment, the City reserves, to the fullest extent of the law, the right to establish and impose new or different additional regulations to the extent required to address a serious threat to public health, safety, and welfare. Nothing in this First Amendment abrogates the City's inherent police power or its ability to protect the public health, safety and welfare.

9. **Representations and Warranties.** Each signatory to this First Amendment represents and warrants that he or she has full power and authority to execute and deliver this First Amendment on behalf of the Party for which he or she is signing, and that he or she will defend and hold harmless the other Parties and signatories from any claim that he or she was not fully authorized to execute this First Amendment on behalf of the person or entity for whom he or she signed. Upon proper execution and delivery, this First Amendment will have been duly entered into by the Parties, will constitute as against each Party a valid, legal and binding obligation that shall run with the land, and will be enforceable against each Party in accordance with the terms herein.
10. **Further Amendment.** No further amendment to the Development Agreement shall be effective unless approved by both Parties in writing and recorded with the King County Department of Records and Elections. The City Manager or his/her designee may approve amendments to the Development Agreement if the amendment is administrative in nature, will serve to correct an error or streamline a process contained in the Development Agreement, or if the following criteria are met:
- The amendment does not result in any significant adverse impact on City property or to the public, following consultation with the Land Use Director, Environmental Coordinator, Community Development Director, and Parks Director, as applicable based on the scope of the amendment; and
 - The amendment is within the general scope, purpose and intent of the Development Agreement, this First Amendment, the Revised Governing Regulations, or the applicable provisions in Part 20.25D LUC existing at the time of amendment; and
 - The amendment complies with all applicable provisions of the LUC and Bellevue City Code under Section C of the Development Agreement, and the proposed amendment is approved by the Land Use Director under LUC 20.35.015.G; and
 - The amendment will not violate any state or local laws, including SEPA and the Growth Management Act, Chapter 36.70A RCW.

All other substantive amendments to this Development Agreement must be approved by the City Council after public notice and consideration during a regularly-scheduled public meeting,

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11. **Full Understanding.** The Parties acknowledge, represent and agree that they have read this First Amendment; they fully understand the terms thereof; they have had the opportunity to be fully advised by their legal counsel and any other advisors with respect thereto; and they are executing this First Amendment after sufficient review and understanding of its contents and of their own free will and not under duress.
12. **Equal Opportunity to Participate in Drafting.** The Parties have participated in and have had an equal opportunity to participate in the drafting of this Development Agreement. No ambiguity shall be construed against any Party based upon a claim that the Party drafted the ambiguous language.
13. **Counterparts; Electronic Signatures.** This First Amendment may be executed in one or more counterpart, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. Electronic signatures on this First Amendment shall constitute original signatures of the Parties.
14. **Recording Required.** This First Amendment shall be recorded in the real property records of King County at Owner's expense. Owner shall promptly provide a conformed copy of the recorded First Amendment to the City.

[SIGNATURES BEGINNING ON NEXT PAGE]

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The effective date of this First Amendment is the date on which it is fully executed by the Parties. The following representatives of the Parties are authorized to, and do hereby, execute on behalf of the Party so indicated:

OWNER:

Block 15 Owner LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

WR-SRI 120th North LLC

By: WR-SRI 120th North LLC,
a Delaware limited liability company

By: WR-SRI 120th LLC,
a Delaware limited liability company,
its Manager

By: SRI EIGHT 120th LLC,
a Delaware limited liability company,
its Manager

By: _____
Name: _____
Title: _____

Approved as to form:

Attorney for Grantor, WR-SRI 120th LLC

CITY:

By: _____
Name: _____
Its: _____

Approved as to form:
Kathryn L. Gerla, Office of the City Attorney

By: Matt McFarland, Assistant City Attorney

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STATE OF WASHINGTON }
COUNTY OF KING } ss.

This record was acknowledged before me on _____ by _____ as _____ of Block 15 Owner LLC, a Delaware limited liability company.

[Stamp Below]

Signature
NOTARY PUBLIC in and for the State of Washington
My Commission Expires _____

STATE OF WASHINGTON }
COUNTY OF KING } ss.

This record was acknowledged before me on _____ by _____ as _____ of SRI EIGHT 120th LLC, a Delaware limited liability company, the Manager of WR-SRI 120th LLC, a Delaware limited liability company, the Manager of WR-SRI 120th North LLC, a Delaware limited liability company.

[Stamp Below]

Signature
NOTARY PUBLIC in and for the State of Washington
My Commission Expires _____

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STATE OF WASHINGTON }
COUNTY OF KING } ss.

This record was acknowledged before me on _____ by _____ as _____ of the City of Bellevue, a Washington municipal corporation.

[Stamp Below]

Signature
NOTARY PUBLIC in and for the State of Washington
My Commission Expires _____

EXHIBIT A

LEGAL DESCRIPTION

LOTS 1, 2, 3-B, 4-A, 4-B, 5-B, 6-B and 15 OF CITY OF BELLEVUE BINDING SITE PLAN NO. 12-110450-LF, ACCORDING TO THAT BINDING SITE PLAN RECORDED UNDER RECORDING NO. 20121101000274 AND FILED IN VOLUME 276 OF CONDOMINIUMS AT PAGES 18 THROUGH 22, AS AMENDED UNDER RECORDING NO. 20140423000863 AND FILED IN VOLUME 280 OF CONDOMINIUMS AT PAGES 30 THROUGH 32, AS AMENDED UNDER RECORDING NO. 20160217000684 AND FILED IN VOLUME 286 OF CONDOMINIUMS AT PAGES 35 THROUGH 37, AS AMENDED UNDER RECORDING NO. 20160506000760 AND FILED IN VOLUME 287 OF CONDOMINIUMS AT PAGES 51 THROUGH 57, AS AMENDED UNDER RECORDING NO. 20170926000625 AND FILED IN VOLUME 292 OF CONDOMINIUMS AT PAGES 47 THROUGH 52, AS AMENDED UNDER RECORDING NO. 20190611001146 AND FILED IN VOLUME 288 OF CONDOMINIUMS AT PAGES 87 THROUGH 92, AS AMENDED UNDER RECORDING NO. 20201214001706 AND FILED IN VOLUME 294 OF CONDOMINIUMS AT PAGES 19 THROUGH 24, AND AS AMENDED UNDER RECORDING NO. 20210429001060 AND FILED IN VOLUME 320 OF CONDOMINIUMS AT PAGES 70 THROUGH 75, IN KING COUNTY, WASHINGTON

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**EXHIBIT B
DEVELOPMENT AGREEMENT**

[Attached]