

**CITY OF OREGON CITY  
COST SHARING AGREEMENT**

**Project Name:** Maple Lane Apartments  
**Permit Number(s):** GLUA-22-00012-SP22-00042, LL-22-00001, NROD-22-00008  
**Map and Tax Lot(s) #:** 32E04C01201, 32e04C01300, and 32E04CD03300

THIS COST SHARING AGREEMENT (“**Agreement**”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 202[  ], by and between the CITY OF OREGON CITY, an Oregon municipal corporation (the “**City**”) and [to be formed Fore entity], LLC, an [STATE] limited liability company (“**Developer**”). City and Developer may be jointly referred to herein as the “**Parties**” or individually as a “**Party**.”

**RECITALS**

- A. Developer is the owner and developer of an approximately 9.5-acre tract of land that is zoned MUC-2 (Mixed Use Corridor 2) bordered by Maplelane Court to the west, Maplelane Road to the east, and Beaver creek Road to the south, referred to as map and tax lots 32E04C01201, 32E04C01300, and 32E04CD03300 in Oregon City, Clackamas County, Oregon (the “**Project Site**”); and
- B. Developer desires to improve and develop the Project Site into a project tentatively named Maple Lane Apartments with 216 multi-family units, parking, landscaping, open space, and clubhouse (the “**Project**”); and
- C. City conditionally approved the Site Plan and Design Review, NROD, Lot Consolidation and Road Modification for the Project on September 26, 2022 through GLUA-22-00012, -SP-22-00042, LL-22-00001, NROD-22-00008 (the “**Decision**”), which includes conditions of approval (“**COA**”) that are binding on the Project; and
- D. COA 3 provides:

“To address TSP project D38, the applicant shall enter into a mutually acceptable agreement with the City, with approval by the City Commission for the construction of a single lane roundabout at the intersection of Walnut Grove Way and Maplelane Road. The agreement must establish the final design of the roundabout, determine the actual cost related to the percentage responsibility of each party, with applicants share not to exceed 24.5% and determine the source and timing of the City’s contribution of its portion of the actual cost. In the event the parties have not executed a final agreement within 180 days of the effective date of this land use decision, notwithstanding the applicant’s good faith efforts to do so, rather than construct a single lane roundabout, the applicant shall construct the left turn lane as required by the applicant’s traffic study and shall pay the proportional contribution of 24.5% of an agreed upon applicant’s engineer’s estimate of the cost of the roundabout minus any portion of the left turn

improvements that would contribute to the future roundabout pavement and geometry. “Good faith efforts” shall include an applicant presented, engineered roundabout design and cost for construction and a draft development agreement within 30 days of the effective date of this land use decision, and participation in meetings with City staff and the City Commission in furtherance of negotiating the agreement.”

- E. The single lane roundabout at the intersection of Walnut Grove Way and Maplelane Road referred to in COA 3 is referred to herein as the “**Roundabout Improvements**,” which are depicted on **Exhibit A**; and
- F. The Parties agree that, as provided in this Agreement, Developer will construct or cause to be constructed the Roundabout Improvements and City will reimburse Developer 75.5% of the Roundabout Improvements’ Construction Costs (defined below) through payment of the City’s Cost Contribution (defined below) in satisfaction of COA 3; and
- G. The Parties agree that this Agreement complies with COA 3 and can be relied upon by Developer in the permitting process for the Project to demonstrate compliance with COA 3.

## **AGREEMENT**

NOW THEREFORE, in consideration of the undertakings and mutual covenants of the Parties set forth in this Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties hereby agree that the foregoing Recitals are true and correct and are incorporated into and made a part of this Agreement as if fully set forth herein and further hereby agree as follows:

- 1. Constructing the Roundabout Improvements.
  - (a) The approved construction drawings for the Roundabout Improvements are included as **Exhibit A**.
  - (b) As provided in COA 42, if Developer commences construction of the Project, Developer shall construct, or cause to be constructed, the Roundabout Improvements, and the Roundabout Improvements shall be approved and accepted by the City prior to issuance of a certificate of occupancy for the Project.
  - (c) If Developer commences construction of the Project, Developer will be solely responsible for construction of the Roundabout Improvements, at Developer’s cost, subject only to payment of the City’s Cost Contribution (defined below) as provided in this Agreement.
  - (d) This Agreement does not alter the standards or processes that are generally and typically applicable to the construction of improvements within the right of way, such as the Roundabout Improvements. Developer shall

construct the Roundabout Improvements in accordance with the approved plans and specifications, applicable permit conditions, Oregon City Public Works Standards, Oregon City municipal codes, and other applicable local, state and federal regulations, and codes as required by permits issued for the Roundabout Improvements. Developer shall comply with all COAs applicable to the Roundabout Improvements, including but not limited to: (i) workmanship and materials standards (COA 35); (ii) performance guarantee (COA 25); (iii) engineer's certificate of completion (COA 42); and (iv) maintenance guarantee (COA 45).

- (e) City shall provide technical plan review, project administration and inspection services for the Roundabout Improvements in accordance with the City's standard policies and applicable service fees, and the Developer shall pay the cost of these services. City will charge the Developer 24.5% of the permit fees for the Roundabout Improvements in addition to 100% of the remaining permit fees related to public infrastructure improvements.

2. Construction Costs. The engineer's estimate for the Roundabout Improvements (the "**Construction Costs**") is attached as **Exhibit B**, totals \$918,110 and shall serve as the sole basis for determining the City's cost contribution obligations.

- (a) The General Contractor's fee, included as an item within the Construction Costs estimate, shall be defined to include project management fees resulting from the procurement of a contractor, processing of payments for construction, and addressing requests for information and/or change orders.

3. Proportional Allocation of Construction Costs. For the reasons explained in the Decision, the Project's proportional impact on the Roundabout Improvements require that the Construction Costs be allocated based on a proportionate share of the Construction Costs as follows:

- (a) "**Developer's Cost Contribution**" is Developer's 24.5% share of the Construction Costs, which total \$224,936.95.
- (b) "**City's Cost Contribution**" is the City's 75.5% share of the Construction Costs which totals \$693,173.05. City has the following sources of funding available for the City's Cost Contribution, which City expects to be available on the Completion Date (defined below):

- i. Transportation System Development Fees \$238,708.60
- ii. Motor Fuel Taxes \$454,464.45

4. Payment of City's Cost Contribution.

- (a) For the purposes of this Agreement, the "**Completion Date**" is when the Roundabout Improvements are substantially complete, meaning the Roundabout Improvements are constructed and available for use for their designed purpose, subject only to minor punchlist or other minor work that does not unreasonably interfere with such use and is completed in a diligent manner. Developer estimates the Completion Date will occur in approximately September 2023, which is provided to assist the City in planning for its Cost Contribution obligation and is not a binding date.
- (b) Within thirty (30) days of the Completion Date, Developer shall provide City with a written request for reimbursement of the City's Cost Contribution ("**Reimbursement Request**").
- (c) Within thirty (30) days of receiving the Reimbursement Request, City shall reimburse Developer for the costs in excess of Developer's proportionate share of the Roundabout Improvements by disbursing to Developer in one lump sum the City's Cost Contribution.

5. Construction Bid Exception. Notwithstanding any other obligation in this Agreement, if prior to commencing construction on the Roundabout Improvements, Developer receives a fixed price bid from a contractor ready and able to construct the Roundabout Improvements that exceeds the engineer's estimate for the Roundabout Improvements (the "**Fixed Price Bid**"), the Parties agree:

- (a) The City shall reimburse the Developer for the City's 75.5% share of the Fixed Price Bid up to, and not exceeding, \$749,999; and
- (b) The City shall not be responsible for payment of any Reimbursement Request amount in excess of \$749,999.

6. Indemnity. The Developer will indemnify and hold the City harmless against all claims to the extent they arise out of or result from the Developer's negligence or willful misconduct in connection with the construction of the Roundabout Improvements, whether such claims arise out of the negligence or willful misconduct of the Developer, any subcontractor, or anyone employed by either of them, but except to the extent of claims arising out of or resulting from (i) the acts or omissions of the City, City's breach of its obligations under this Agreement, or City's obligation to pay City's Cost Contribution, or (ii) any matter occurring after the City accepts the Roundabout Improvements after expiration of the two (2) year warranty required under Section 17.50.141 of the City's Municipal Code.

7. Insurance.

- (a) The Developer shall purchase and maintain, or cause to be purchased and maintained:

- i. Commercial general liability insurance that shall insure against claims arising out of the Developer's construction of the Roundabout Improvements, whether such claims arise out of the actions of the Developer, any subcontractor, their employees, agents, or independent contractors, with property damage and contractual indemnity coverage;
- ii. Workers compensation insurance in the amounts required under applicable law;
- iii. Employer's liability insurance; and
- iv. Comprehensive automobile insurance.

(b) The furnishing of the aforesaid insurance shall not relieve the Developer of its obligation to indemnify the City in accordance with the provisions of this Agreement.

8. Interpretation and Severability. If any provision of this Agreement is held to be unlawful, invalid or unenforceable under present or future laws effective during the terms hereof, such provisions shall be fully severable and this Agreement shall be construed and enforced as if such unlawful, invalid, or unenforceable provision was not a part of this Agreement.

9. Assignment. Developer may assign its rights and obligations under this Agreement to any successor owner of the Project Site. The Developer shall promptly notify the City of any such assignment and the assignee shall submit to the City evidence that it is carrying the insurance required hereunder not later than thirty (30) days following such change of ownership. The Developer may collaterally assign this Agreement to a lender providing financing for the construction of the Project.

10. No Waiver. The failure of a Party to insist upon prompt and strict performance of any of the terms, conditions or undertakings of this Agreement, or to exercise any right herein conferred, in any one or more instances, shall not be construed as a waiver of the same or any other term, condition, undertaking or right.

11. Authority to Execute. City and Developer each warrant and represent that the party signing this Agreement on behalf of each has authority to enter into this Agreement and to bind the City and Developer, respectively, to the terms, covenants and conditions contained herein. Each party shall deliver to the other, upon request, all documents reasonably requested by the other evidencing such authority, including a copy of all resolutions, consents or minutes reflecting the authority of persons or parties to enter into agreements on behalf of such party.

12. Attorney Fees. In the event that any party to this Agreement institutes a suit, action, arbitration, or other legal proceeding of any nature whatsoever, relating to this Agreement or to the rights or obligations of the parties with respect thereto, the prevailing party shall be

entitled to recover from the losing party its reasonable attorney, paralegal, accountant, expert witness (whether or not called to testify at trial or other proceeding) and other professional fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, including but not limited to deposition transcript and court reporter costs, as determined by the judge or arbitrator at trial or other proceeding, and including such fees, costs and expenses incurred in any appellate or review proceeding, or in collecting any judgment or award, or in enforcing any decree rendered with respect thereto, in addition to all other amounts provided for by law. This cost and attorneys fee provision shall apply with respect to any litigation or other proceedings in bankruptcy court, including litigation or proceedings related to issues unique to bankruptcy law.

13. Exhibits. Any exhibits attached to this Agreement and referred to herein are incorporated in this Agreement as if they were fully set forth in the text hereof. Exhibits include:

- (a) Exhibit A. Roundabout Improvements.
- (b) Exhibit B. Construction Costs.

14. Notices. Any notice required or permitted under this Agreement shall be in writing and shall be deemed effective (a) when actually delivered in person, (b) one business day after deposit with a commercial courier service for “next day” delivery, (c) two business days after having been deposited in the United States mail as first-class mail, certified or registered mail, postage prepaid, or (c) when emailed (with proof of transmission) addressed to the parties as follows:

City: Josh Wheeler, P.E.  
Development Projects Manager  
City of Oregon City  
P.O. Box 3040  
Oregon City, OR 97045  
503-657-0891  
[jwheeler@orcity.org](mailto:jwheeler@orcity.org)

Developer: Jason Wald  
Partner  
[to be formed Fore entity]  
c/o Fore Property Company  
1741 Village Center Circle  
Las Vegas, NV 89134  
972-415-4214  
[jwald@foreproperty.com](mailto:jwald@foreproperty.com)

Any party may change its address for notice purposes, such notice to be given pursuant to this section.

**Signature Page(s) to Follow**

IN WITNESS WHEREOF, Developer and the City have executed this instrument on the date first written above.

<p><b>DEVELOPER:</b></p> <p>By: _____ Name: _____ Its: _____</p> <p>Date: _____</p>	<p><b>CITY OF OREGON CITY:</b></p> <p>By: _____ City Manager, Anthony J Konkol, III</p> <p>By: _____ John M. Lewis, P.E. Public Works Director</p> <p>Approved as to form:</p> <p>By: _____ City Attorney</p>
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**EXHIBIT A**

**ROUNDBOUT IMPROVEMENTS**

[approved construction drawings, to be provided]



**EXHIBIT B**  
**CONSTRUCTION COSTS**

[to be provided]