ORDINANCE NO. 496

AN ORDINANCE OF THE CITY OF UNIVERSITY PLACE, WASHINGTON APPROVING THE DISPOSITION AND DEVELOPMENT AGREEMENT WITH UPTOWN CENTER DEVELOPMENT, LLC, AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT WITH UPTOWN CENTER DEVELOPMENT LLC, SUBSTANTIALLY IN THE FORM ATTACHED, ENTERING THE ORDINANCE INTO THE PUBLIC RECORD, AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL OTHER DOCUMENTS AND APPROVALS NECESSARY TO ACCOMPLISH THE TERMS AND CONDITIONS SET FORTH IN THE AGREEMENT.

WHEREAS, the City has conducted a series of public hearings, public planning workshops, and design charettes over several years to consider the development of a mixed-use urban center within the City's Town Center zone; and

WHEREAS, as a result of these planning efforts, the City seeks to develop an "UP Town District," a visually attractive and pedestrian oriented mixed-use Town Center that will serve the focal point of the community with a mix of civic, entertainment, commercial, retail, and residential uses; and

WHEREAS, the City has adopted amendments to the City's Comprehensive Plan and zoning code, an Economic Development Strategic Action Plan, and a Planned Action Ordinance to accomplish this town center development; and

WHEREAS, the City is the owner of certain parcels of property located within the Town Center Zone that are now surplus to its public purposes have been declared surplus and that the City now wishes to sell for the development of a visually attractive and pedestrian oriented mixed-use Town Center project; and

WHEREAS, in 2006 the City entered into a letter of intent with Cambridge Development Group, later UPTown Center Development, LLC, ("Developer") to identify the terms and conditions under which the City and the Developer would negotiate a public-private partnership for the development of a mixed use urban center within the City's Town Center zone; and

WHEREAS, the City has applied for and received federal and state funding for transit and infrastructure improvements; and

WHEREAS, the City and Developer have cooperated in the development of a preliminary site plan and business agreement to accomplish the construction of a visually attractive and pedestrian oriented mixed-use Town Center project in furtherance of the City's goals and vision for the UP Town District; and

WHEREAS, the City wishes to enter into a Disposition and Development Agreement with the Developer for the phased sale and development of surplus lots into a high quality, pedestrian oriented, mixed-use development project with retail, civic, office, residential, and entertainment uses.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Findings Adopted. The City Council hereby adopts the following Findings of Fact:

a. The City has been engaged in a planning process for many years to develop a visually attractive and pedestrian oriented mixed-use Town Center. The City's vision for the Town Center is that it will serve as the focal point of the community with a mix of civic, entertainment, commercial, retail and residential uses. The Town Center will, among other things, create a vibrant and sustainable economy that meets the needs of City residents for goods and services. It will also provide public amenities and open space, provide for the relocation, upgrade and improvement to public utilities, streets and sidewalks

within the town center area. In addition, it will create jobs, provide important public spaces including a new library branch, and establish a diversified tax base to maintain quality of life and essential community services for City residents. The Town Center will also provide for tourist opportunities and economic growth in that area.

- b. In 1998, the City adopted a Comprehensive Plan and Land Use Map that called for the creation of a Town Center. In 1999, following a series of public meetings, design workshops and public processes, the City adopted a Town Center Plan that establishes a vision for redevelopment of the City's central business area, including core goals and principles.
- c. In 2002, the City Council adopted an Economic Development Strategic Action Plan for 2002-2007, which identified as one of their goals the creation of University Place Town Center, with a mix of residential, commercial, cultural, community, public and open spaces. This goal was maintained in the updated Plan for 2007-2011 adopted in 2007. The development concept for Town Center is a mixed-use neighborhood that creates an integrated retail and residential urban village atmosphere.
- d. In 2004, the City Council adopted amendments to the Comprehensive Plan and the Zoning Code providing for a Town Center overlay zone and high quality design standards and guidelines to accommodate a mixed-use, substantial planned residential civic and retail center in the City. The Zoning Code and Design Standards have since been amended to further accomplish the City's vision.
- e. In 2004, the City adopted Ordinance 409, establishing a planned action area in accordance with RCW 43.21C.240 for an area consisting of 24 parcels of real property totaling approximately 31.7 acres of size located on the east and west sides of Bridgeport Way W. roughly between 35th Street and 38th Street. The purpose of the planned action ordinance was to expedite the land use permit process by combining environmental analysis with land use planning and to provide a process to designate certain project actions within the Town Center as planned actions. This Planned Action Ordinance was further amended by Ordinance 469 in 2006.
- f. The City has applied for and received the following funding for Town Center and Transit infrastructure improvements: in 2005, the City received federal funding in the amount of \$2.4 million for streetscapes, and \$2.8 million for a transit facility and an \$886,000 public works trust fund loan for the streetscapes; in 2007, the City received \$1 million State funding for Market Square and transit-related facilities and \$750,000 for street improvements for Drexler Drive.
- g. In 2007, the City completed a Binding Site Plan to establish the location of the public road grid system and associated public improvements and to establish buildable lots of the remainder to support a coordinated Town Center development plan.
- h. The City has designed and will construct several public improvements to support urban development in the Town Center overlay zone, including public parking, a road grid system and associated sidewalks and frontage improvements, utility improvements, a public plaza, public open space and other public amenities. These amenities, specifically the public parking system, will support and accommodate tourist activities such as regional shopping and recreational opportunities in University Place.
- i. Upon completion of the preliminary design of the public infrastructure improvements, the City has by Ordinance 542 and Ordinance 555, declared certain City-owned parcels are surplus to its needs.
- j. In the redevelopment of the Town Center Property, the City desires to have a single developer to ensure a coordinated and consistent development on a scale that will accomplish the City's vision for the community. In 2003, the City called for developers through a Request for Qualifications in an open and competitive process for the selection of a developer for the Town Center Property. The City received several submittals from qualified developers and entered into negotiations with them to realize the vision. At the conclusion of those negotiations, in February 2006, the City entered into an exclusive negotiating agreement through a Letter of Intent with Cambridge Development Group, later UPTown

Center Development, LLC ("Developer"). The Letter of Intent identified the terms and conditions under which the City and the Developer would negotiate a public-private partnership for the development of a mixed use urban center within the City's Town Center zone. The Developer paid a monthly fee for its exclusive negotiating right. The Letter of Intent was extended periodically throughout 2006 and 2007 to allow the City and the Developer additional time to negotiate a Disposition and Development Agreement ("the Agreement"). The attached Agreement is the result of these negotiations.

- k. The City and the Developer have jointly participated in several public meetings, planning charrettes, and workshops for the development of a design for the Town Center that will further the City's vision.
- I. The City has carefully analyzed, and is committed to, compliance with all public works requirements of law in the context of this public private development. The proposed mixed-use project will integrate retail, civic, residential and office uses. The public and private design and uses have been coordinated to achieve economies of scale and efficiently use limited public resources to accomplish a civic center and public square as part of a vibrant downtown to increase the convenience of residents.
- m. Pursuant to Resolution No. 542 adopted on November 13, 2006, and Resolution No. 555 adopted on February 20, 2007, certain parcels of property located within the Town Center Zone were declared surplus, and the City now wishes to sell said parcels for the development of the Town Center project.
- n. The attached Agreement furthers the goals set forth in the City's Comprehensive Plan, Town Center Plan, and Economic Development Strategic Action Plan. The sale and development of land under the Agreement will provide a civic center, increase economic development and tax revenues to provide for necessary city services, provide a pedestrian friendly focal point for the community, promote tourism, and provide retail and entertainment opportunities for citizens.
- o. A public hearing was held on the attached Disposition and Development Agreement on May 17, 2007.
- Section 2. Approve Disposition and Development Agreement with UPTown Center Development, LLC. The Disposition and Development Agreement with UPTown Center Development (the "Agreement") is hereby approved substantially in the form presented to Council on May 17, 2007, and attached hereto as Exhibit A.
- **Section_3. Entry into Public Record.** This Ordinance is hereby immediately entered into the public record upon passage by the City Council.
- Section 4. <u>Authorize the City Manager to Execute the Agreement.</u> The City Manager is hereby authorized to execute the Agreement substantially in the form attached.
- Section 5. <u>Authorize the City Manager to Execute Other Documents</u>. The City Manager is authorized to execute all other documents necessary to accomplish the terms and conditions set forth in the Agreement.
- **Section 6.** <u>Effective Date</u>. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

PASSED BY THE CITY COUNCIL ON MAY 17, 2007.

Gerald Gehring, Mayor

ATTEST:

Sarah Ortiz, CMC, City Clerk

APPROVED AS TO FORM:

Janean Parker, City Attorney

Published: 05/19/07 Effective Date: 05/24/07

DISPOSITION AND DEVELOPMENT AGREEMENT

Between

CITY OF UNIVERSITY PLACE, a Washington municipal corporation

and

UPTOWN CENTER DEVELOPMENT LLC, a New York limited liability company as Developer

Dated as of ______, 2007

EXHIBITS

Exhibit A-Map of the Planned Action Area

Exhibit B—Binding Site Plan

Exhibit C—Intentionally Omitted

Exhibit D--Non-binding Proposed Conceptual Site Plan of the Town Center Property, dated April 2, 2007, 2007

Exhibit E—Intentionally Omitted

Exhibit F—Intentionally Omitted

Exhibit G-Intentionally Omitted

Exhibit H—Intentionally Omitted

Exhibit I— Development Team

Exhibit J—Purchase Price/Escrow Deposits

Exhibit K—Intentionally Deleted

Exhibit L-- Non-exclusive easement between City and Developer across Tract B

Exhibit M—No-build easement between City and Developer across Tract A

Exhibit N—a non-exclusive easement between Developer and City for ingress, egress and public utilities

Exhibit O—a non-exclusive easement between Pierce County Fire Protection District No. 3 and City, for surface parking and private utility purposes

Exhibit Q—Intentionally Omitted

Exhibit R—Definitions.

Exhibit S—First Floor Lease of University Building

Exhibit T—Second and Third Floor Lease of University Building

Exhibit U—Term Sheet for City Hall Lease

Exhibit V—Intentionally Omitted

Exhibit W—Condominium Declarations (To be added at or before Phase II)

Exhibit X—Condominium Surveys (To be added at or before Phase II closing)

Exhibit Y—Master Covenants for Town Center Property (To be added at or before Phase II closing)

Exhibit Z—Form of Bargain and Sale Deed

Exhibit AA—Insurance Requirements

Exhibit BB—Proposed Building Massing & Heights

Exhibit CC—Potential Courtyard and Plaza Locations

Exhibit DD—Parking

Exhibit EE—Pedestrian and Service Circulation

Exhibit FF—Elevation drawings and vignettes.

Exhibit GG—City Hall Lease (to be added at or before phase II closing)

Exhibit HH—Intentionally omitted

Exhibit II—Intentionally omitted

Exhibit JJ—Promissory Note in favor of City for purchase of Lot 1 (To be added before Phase III closing)

Exhibit KK—Deed of Trust securing Lot 1 Promissory Note (To be added before Phase III closing)

Exhibit LL—Earnest Money Deposit Promissory Note

Exhibit MM – Memorandum of Agreement

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DISPOSITION AND DEVELOPMENT AGREEMENT (TOWN CENTER PROJECT)

THIS DISPOSITION AND DE	VELOPMENT AGREEMENT (the "Agreement") is
entered into as of the day of	, 2007, by the CITY OF UNIVERSITY PLACE,
a Washington municipal corporation ("C	ity") and UPTOWN CENTER DEVELOPMENT LLC,
a New York limited liability company ('Developer") (collectively the "Parties") with reference
to the following facts:	

RECITALS

- A. The City has been engaged in a planning process for many years to develop a visually attractive and pedestrian oriented mixed-use town center to serve as the civic and retail focal point of the community ("City Vision"). Some goals of the town center are to (i) create a vibrant and sustainable economy that meets the needs of City residents for goods, services, public amenities and important public spaces; (ii) provide for relocation, upgrade and improvement to public utilities, streets and sidewalks within the town center area; (iii) create jobs; (iv) improve the economic vitality of the City; (v) establish a more diversified tax base; and (vi) promote tourism.
- B. In 1998, the City adopted a Comprehensive Plan and Land Use Map that called for the creation of a town center. In 1999, following a series of public meetings, design workshops and public processes, the City adopted a Town Center Plan that established a vision for redevelopment of the City's central business area.
- C. In 2002, the City Council adopted an Economic Development Strategic Action Plan for 2002-2007, and established an Economic Development Task Force to promote business growth and development within the City's business districts to ensure an economically sustainable future. The Economic Development Task Force identified as one of its goals the creation of University Place Town Center.
- D. The City amended its Comprehensive Plan to provide for the Town Center Overlay zone, adopted design standards and guidelines for the Town Center district of the City and established a planned action area consisting of 26.08 acres of land located on the east and west side of Bridgeport Way W, roughly between 35th Street and 38th Street in the City of University Place (the "Planned Action Area"), which is set forth on the map attached as Exhibit A. The City also adopted various amendments to its zoning code pertaining to height, density, setbacks and the application of design standards and guidelines in the town center.
- E. The City owns certain parcels located in the Planned Action Area which are identified on Exhibit B, the Binding Site Plan, and referred to as Lots 1 through 13, and Tracts A & B, and the public right of way in and about the foregoing (the "Property"). The City has determined that portions of the Property generally described as Lots 1 through 6, airspace rights over Lots 7 through 10, and Lots 11 through 13, are surplus to its needs (collectively, and together with certain easements set forth herein, the "Town Center Property"). The City desires to sell the Town Center Property to permit development which will be consistent with the City

Vision.

- F. The City will develop or pay for the development of the portions of the Property for public purposes including but not limited to: (i) a transit center; (ii) a branch library; (iii) a significant new public plaza; (iv) new public thoroughfares; (v) street and sidewalk improvements; (vi) improvement of (and in some cases moving or installing) public utilities exclusive of connections, meters, transformers and associated fees and connection charges for privately owned buildings in the Project; (vii) public parking; and (viii) other improvements, more particularly described herein.
- G. Developer and various members of its team have participated in no less than four multi-day workshops with representatives of University Place and its designated consultants and have solicited extensive comments from (i) City staff; (ii) City Council; (iii) City consultants; (iv) citizens at workshops and the UP Festival; and (v) students in workshops, at the UP Festival, and a Developer-sponsored competition.
- H. At great expense, Developer and its team of design, transportation, construction, marketing, leasing, and financial experts have over a 16-month period, spent thousands of person hours researching analyzing and planning a large scale mixed use development in University Place. As a result of its efforts, Developer believes it can serve a meaningful role in the realization of the City Vision and Developer desires to purchase the Town Center Property for redevelopment.
- I. Developer has paid for the right to exclusively negotiate with the City an amount of approximately \$569,000, which the City acknowledges is evidence of Developer's commitment to the Project. In part because of Developer's payment, and in part in exchange for Developer's expenditures set forth in Recital H, the City seeks to enter into this Agreement with Developer.
- J. Before setting forth specific terms of this Agreement, the Parties wish to reaffirm their commitment to working collaboratively with each other in an attempt to maximize the deliverable for both Parties and the community of University Place. To a large degree, the success of the City Vision is dependent upon strong Retail sales on the Town Center property and strong sales are dependant upon good planning, design, and architecture that is within the City's and Developer's budgets and within the economic paradigm dictated by market conditions.
- NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound by this Agreement, the Parties agree as follows:

AGREEMENT

- 1. <u>Incorporation of Recitals; Definitions</u>. Each of the recitals set forth above are incorporated into this Agreement as though fully set forth herein.
- 1.1 Definitions. For the purposes of this Agreement: (i) "Retail" means space constructed for use by one or more businesses that sells tangible personal property to consumers

for their own use and any services defined as retail activities pursuant to Washington State Law with the exception of those businesses that sell only sales tax exempt items; (ii) "Ticket Venue" means space constructed for use by one or more businesses that charges: (a) a cover charge or a charge made for use of seats or tables, reserved or otherwise, and similar accommodations; (b) a charge made for season tickets or subscriptions; (c) a charge made for food and refreshments in any place where any free entertainment, recreation, or amusement is provided; (d) a charge made for admission to any theatre, dance hall, cabaret, amphitheatre, club, haunted house, auditorium, stadium, athletic pavilion, park or field, baseball or athletic park, circus, amusement ride, or similar place; (e) a charge made for admission to or rental of equipment or facilities to any public golf course, facility, or driving range; (f) a charge made for automobile parking where the amount of the charge is determined according to the number of passengers in an automobile; and/or (g) special events where a sum of money referred to as a "donation" or similar payment which must be paid before entrance is allowed; (iii) "Hotel" means space constructed for use by one or more businesses that charge for rooms for lodging by persons for an incremental period of less than 30 days; (iv) "Square Footage" and "sq ft", or any variation thereof, mean gross square footage unless expressly indicated otherwise. Attached as Exhibit R is a reference for many other definitions provided herein.

- 2. <u>Description of Town Center Project</u>. The Parties desire to jointly stimulate significant economic and social activity within the Planned Action Area by constructing or causing the construction of a dynamic mix of public and private uses including, without limitation: important public spaces, civic, parking, transit, retail, restaurant, entertainment, office, hospitality, residential and/or their economic equivalents on the Town Center Property (the "Project").
- 2.1 <u>Developer's Minimum Commitment</u>. Subject to the other provisions of this Agreement, Developer shall at its sole cost and prior to August 31, 2010:
- (i) Complete construction of the following: (a) Hotel(s), Retail and/or Ticket Venue(s) on the Town Center Property, sufficient in quantity so that using the assumptions set forth in Section 2.2, the Developer's construction is anticipated to generate tax revenue upon occupancy and stabilization of not less than \$905,000 per annum; and (b) no less than an additional 133,000 sq ft of space which, at Developer's sole discretion, may or may not be anticipated to generate material tax revenue but shall, at a minimum, include the construction of 24,000 sq feet of City office space, as set forth more fully in this Agreement;
- (ii) Purchase no less than 180 structured parking stalls from the City for the sum of \$18,000 per stall.

(collectively, "Developer's Minimum Commitment").

- 2.2 <u>Methodology for Calculating Tax Revenue</u>. The methodology for calculating the tax revenue anticipated to be generated from any construction completed by the Developer shall be determined as follows:
- (i) For Hotel development, the Developer shall produce a market analysis (which may be performed pre or post construction) by a Developer-selected analyst who is reasonably acceptable to the City which estimates, on a pro-forma basis, the anticipated room

revenue per year of the proposed type of Hotel as of stabilization. The Parties shall then multiply the anticipated room revenue as so determined by .0784. ("Room Revenue Tax"). To the extent that any other projected revenue is identified in the market analysis, the City shall in its reasonable discretion determine which categories are subject to sales tax and the sum of anticipated revenue from all such categories shall then be multiplied by .0084 ("Hotel Ancillary Tax"). The anticipated tax revenue from the Hotel is the sum of the Room Revenue Tax and the Hotel Ancillary Tax;

- (ii) For Retail development, the anticipated tax revenue is the sum of the Retail square footage (excluding that forming a part of a Hotel or Ticket Venue) times \$325 times .0084 ("Retail Tax");
- (iii) For Ticket Venue, that primarily runs mainstream film fare from major film companies during the initial new release period, the anticipated tax revenue is \$2,080 times each seat constructed times .05. ("Ticket Venue Tax"). For all other Ticket Venues, the Developer shall produce a market analysis performed by an analyst selected by the Developer who is reasonably acceptable to the City which estimates, on a pro-forma basis, the anticipated admissions revenue per year as of stabilization. The Parties shall then multiply the revenue as so determined by .05 to arrive at the projected tax revenue from the Ticket Venue(s);
- (iv) For Office or other space that is not retail, Hotel or Ticket Venue, there shall be no benefit tax benefit ascribed; and
- (v) No adjustment shall be made to tax revenue calculations for time or inflation.
- 2.3 <u>Qualification of Developer's Minimum Commitment</u>. Neither Party has the ability to predict with certainty, or to control the Retail, Ticket Venue, Hotel or other markets, or is a guarantor, or in any way represents or warrants to the other occupancy or revenue in or from the space constructed by Developer.

The City assumes all risk in changes in law, rules or regulations which will adversely affect its ability to collect an anticipated revenue stream and likewise will receive any benefit of changes in law which increases such revenue stream.

Developer may construct any combination of structures that it desires, which may or may not include Hotel(s) and/or Ticket Venue(s) but Developer shall construct no less than an aggregate of 180,000 sq ft of Retail and/or Ticket Venue and/or other spaces which sell goods or services which are not categorized as Retail" for the purposes of this Agreement.

Should Developer construct a Hotel, it shall be of the type that would appeal to the traveler and tourist seeking more than the basic accommodations, contain or be adjacent to conference space, have enhancements to the overall physical attributes and design elements and reasonably be expected to generate post stabilization room revenue of at least \$19,500 per room per annum. In the event that specific market conditions in the University Place market and not Developer's design cause the analyst to estimate lower than desired room revenue, reduced projected annual room revenue shall not be a breach of this Agreement and construction of the

Hotel shall be permitted.

Should Developer construct a Ticket Venue, it shall be multiplex cinema or arts cinema as matter of right, and any other venue or venues subject to Ticket Venue Tax shall be subject to the approval of the City in its reasonable discretion.

While retail sales averages and projections of retail sales averages from Retail may be more or less than anticipated, except as expressly set forth to the contrary, the revenue figure of \$325 per square foot will be used without regard to whether additional information becomes available which would lead the Parties to believe that the actual amount of taxable sales will be more or less than \$325 per square foot.

- City's Minimum Commitment. Unless otherwise expressly indicated herein, the City shall, at its sole cost and prior to July 31, 2009, design, build, develop and complete roads, curbs, water lines, and amenity zones, together with all public and private utilities required for the use, maintenance and/or operation of the public improvements and rights and all public utilities and private utility conduits through the public rights of way for connection by others, surface water management, required traffic engineering and any mitigation required by the EIS, unless the same is expressly set forth in this Agreement as the obligation of the Developer, for the build-out of the Developer's Intended Project and the City's Minimum Commitment. Whenever possible, the City's work shall be constructed and maintained on the public right of way. When a quantity and/or location is not expressly set forth, the same shall be determined through further design discussions by the Parties and unless otherwise agreed to by the Developer herein or after the execution of this Agreement, all work shall be in compliance with the minimum standard and quantity requirements set forth in the Design Review Documents for the Intended Project as the Design Review Documents exist on the date of this Agreement. The City's work shall include but not be limited to:
 - (i) expansion, resurfacing and/or creation of streets
 - (ii) Streetscape improvements and on-street parking,
 - (iii) bollards, where necessary or required,
 - (iv) street trees and landscaping,
 - (v) pedestrian and vehicular street lights,
 - (vi) bike racks,
 - (vii) trash and recycling receptacles,
 - (viii) wiring for speakers for special events,
 - (ix) internet connectivity (WIFI) in the Civic Building and Market Square,

- (x) electric for all Civic Components of the Project and spaces and electric conduits in the amenity zones sufficient to run private utilities,
 - (xi) water lines,
 - (xii) storm drain and sewer,
 - (xiii) seating,
 - (xiv) water features and drinking fountains, including, without limitation, dog fountains,
 - (xv) newspaper stands and receptacles,
 - (xvi) sidewalks and all public realm hard surfaces, and
 - (xvii) all public realm improvements which are not more specifically described.

Unless otherwise stated, at the City's sole cost:

- (i) landscape items such as trees will be planted during dormant months and may not be completed at the same time as completion of the hardscape features,
- (ii) amenity zones will be adjacent to the curb where the City shall generally place trees, light poles and special paving features and other frontage improvements,
- (iii) all items shall be designed, selected, and/or placed by the City so as to ensure, to the fullest extent possible, that they do not block the view of pedestrians or those traveling by automobile of storefronts or retail signage or prevent pedestrians from walking uninterrupted along storefronts,
- (iv) amenity zones and sidewalks shall be constructed for heavy pedestrian traffic and be 15 feet wide inclusive of a 5 foot wide amenity zone or as otherwise agreed to by the Parties,
- (v) all work shall be coordinated with Developer so as not to interfere with Developer's construction:
- (vi) the City shall give the Developer a meaningful opportunity to participate in design and for input prior to implementation, and
- (vii) Unless otherwise indicated, and except on Bridgeport, travel lanes shall be no greater than 10 ft wide to help ensure traffic calming and maximum parking capacity and comfort.

In addition to the foregoing, the City's Minimum Commitment includes the following, and unless expressly indicated otherwise, the same shall be at City's sole cost:

a. <u>Bridgeport Way from 35th to Homestead Park:</u> widening of Bridgeport to provide on-street parking, new curb and gutter. The City shall also provide an amenity zone and full sidewalk to within 2 feet of the proposed buildings on the Eastside of Bridgeport Way and

required by the street expansion on the Westside of Bridgeport, street lighting, traffic signalization, pavement markings, signage, (and other traffic engineering) crosswalks, streetscaping and irrigation system. The Developer shall be responsible for the sidewalk construction within 2 feet of all buildings on the Eastside of Bridgeport. A new traffic signal will be installed at the north intersection of Bridgeport Way and Market Place. A new pedestrian signal will be constructed at Bridgeport Way and Market Square. The signals at 37th and 35th will be modified or replaced, if necessary, and other measures such as placement of a median and/or retractable bollards, shall be used to control pedestrian and vehicular traffic to conform to the new design and anticipated traffic and pedestrian movements and flows.

- b. <u>35th from Bridgeport Way to Morrison</u>: widening and resurfacing of 35th to provide on-street parking, new curb and gutter, amenity portion and full sidewalk on the South side of the Street, lighting, traffic signalization, pavement markings, signage, and other pedestrian and vehicular traffic engineering devices, crosswalks, streetscaping and irrigation system. The initial construction will generally consist of curb, gutter and asphalt base course. A new traffic signal will be installed at the intersection of 35th and Drexler Drive.
- Market Place: a new street as part of improvements to the street grid system in Town Center. Construction will consist of asphalt paving, parking, new curb and gutter, amenity zones, street lighting, pavement markings, signage, crosswalks, streetscaping and irrigation system. Sidewalk construction beyond the amenity zone shall be the responsibility of the Developer. The initial construction will generally consist of curb, gutter and asphalt base course. To the extent that the Developer requests the same prior to bid advertisement, the City shall have public utilities brought down Market Place including without limitation, electric, a new water main and sanitary sewer and private utility conduits for privately-owned buildings. The City shall pay for the installation of all public utilities within Market Place and throughout the Project and for all private utilities necessary or desirable to service the public portion of the Project. Developer will be responsible for the physical connection to the water main and sanitary sewer and all connection fees required by the public agencies responsible for connection from the street to the privately-owned buildings constructed within the Town Center Project. Fill required to construct Market Place and to make Lot 13 construction pad ready will be placed by the City and compacted as part of the street improvements. That portion of Market Place South of 37th will be constructed by the City after Developer has built retaining walls or filled relevant portions of Lot 1. The City shall construct, with design input and approval from the Developer, a tunnel under Lot 3 and the public right of way to provide right turn southbound access to the parking structure from Market Place.
- d. <u>Drexler Drive Lots A & B to 35th</u>: design and construction for enhancements to Drexler Drive as part of improvements to the street grid system in the Town Center. Construction will consist of asphalt paving, on-street and angled parking, new curb and gutter, a sidewalk and amenity zone, street lighting, pavement markings, signage, crosswalks, streetscaping and irrigation system. The City shall ensure that a new water main will be timely constructed in Drexler Drive, without cost to Developer, prior to the street construction.
- e. <u>37th from Drexler Drive to Bridgeport Way</u>: widening, regrading and resurfacing of 37th to provide on street parking, new curb and gutter, amenity portion of the sidewalk, street lighting, pavement markings, signage, crosswalks, streetscaping and irrigation

system. Sidewalk construction beyond the amenity zone shall be the responsibility of the City except that to the West of Market Place and on the South side of the Street, Developer shall construct, at its cost, the two feet of sidewalk closest to the buildings. A vehicular and pedestrian tunnel for connection of the garages north and south of 37th will be constructed by the City concurrently with 37th Street improvements.

- f. Market Court from Market Place to Drexler Drive: design and construction for a new street as part of improvements to the street grid system in Town Center. Construction will consist of asphalt paving, new curb and gutter, entire sidewalk, street lighting, pavement markings, signage, crosswalks, streetscaping and irrigation system. The sidewalk will be 6 feet wide unless otherwise indicated. A new water main and sanitary sewer will be constructed in portions of Market Court as determined during the design phase of Market Court. A tunnel for connection of the garages north and south of Market Court will be constructed by the City concurrently with its Market Court improvements.
- g. Market Square from Market Place to Bridgeport: design and construction for a public square and raised cross-walks on Bridgeport Way and Market Place. These improvements will include hardscape paving, curb-less lanes, amenity portion of the sidewalk, street lighting, pavement markings, signage, crosswalks, streetscaping and irrigation system. At a minimum, the City shall provide utility service, water bibs and hookups necessary for kiosks, special lighting, a stage area for performances, a sound system, and an interactive water feature or such other features mutually agreed to by the Parties. The design of the Market Square will be a cooperative effort, with the Developer having a meaningful opportunity to participate in design and for input prior to implementation, but again, at the City's sole cost. Construction will occur between July 2008 and March 2009 to ensure less interference and/or conflict with construction of the adjacent structures.
- h. Library, City Hall Space and Enclosed Square: Design the Civic Components (defined in Section 9.1) of the Phase II Building (defined in Section 9.1). The Phase II Building shall contain the Enclosed Square, the City Hall Space, and, if applicable, the Library. Such design shall include, but is not limited to, conceptual design, schematic design, design development, and contract documents sufficient for bidding and to the amount of detail and accuracy required by the City to ensure that no change orders will be necessary, following completion of the bidding, to add items which were not previously detailed. The City shall design the Civic Components with all anticipated improvements, whether interior or exterior, to the reasonable satisfaction of Developer, and shall include the design of all circulation, ingress, and egress to and from the public and Civic Components. For the remainder of the Phase II Building, the design shall be core and shell only, since the City shall be responsible for all tenant improvements to the Civic Components or other public spaces. It is recognized that the design shall not cover the entirety of the Phase II Building, which will extend beyond Lot 9 to Lot 8. Developer is responsible for the design of all elements beyond the boundary of Lot 9, except to the extent that the Lot 9 portions and Lot 8 portions of the Phase II Building share common mechanicals, electrical systems, or the like (which is anticipated). In that event, the Parties shall jointly select professionals and split the cost of any such design proportionately. It is anticipated that, at a minimum, the Civic Components shall include space suitable for use by the City as office, and for City Hall, collectively consisting of approximately 24,000 square feet (the "City Hall Space"), and approximately 2,000 square feet of a total 4,000 square foot area of indoor

space centered on Market Square, of which half is public (for ingress and egress to the Transit Stalls, City Hall and other Civic Components) and half is private (the "Enclosed Square"). In addition, subject to the City entering into a contract which is satisfactory to the Parties and to the Library District, the Civic Components would include 15,000 sq feet of library space to the rear of the atrium, which would be constructed for the City by Developer, for the City to convey to the Library District pursuant to the terms set forth in Section 11.

The Developer shall be responsible to obtain the building permits and construct the building shell and core of the Civic Components and any other construction and the Enclosed Square which the Parties agree will be constructed, it being acknowledged by the City that such construction will occur in the context of a larger building (i.e. the Phase II Building) which will have significant private components.

Upon substantial completion of the shell and core of the Enclosed Square, the City shall pay the Developer fifty percent (50%) of Developer's hard and soft costs of its purchase, design, and development, which, in any event, shall be no less than \$1,000,000. Following substantial completion of the shell and core of the City Hall Space, the City shall commence paying rent upon the terms and conditions set forth herein. If the Library is constructed as a part of the Phase II Building, the City shall pay Developer for such construction pursuant to mutually agreeable terms that will be worked out between the City and Developer whenever City and Library District negotiate a Library Amendment.

Notwithstanding the foregoing, it is understood that the Enclosed Square will provide weather protected ingress and egress from the Transit Stalls to Market Street, so the City may desire to construct portions of the Enclosed Square as part of that portion of the Parking Structure over which the Transit Stalls will be located, to the extent any transit related grant funding will be utilized in the construction.

Parking Structure; Tunnels; City Employee Parking: At its sole cost, the City shall design and construct no less than 1310 structured parking stalls, and more stalls should they fit within the building boundaries, as set forth on the parking diagram attached as Exhibit DD (the "Parking Diagram") together with two pedestrian and vehicular tunnels and one vehicular tunnel running from Market at Lot 3 to the Parking Structure on Lot 10 ("Lot 3 Tunnel"), all as generally shown on Exhibit DD. It is anticipated that 465 of the 1310 required structured parking stalls will be constructed on Lot 7 (the "Lot 7 Garage") and the balance will be constructed on Lots 8, 9, and 10, within one open garage (the 'Parking Structure'). Notwithstanding the foregoing, the City shall not be obligated to construct the 465 structured parking stalls on Lot 7 until Developer has provided the City with (i) the desired grid, (ii) the load requirements if more than typically contained in four stories of construction, and (iii) any desired circulation. All of the foregoing shall be provided by Developer based upon the needs of an identified tenant or tenants. Notwithstanding the foregoing, the City shall not be responsible for constructing the topping slab above the Parking Structure except that the City is responsible for the cost of 22,000 square feet of topping slab over that portion of the Parking Structure that will be directly under the Phase II Building, The City shall either construct, or pay for the cost to construct, said portion of the topping slab, in addition to any other amounts that it pays Developer relating to the design or development of the Phase II Building. Developer shall, at its cost, provide the balance of the topping slab over the Parking Structure to be constructed on Lots

- 8, 9 and 10, should it choose, or be required to, build improvements over said Parking Structure.
- (i) <u>Tunnels</u>. With the exception of the Lot 3 Tunnel, all of the tunnels City will construct shall be sufficient in width for two-way pedestrian and two-way vehicular traffic.
- (ii) <u>Height of Parking Structure</u>. The height of the Parking Structure shall be three stories to an elevation approximately 8 inches below Market Place or as otherwise agreed upon in writing by Developer and City.
- (iii) <u>Bay Service Area</u>. In addition to the foregoing, the City shall build the framework for one (1) three-bay service area and one double-bay service area outside of the Parking Structure and adjacent thereto in the approximate location set forth on Exhibit DD or as otherwise agreed by the Parties. Upon substantial completion of said framework, the Developer shall install the necessary equipment, furniture and fixtures into the framework of said bay service areas at Developer's sole cost.
- (iv) <u>Pedestrian Corridor and Design of Parking Structure</u>. In the portion of the Parking Structure designated for Transit Stalls, there shall be an attractive pedestrian corridor connecting the top level of the Parking Structure to the Enclosed Square. The three floors of the Parking Structure shall be connected by a ramp system for vehicles, and by stairs and elevators for pedestrians. It is contemplated that the design of the vehicular ingress, egress, ramps, stairs and pedestrian circulation shall conform to Exhibit EE, or a design of its functional equivalent. The Parking Structure shall serve as the structural base and foundation of the Civic Components and other improvements to be built on Lots 8, 9 and 10. It shall contain necessary sheering walls and otherwise be capable of supporting four-story structures on a 28 foot wide horizontal grid. The Parking Structure shall be designed with an artistic and decorative screening of sufficient height to screen parked vehicles.

j. City Employee Parking; On-Street Parking, Other Required Parking.

- (i) <u>City Employee Parking</u>. Within the Planned Action Area, the City shall design and construct for City employee parking, a surface parking lot consisting of no less than 75 parking spaces ("City Employee Parking").
- (ii) On-Street Parking. In addition, the City shall create no less than 150 on-street parking spaces along: (a) Market Place; (b) the East side of Drexler between Tract B and 35th Street; (c) the South side of 35th Street between Bridgeport and Drexler; (d) the East side of Bridgeport between Tract A and 35th Street; (e) 37th between Bridgeport and Market Place; and (f) along Market Square plus any other on-street parking spaces which reasonably fit within those boundaries (the "On-Street Parking").
- (iii) Other Required Parking. In addition to the foregoing, there shall be no fewer than two (2) on-street parking spaces and a loading/drop off space on the East side of Drexler by the University Building and an additional 15 parking spaces created elsewhere on Bridgeport, 35th, and/or Drexler within close proximity to the Project.
 - k. Utilities: All public utilities consisting of water, sewer, storm drainage,

and electric and telephone conduit under and along Bridgeport Way, Market Street, Drexler Avenue, 37th Street, Market Lane and 35th Street shall be the City's responsibility to install and/or construct at its sole cost. Said utilities shall be sufficient to support within the Town Center Property, (i.e., Lots 1 through 10 and 13) all of the following, including a new water main capable of servicing the Intended Project that will be constructed in 35th by a public utility provider, prior to, and in time to allow for the timely construction of 35th Street: :

- (i) 154,000 square feet of non-restaurant Retail space (Eastside);
- (ii) 50,000 square feet of Retail restaurant space (Eastside);
- (iii) 3,000 seat movie theatre or other Ticket Venue with vending stations (Eastside);
- (iv) 250-key Hotel, or a 200-key Hotel with 18 residential units (Eastside);
- (v) 50,000 square feet of civic use space (i.e. City Hall, Library) (Eastside);
- (vi) A 4,000 sq ft Enclosed Square with a gas fireplace, together with Market Square as generally described in this Agreement;
- (vii) 85,000 square feet of office or other construction (Eastside) (up to 30,000 square feet of which may be a health club or spa);
- (viii) 9,500 square feet of service (loading) space (Eastside);
- (viii) 200 residential units which on average have 2.3 bedrooms and 2.5 bathrooms (Eastside); and
- (ix) 43,000 square feet of office space on the Eastside of Drexler and 1,200 square feet of retail; and
- (x) The City' Minimum Commitment.

City represents to Developer that all necessary utilities are adjacent to Lot 11 and within 300 feet of Lot 12 (Westside).

l. Amendment of Binding Site Plan. The Parties acknowledge that the Binding Site Plan may need to be amended to create one lot out of the currently existing Lots 8, 9 and 10 in an effort to cause the intended design of the Parking Structure to conform with certain fire and safety codes under the International Building Code and certain other regulations. To the extent that such a Binding Site Plan amendment is required for such conformity, the City shall be responsible to amend the Binding Site Plan and Developer agrees to reasonably cooperate in signing any such documents necessary to effectuate the amendment. To the extent that such Binding Site Plan amendment is required, it shall be recorded prior to the time the City of University Place issues a building permit for the parking improvements intended on Lots 8

through 10.

All of the aforementioned City obligations and work in Section 2.4 are collectively referred to as the "City's Minimum Commitment."

3. <u>Land Use and Design Criteria for Project.</u>

3.1 <u>Design Review Documents.</u>

The City has created the following design principles and guidelines as they may be hereafter amended from time to time for the Planned Action Area: (i) the City's Comprehensive Plan, (ii) the Town Center Plan which sets forth certain core goals and design guidelines for redevelopment of the Town Center Overlay, (iii) the City's development regulations in its Municipal Code, including zoning in its Municipal Code, including the Town Center Overlay, (iv) the Design Standards and Guidelines for the Town Center Overlay, and (v) the City's Planned Action Ordinance and Environmental Impact Statements with respect to future land uses and mitigation measures identified therein (collectively, the "Design Review Documents"). Whenever possible, the requirements of the Design Review Documents may be met by the Intended Project in its entirety over time, and not on a building-by-building or parcel-by-parcel basis.

3.2 Intentionally Omitted.

3.3 Planned Action Ordinance.

- a. The City has adopted a Planned Action Ordinance, No. 409, as amended by 469, and associated City of University Place Town Center Environmental Impact Statement (the "EIS") for the Planned Action Area within the Town Center Zone. The Planned Action designation applies to future land uses and development proposals analyzed in the EIS within the Planned Action Area. Land uses and development levels, together with the customary accessory uses and amenities described in the EIS are subject to the planned action thresholds set forth in City Ordinance Nos. 409, 469 and 470, and the mitigation measures described in the EIS and addendums thereto are designated "Planned Actions" or "Planned Action Projects," pursuant to RCW 43.21C.031. A land use permit application for site-specific Planned Action Projects within the Planned Action Area shall be designated as a Planned Action (and not subject to further environmental review) if it meets the Planned Action threshold criteria set forth in Section 3(d) of City Ordinances No. 469. Structured, surface and/or on-street parking are not independent uses and therefore have no effect on the amount or nature of the thresholds set forth in the Ordinances described above.
- b. Pursuant to this Agreement, the Developer may develop within the following mix and threshold of uses without further environmental review:

Use	Size	Peak Hour
	<u> </u>	Trips

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Shopping Center	480,000 Sq. Ft.	879
General Office	20,000 Sq. Ft.	22
Government Office	10,000 Sq. Ft.	11
Gourmet Supermarket	20,000 Sq. Ft.	96
Movie Theater	6 screens/30,000 Sq. Ft.	82
24-Hour Health Club	45,000 Sq. Ft.	182
Luxury Condominiums	187 Units	76
High-Rise Residential Condominiums	563 Units	158
High-Turnover Restaurants	14,000 Sq. Ft.	64
Quality Restaurants	16,000 Sq. Ft.	50
Library ¹	15,000 Sq. Ft ²	106
S	1726	
Nursing Home ³	5,400 Sq. Ft.	-2
Apartments ³	113 Units	-56
Furniture Store ³	3,850 Sq. Ft.	-2
То		
Library capacity only avail 11.	1666	
2. This includes the 3,000 sq.		

- as the 12,000 sq. ft. demolished library (not included in the EIS.
- These uses were noted in the EIS as uses to be removed, however, they are located on parcels not included in this agreement and as such credit for the removal of these uses can not be attributable to this development.

The Total Trips set forth above are to expand, not limit, allowable uses. In other words, the Developer may have the stated uses or any other uses which are otherwise permissible by law and do not, in the aggregate, exceed 1,666 Total Trips.

- c. Through and until a date which is twelve (12) months beyond the Option Expiration Date, the Parties understand and agree that other or future development beyond that set forth in this Agreement within the Planned Action Area shall be considered a future development proposal under Section 1D(1)(b) of the Planned Action Ordinance and as such, may require additional SEPA review and may not otherwise be available for Planned Action designation.
- d. In addition, the Developer may develop a different mix of uses than that provided in the EIS upon demonstrating to the City, following further SEPA review as may be required, that such uses are equivalent for purposes of peak hour traffic trips. In the event that Developer demolishes existing structures within the Binding Site Plan (e.g., Windmill Village), the size of the buildings demolished will be added into the categories to which they apply, thereby expanding the amount of construction permissible and peak hour trip count for the usage to which they apply (collectively the "Planned Action Threshold"). Further, the Developer may develop property in excess of the mix and threshold of uses identified here upon demonstrating to the City, following further SEPA review, as may be required, that the traffic and other significant adverse environmental impacts from any increase will be mitigated.
- e. The City's Minimum Commitment does not provide all mitigation measures required to mitigate all traffic impacts identified under the Planned Action Ordinance. The City agrees, and shall be required, to construct such additional mitigation as may be required to allow Developer to construct the Project, up to the Planned Action thresholds or equivalents; the Developer shall have a meaningful opportunity for review and input into any additional mitigation. In lieu of such construction, the City may take other actions that will allow the Planned Action thresholds to be constructed by Developer, including reduction of street level service standards, alternate transportation corridors, or other alternatives, again, subject to Developer's approval. If the Project exceeds the Planned Action thresholds, the Developer shall provide such additional SEPA review and mitigation as may be necessary.

3.4 Developer's Plans.

The Developer has made available to the City for its review: (a) a non-binding proposed

conceptual site plan (the "Nonbinding Proposed Conceptual Site Plan"), which is attached hereto as Exhibit D; (b) conceptual diagrams of the first floor, massing and circulation, which is attached hereto as Exhibit BB; (c) potential courtyard and plaza locations, which is set forth as Exhibit CC; (d) diagrams of the intended Parking Structure, which is attached hereto as Exhibit DD; plans for the pedestrian and service circulation of the Parking Structure, which is attached hereto as Exhibit EE; (e) other renderings for elevations and certain buildings in the Town Center Project which is attached hereto as Exhibit FF; and (f) the design documents for Lot 2, which generally set forth a development scheme consisting of approximately 42,605 square feet of development. (Those items identified above, inclusive of Exhibits D, BB, CC, DD, EE, and FF and City Permit No. BLD 07-0032 are collectively hereafter referred to as, the "Developer's Plans"). Both parties hereto anticipate that Developer's Plans may be further refined and amended from time to time. To the extent that the proposed uses, massing, density, parking ratios, setbacks, and number or volume of public spaces are currently identified in the Developer's Plans, the City finds Developer's Plans are consistent with the Design Review Documents as set forth in this Section 3, subject to the standards, conditions, and assumptions provided herein. The Parties acknowledge, however, that the Developer's Plans do not contain sufficient detail to evaluate conformity in all areas of review required by the Design Review Documents and that additional review may be necessary as changes or additional submittals become available. The parking, upper story setbacks, massing and glazing specifics have been determined by the City to be in conformity with the Design Review Documents, taking the following into account:

3.4.1 Parking.

- The City has determined that the parking requirements for the Project will be those set forth in the City's Municipal Code, reduced by 25 percent. In addition, any parking calculations made by the City as they relate to the uses in this Project shall be based upon a net square footage basis only, excluding areas for storage equipment and similar uses, and the Project may further be allowed an additional reduction up to 50 percent for joint use, upon a showing by Developer that uses with differing peak use times are present within the Project. The City finds that this three-fold parking reduction plan stated herein is consistent with and implements Comprehensive Plan policies by reducing impacts from stormwater runoff and encouraging the use of transit and pedestrian modes of transportation in the Town Center Zone. Further, the City finds the mix of uses in the Project will provide opportunity for joint use parking allowed under the Code and is encouraged by the City in the Town Center Zone because of significant night-time uses as contemplated in the Project. A reduction in parking is necessary for the preservation of a substantial property right, will not be materially detrimental to the public welfare or injurious to the property in the vicinity, would otherwise create an unnecessary hardship, and is not a result of the deliberate actions of the Developer. Because the majority of the parking to be constructed as a part of this Project is public parking, open to all on a firstcome, first-served basis, there is no requirement for a joint use parking agreement.
- b. All of the parking described herein shall be counted toward and is deemed sufficient to meet the parking requirements of the Project, subject to the maximum uses identified above, but shall not be counted toward the parking requirements of any other project, property or development, except 200 parking stalls, which shall be for public transit use (the "Transit Stalls") or other exclusive parking, if any.

- 3.4.2 <u>Upper Story Setbacks</u>. The City has determined based upon the massing and conceptual diagrams in Exhibits D, BB and FF, that upper story setback requirements are met under the Design Review Documents for a proposed Hotel on Lot 1 because: (1) the Hotel is positioned on Lot 1 in a way that is angled to deflect view obstruction and is significantly set back from the arterial to minimize blocking; (2) the upper stories of the Hotel are stepped back after the second floor; and (3) the exhibits show architectural details and differing materials at the corners of the Hotel. Recognizing that design changes are likely, the City agrees that another design that has opposing buildings of varying heights, and/or a taller building set on a larger base will meet the upper setback requirements of the Design Review Documents. Those design features create a more varied and interesting pedestrian experience and assure more sunlight at the pedestrian level.
- 3.4.3 <u>Massing</u>. The City has determined that the massing as shown on Exhibit BB is consistent with the Design Review Documents and an exception will be granted for the type and percentage of one-story structures shown on Exhibit BB. The City finds the overall massing as set forth in Exhibit DD is permissible because vertical articulation is provided throughout the Project. Architectural elements shall be included at the significant corners of Market Place and Bridgeport Way on Lot 13 and Bridgeport Way and Market Square in accordance with the Standards.
- 3.4.4 <u>Glazing</u>. The City has determined that multi-story glass walls on the hotel and civic mixed-use building as shown in Exhibit FF are consistent with the Design Review Documents. The City finds the glass walls to be sufficiently integrated with other materials in the building facades and in the case of the Phase II Building, serves as a required standout architectural element. The City acknowledges that within the context of the Project, non-reflective glass walls that are sufficiently integrated with other materials shall be permitted.
- 3.5 <u>Traffic Impact Fees.</u> The City finds that the Developer has complied with the Traffic Impact Fee Ordinance No. 494. The Parties agree that the City is the Developer's predecessor in interest for purposes of the application credits under the City's Traffic Impact Fee Ordinance, No. 494, for the development of Lots subject to this Agreement. As the predecessor in interest, and in exchange for the mutual promises herein, the City agrees to construct the City's Minimum Commitment, which contains several infrastructure projects on the Project Facilities List set forth in Ordinance No. 494. The cost of the City's construction of the infrastructure projects on the Project Facilities List (that may be set forth in the City's Minimum Commitment or otherwise constructed by the City) will be counted as a credit to the Developer's traffic impact fee for Developer's Project under Ordinance No.494. The City finds the credit for the City constructed improvements is equal to the Traffic Impact Fee due for the Project up to the peak hour trips identified in Section 3.3(b). As a result, under these assumptions, the Developer has complied with Ordinance No. 494 and building permits shall be processed accounting for this credit.

3.6 <u>Vested Rights of Developer.</u>

(a) Through and until a date which is twelve (12) months beyond the Option Expiration Date, and any such additional periods as may be permitted by law to the extent that a complete building permit is submitted by said date, or added hereto as a result of Unavoidable

Delay (described in Section 5.3), Developer is assured, and the City agrees, that the development rights, obligations, terms and conditions specified herein as of the date of this Agreement, are fully vested in Developer to develop the Town Center Property consistent with the Project described herein, including, but not limited to, those set forth in Sections 2 and 3 herein, which may not be changed or modified hereafter, except as may be necessary by the City for the protection of a serious threat to public health or safety or as may be mutually agreed upon in writing by the Parties.

- Option Expiration Date, and any such additional periods as may be permitted by law to the extent that a complete building permit is submitted by said date, or added hereto as a result of Unavoidable Delay (described in Section 5.3), Developer is assured, and the City agrees, that Developer is fully vested with the right to have the Project reviewed, and to develop the Property, and every part of the Property, in accordance with the Design Review Documents in effect at the execution of this Agreement. Subsequent changes to the Design Review Documents that Developer has not elected in writing to apply to the Property or the Project, shall not apply to the Property or the Project through the term of the Agreement, except such regulations as may be necessary by the City for the protection of a serious threat to public health or safety. This Agreement shall be considered a "Development Agreement" as provided for in Chapter 36.70B RCW.
- 3.7 <u>Effect of Appeals</u>. In the event that this Agreement is appealed within the applicable appeal period, neither City nor Developer shall have any obligation to move forward on the terms herein until the appeal has been fully exhausted and all administrative or other remedies have expired; however, the Parties may agree to do so unless prohibited by law. All dates set forth in this Agreement shall be adjusted as a result of the appeal in accordance with the Unavoidable Delay adjustment described in Section 5.3.
- 3.8 <u>Changes to the Design Review Documents</u>. The Parties may, at any time during this Agreement, review the Design Review Documents and propose any other desired changes to the other. The Parties agree to cooperate in good faith to reasonably pursue such mutually agreeable changes. All proposed changes to the Design Review Documents are to be reviewed and approved by the Planning Commission and City Council.
- 4. <u>Easements between the Parties</u>. Concurrently with the sale of that portion of the Town Center Property to which each easement relates, the following easements shall be granted by the City or the Developer to the other party, without additional consideration therefore since the value of these easements are included in the purchase price for the Town Center Property, and the consideration therefore is the mutual commitment set forth in this Agreement:
- a. A non-exclusive easement between City, as Grantor, and Developer, as Grantee, across the northernmost 20 feet of Tract B, for the purpose of public surface parking, including the installation, maintenance, repair and/or removal of all parking facilities, terminable upon change in the use of the University Building for office purposes or demolition or removal of the University Building to be constructed on Lot 2 in the form attached hereto as Exhibit L.
 - b. A nonexclusive no-build easement between City, as Grantor, across the

northernmost 20 feet of Tract A, for the purpose of allowing Developer to build to the full lot lines without utilizing lot line windows or other lot line fire protection systems in the form attached hereto as Exhibit M.

- c. A temporary construction easement between City, as Grantor, and Developer, as Grantee, to permit access on and across Lot 6 for adjacent construction prior to Developer's ownership and access to the parking structure on Lot 7.
- d. A temporary construction easement between City, as Grantor, and Developer, as Grantee, to utilize the Lots that have not been purchased pursuant to this Agreement during construction of other adjacent Lots for the purpose of storing equipment, housing temporary offices, and other construction staging purposes to the extent not inconsistent with the City's use thereof for the same purpose. Developer shall not be entitled to a construction easement to use all or any portion of Lot 1 so long as City occupies Lot 1, and such construction easement materially interferes with the City's occupancy.
- e. A perpetual and non-exclusive easement between Developer, as Grantor, and City, as Grantee, across Lot 2 for use by the City for ingress, egress and public utilities and for the installation of a stormwater drainage conveyance system, including the installation maintenance and repair thereof, which the City shall have the sole responsibility to maintain, in the form attached hereto as Exhibit N.
- f. A perpetual easement between Developer as Grantor and the City as Grantee for use by the City of a portion of Lot 3 necessary for construction, maintenance, and public use of the underground Lot 3 Tunnel supporting the Parking Structure.
- g. A perpetual and non-exclusive easement between Pierce County Fire Protection District No. 3, as Grantor, and City, as Grantee, for use by the City as the property owner of the benefited parcel, Lot 2, for surface parking and private utility purposes, in the form attached hereto as Exhibit O;
- h. Prior to or concurrent with the sale of the respective portion of the Property to which an easement relates, the Parties agree to grant such easements as may be reasonably necessary and practical to complete the Project. The Parties agree to work in good faith and fair dealings to negotiate mutually agreeable location and other terms for said easements.

All of the easements described in this Section 4 shall be referred to herein collectively as the "Easements."

5. Phasing of Development. It is contemplated that the development of the Town Center Project will occur in phases with the tax-revenue-producing portions of the Developer's Minimum Commitment being substantially complete on or before August 31, 2009. It is anticipated, however, that expansion and/or completion of the Developer's Minimum Commitment will continue to occur through a date which is twelve (12) months beyond the Option Expiration Date. The City will, whenever possible, expedite its review of Developer's requests for Building Permits and Certificates of Occupancy and upon request act as a liaison with other levels of government and utility providers to expedite and induce cooperation,

approvals or other desired actions.

5.1 Project Completion.

- 5.1.1 <u>City's Obligations</u>: Except as otherwise provided herein, the City shall substantially complete all of its obligations hereunder (including, but not limited to, the City's Minimum Commitment) on or before July 31, 2009, subject to Unavoidable Delay (defined in Section 5.3). However, prior to July 31, 2009, certain portions of the City's Minimum Commitment must be completed on a fixed schedule by certain specific dates, subject to events of Unavoidable Delay. The City and Developer have agreed that those specific dates are as follows:
 - a. That portion of the Parking Structure under, over and across Lot 9 shall be ready to support Developer's construction by January 15, 2008.
 - b. That portion of the Parking Structure under, over and across Lot 10 shall be ready to support Developer's construction by June 1, 2008.
 - c. That portion of the Parking Structure under, over and across Lot 8 shall be ready to support Developer's construction by April 1, 2008.
 - d. That portion of the Parking Structure under, over and across Lot 7 shall be ready to support Developer's construction within 11 months following Developer providing the City with the following: (i) the desired grid; (ii) load requirements if more than typically contained in four stories of construction; and (iii) any desired circulation, all of the aforementioned items being based upon the needs of an identified tenant or tenants.
 - 5.1.2 <u>Developer's Obligations</u>: Developer shall substantially complete the following on a fixed schedule, subject to events of Unavoidable Delay:
 - a. The shell and core of the University Building and the Building Standard Tenant Improvements (as that term is defined in Exhibits S and T) within fourteen (14) months following Developer's closing on Lot 2, or the issuance of the Lot 2 building permit, whichever is later (the Phase I Property).
 - b. The amount of construction necessary to create the tax revenue producing portions of the Developer's Minimum Commitment shall be substantially complete by August 31, 2009 (hereinafter referred to as "Developer's Minimum Project Completion Date").

5.2 <u>Delay in Minimum Project Completion Date; Extension Fees.</u>

5.2.1 Extension Fees.

a. <u>Notice of Delay</u>. To the extent that Developer can reasonably foresee that it will not achieve substantial completion of Developer's Minimum Commitment by the Minimum Project Completion Date, it shall provide notice to the City of the same, but in any

event, not later than July 15, 2009 ("Notice of Delay").

b. Outside Extension Date; Fee Amounts; Payment. Once the Notice of Delay is delivered to the City, the Minimum Project Completion Date shall be extended thirteen (13) months from August 31, 2009 (or such other period thereafter attributable to Unavoidable Delay) (the "Outside Extension Date"), provided Developer pays the City on a monthly basis thereafter, beginning on September 1, 2009, or the first day of the first full month following the last day of any period of time attributable to Unavoidable Delay that immediately follows the Minimum Project Completion Date, whichever is later, a monthly extension fee equal to:

\$31,850 - ((\$27.08 x the number of square feet of retail which is ready for occupancy on that date) x .0084)); plus

\$20,833 – (projected monthly revenue for any ticket venue constructed x 0.05); plus

\$22,750 - (the number of rooms ready for occupancy x the projected monthly revenue per room as established prior to construction as set forth in this Agreement) x .00584)). (Collectively referred to herein as the "Extension Fee".)

Should any of the foregoing formulas produce negative integers, negative integers shall be added to positive integers to achieve the total amount due as an Extension Fee. Notwithstanding the foregoing, in no event shall the Extension Fee exceed the City's then actual debt service for what remains in the City's possession of Lots 1-13, plus any debt service attributable to the City's out-of-pocket expenses for the development and construction required herein. To the extent that City does not complete City's Minimum Commitment according to the fixed schedule set forth in Section 5.1.1, subject Unavoidable Delay, the City shall be liable to Developer in accordance with Section 31.4(d).

- c. <u>Pro-rations</u>. Any unearned portion of an advance payment of any such Extension Fee shall be refunded within thirty (30) days of substantial completion of the tax revenue producing portions of the Developer's Minimum Commitment.
- 5.3 <u>Unavoidable Delay</u>. For the purpose of this Agreement, the term "Unavoidable Delay" means riots, strikes, or other labor action, and judicial and/or regulatory actions by federal, state or local governmental agencies that enjoin or delay construction, acts of God, war or acts of terrorism or shortages or rationing of material or other delay caused in whole or in part by another party that cannot be avoided by reasonable effort of the Party. To the extent that dates herein are extended due to Unavoidable Delay, Developer shall not pay any Extension Fees for the period of such delay. Further, all dates set forth in this Agreement are subject to extension for Unavoidable Delay.
- 6. <u>Intentionally Omitted</u>.
- 7. Phase I of the Project.

7.1 Purchase of Phase I Property; Development.

- a. <u>Execution of University Building Leases</u>. Simultaneously with the execution of this Agreement, the City shall execute the leases substantially in the form attached hereto as Exhibits S and T, for the first floor office space ("First Floor Space") and the second and third floor office space ("Second and Third Floor Space"), respectively, of the building to be constructed on Lot 2 (the "University Building"), on the terms and conditions set forth therein (collectively, the "University Building Leases").
- b. <u>Purchase of Lot 2</u>. On or about the day requested by the Developer, but no later than thirty (30) calendar days following the issuance of the building permit for the development of Lot 2, the City will sell, and Developer will purchase, Lot 2 ("Phase I Property") for the price set forth on Exhibit J, subject to satisfaction of all of the conditions set forth in Sections 7.2 and 7.3 below. Developer shall submit a complete building application for Phase I Project within sixty (60) days following the execution of this Agreement.
- c. <u>Construction of University Building</u>. After Developer's purchase of the Phase I Property, the Developer will commence and substantially complete the shell and core of the University Building and the Building Standard Tenant Improvements (as defined in Exhibits S and T) in the timeframes set forth in Section 5.1.2(a) above ("Phase I Project").
- d. <u>Relocation of Storm Drain</u>. In addition, after mutual execution of this Agreement, and prior to the substantial completion of the Phase I Project, the City will relocate the storm drain on Lot 2 outside of and adjacent to the University Building footprint. City shall arrange for the relocation to be done at a time and in a manner that does not hinder Developer's construction progress on the University Building.
- 7.2 <u>Conditions Precedent to Developer's Purchase of Phase I Property.</u> As conditions precedent to Developer's obligation to close on the Phase I Property, the following conditions must be met to the reasonable satisfaction of Developer:
- a. <u>Building Permit</u>. The City has issued a building permit for the Phase I Project;
- b. <u>Marketable Title</u>. The City has provided evidence of good, marketable, and insurable title that is free and clear of any encumbrances except Permitted Exceptions, identified according to the process set forth in Section 18.
- c. <u>Recorded Easements</u>. The City has recorded all Easements described in Section 4 above pertaining to or affecting the development of the Phase I Property;
- d. <u>Performance to Date</u>. The City has reasonably performed, observed and complied with all of the covenants, agreements, obligations and conditions required of it in this Agreement prior to or as of the Closing Date of the Phase I Property; and,
- e. <u>Representations</u>. The representations of City set forth in Section 19 of this Agreement are true and correct on and as of the Closing Date.

- 7.3 <u>Conditions Precedent to City's Obligation to Sell the Phase I Property</u>. As conditions precedent to City's obligation to close on the sale of the Phase I Property to the Developer, the following conditions must be met to the reasonable satisfaction of the City:
- a. <u>Approved Construction Contract</u>. Developer has executed a construction contract for the construction of the Phase I Project;
- b. <u>Initial Earnest Money Deposit</u>. Developer has paid the City the Initial Earnest Money Deposit, in the amount of \$600,000, pursuant to the terms set forth in Section 17 below;
- c. <u>Authorization</u>. Developer has provided the City a copy of Developer's entity formation documents, a certificate of good standing, and proof that said company is authorized to conduct business in the state of Washington;
- d. <u>Development Team</u>. Developer has provided the City with the names of the lead architects and other key members of the development team (the "Development Team") for City's approval, which approval has been given. Particularly, the lead architect for the Phase I Project is Andre Solouri. The list of approved Development Team members, along with their contact information, is attached hereto as Exhibit I. The Development Team members may change from time to time with the prior approval of the City, which will not be withheld, conditioned or delayed unless there is a reasonable basis to believe that the proposed team member is unfit for its proposed capacity;
- e. <u>Building Permit Application</u>. Developer has submitted a complete building permit application for the Phase I Property to the City for review and approval;
- f. <u>Recorded Easements</u>. The Developer has recorded all Easements described in Section 4 above pertaining to or affecting the development of the Phase I Property;
- g. <u>Performance to Date</u>. Developer has reasonably performed, observed and complied with all of the material covenants, agreements, obligations and conditions required of it by this Agreement prior to or as of the Closing Date;
- h. <u>Representations</u>. The representations and warranties of Developer set forth in Section 19 of this Agreement are true and correct on and as of the Closing Date; and
- i. No Bankruptcy. Neither Developer nor its managers (i) have applied for or consented to the appointment of a receiver, custodian or trustee for it or any of its property, (ii) have failed generally or admitted in writing its inability to pay its debts as they become due, (iii) have liquidated or dissolved, (iv) have filed a petition or action for relief relating to any federal or state bankruptcy, reorganization, insolvency, moratorium or similar statute or any other law or laws for the relief or of relating to debtors, (v) have made an assignment for the benefit of its creditors or entered into an agreement of composition with its creditors, nor (vi) have had a petition filed against Developer or any of its managers under any federal or state bankruptcy, reorganization, insolvency, moratorium or similar statute, or any other law or laws for the relief of or relating to debtors.

7.4 <u>Prevailing Wage</u>. Developer (and the City as to any Tenant Improvements constructed by City) will require their respective contractor (and require their respective contractor to require of the subcontractors) to pay the prevailing wage to the workers, laborers and mechanics as may then be determined by the Washington State Department of Labor and Industries for the particular craft in the particular geographical area.

8. Phase II of the Project.

8.1 Purchase of Phase II Properties.

a. <u>Description</u>. Developer shall purchase the air rights over the Parking Structure to be constructed on Lots 8 and 9 ("Phase II Properties") and construct a building on the Phase II Properties ("Phase II Building"), collectively, "the Phase II Project"). The Phase II Building is expected to include construction of approximately 24,000 square feet of upper floor space for City Hall ("City Hall Space"), 2000 square feet of the Enclosed Square, and in the event the City and Library execute a library amendment reasonably acceptable to Developer ("Library Amendment") and this Agreement is amended accordingly, the Phase II Building will also include approximately 15,000 square feet for a library, ("Library Space") in the eastern portion of the floor, and 5,000 square feet for future library expansion ("Library Expansion Space"). Collectively, the City Hall Space, 2000 square feet of Enclosed Square, and if applicable, the Library Space and Library Expansion Space shall be referred to as the "Civic Components of the Phase II Building" The City shall design the Civic Components of the Phase II Building and shall construct the tenant improvements for Civic Components of the Phase II Building is expected to be in excess of 95,000 square feet.

Upon completion of the shell and core, the City Hall Space will be leased to the City in accordance with Section 8.3 and Exhibit U; further, the City will purchase the 2000 square feet of the Enclosed Square and, if applicable, the Library Space and Library Expansion space in accordance with Section 8.3 and Section 11. In the event the Library Amendment is not executed, the Developer shall have the right to lease Library Space and Library Expansion Space for private use and the City's obligation to purchase approximately 15,000 square feet of Library space and 5,000 square feet of expansion space shall automatically terminate and be of no further force and effect.

The shell and core of the Phase II Building will be designed as a single, integrated structural unit with common systems. In consultation with their respective architects and consultants, the Parties find that it would be impractical and infeasible to design and construct the portions of the shell and core that will ultimately be leased or sold to the City independently of the remaining structure, especially since the Phase II Building will be constructed atop, the Parking Structure serving as its construction platform. It is important for the structural integrity, construction efficiency and cost containment of the Phase II Building that its design, construction staging and construction process be supervised and completed by a single entity. At the time that a portion of the shell and core of the Phase II Building can be sold or leased to the City, the City will proceed to finish the public portions of the Phase II Building pursuant to the public works requirements of State law.

b. <u>Intended Design</u>. The Parties intend to design the Phase II Building in the

following manner: In the event a Library Amendment is executed, the Library is expected to occupy a portion of the first floor above the eastern portion of the Parking Structure behind the Enclosed Square, the City Hall Space shall be situated above all or a portion of the Library and first floor retail space and is anticipated to be one or more stories in height, and the portion of the structure that the Library and City Hall occupy will be built partially on that portion of the Parking Structure directly over the garage containing the Transit Stalls and over a platform over that garage extending toward Drexler, supported by columns. The support for the building extension shall be constructed by the City concurrently with the construction of the Transit Stalls. It is anticipated that the Enclosed Square will consist of approximately 4,000 square feet, approximately 2,000 square feet of which will be for public purposes and owned by the City and approximately 2,000 square feet of which will be for private purposes and owned by the Developer. The location of the public and private portions of the Enclosed Square will be determined by the mutual agreement of the Parties during the design phase. The Enclosed Square will have retail pads on either side on Market consisting of approximately 7,000 square feet with additional retail pads fronting Market to the North, to be developed and owned by Developer.

- c. <u>City Hall Lease</u>. Within 120 days of execution of this Agreement, the City shall execute a lease agreement for the City Hall Space (the "City Hall Lease"), which will be located on the upper levels of the Phase II Building on the Phase II Properties. The agreed upon terms for the City Hall Lease are set forth on the term sheet attached as Exhibit U and generally in the form attached hereto as Exhibit T, and when the City Hall Lease is executed, it shall be added to this Agreement as Exhibit GG.
- d. <u>Developer's Purchase of Phase II Properties</u>. On or about the day requested by the Developer, but no later than thirty (30) calendar days following the issuance of the building permit for the Phase II Building, the City will sell and Developer will purchase the Phase II Properties for the price set forth on Exhibit J, subject to satisfaction of all of the conditions set forth in Sections 8.2 and 8.3 below.
- Formation of Condominium Creating Phase II Property. acknowledge and agree that in order to sell the Phase II Property to Developer, the City shall cause Lots 8, 9 and 10 to be subject to a condominium declaration (including survey map and plans) ("Condominium A"). As of the date of this Agreement, the Parties expect that Condominium A will consist of one or more units consisting of the entirety of the parking structures to be constructed on Lots 8, 9 and 10 (collectively, the "Parking Garage Units"), and two units located above the Parking Garage Units, one located above the podium deck of the portion of the parking structure constructed on Lot 10 and one unit located above the podium deck of the portion of the parking structure constructed on Lots 8 and 9 (the "Commercial Units"). The Units shall consist of an envelope of space, the perimeter boundaries of which will be located and depicted on the survey map and plans for Condominium A. The upper and lower boundaries for each Unit will be shown on the survey map and plans or noted therein as extending to the legal limits of ownership. Except as otherwise provided in the Condominium A Declaration and survey map and plans, the upper surface of the concrete slab constituting the roof of the Parking Garage Units shall be a part of and the boundary of the Parking Garage Units. The lower boundary of the Commercial Units shall be the underside of the topping podium which constitutes the ground floor of the Commercial Units and shall be part of and the boundary

of the Commercial Units. Except as otherwise provided in the Condominium A Declaration and survey map and plans, a Unit shall include all buildings, structures, improvements and fixtures now or hereafter located within the boundaries of such Unit, unless designated as Limited Elements or Common Elements in the Condominium A Declaration and survey map and plans, except that (i) the elevator pits, loading docks, utility lines, ducts, pipes, wires, conduits and machine rooms serving the Commercial Units located within the Parking Garage Units are part of the Commercial Units, (ii) the roof of buildings constructed as part of the Commercial Units are part of the Commercial Units, and (iii) elevators serving only the Parking Garage Units are part of the Parking Garage Units. The precise numbers and location of Parking Garage Units shall be determined no later than sixty (60) days preceding the expected date of Substantial Completion of the parking garage structures to be located within the Parking Garage Units. The Condominium A Declaration and survey map and plans shall accurately identify the boundaries of each Unit, any appurtenant easements, and the Common Elements and the Limited Common Elements if any, as actually constructed with respect to each Unit. The Condominium A Declaration shall set forth the formula for determining the allocated interest of each Unit, each Unit's undivided interest in any Common Elements or Limited Common Elements, each Unit's votes and each Unit's share of any Assessments or Common Elements. The Condominium A Declaration and survey map and plans shall be prepared by the City and shall be approved by both Parties, which approval shall not be unreasonably withheld, conditioned or delayed. The City shall pay the cost of any legal fees and surveying costs associated with the preparation of the Condominium Declaration and Survey Map and Plans for Condominium A. Recordation of the Declaration and Survey Map and Plans for Condominium A is a condition precedent to the sale of the Phase II Property to Developer.

f. Formation of Additional Condominium to be Located entirely within the Commercial Unit to be sold to Developer as the Phase II Properties. Following its purchase of the Commercial Unit located over the portion of the parking structure constructed on Lots 8 and 9 (the "Phase II Building Commercial Unit"), Developer intends to construct the Phase II Building within the boundaries of the Phase II Building Commercial Unit. Following Substantial Completion of the Phase II Building and in order for Developer to be able to lease the City Hall space to City with an option to purchase the leased premises, and sell City additional space on the ground floor of the Phase II Building, it will be necessary for Developer to record a condominium declaration creating an additional condominium and additional condominium units within the Phase II Building Commercial Unit ("Condominium B"). As of the date of this Agreement, the parties intend that Condominium B will contain one or more units consisting of the City Hall offices, public portion of the Enclosed Square, and the Library expansion space, and one or more additional units to be retained by Developer for sale or lease to third parties. In the event the Library Amendment contemplated by Section 11 is agreed to by the City and the Library, the Parties understand and agree that the Developer will need to create additional condominium units as part of Condominium B in order to develop the library, all of which shall be located entirely within the boundaries of the Phase II Building Commercial Unit and this section shall be amended to be consistent with the Library Amendment. Following Developer's purchase of the Phase II Properties, the Parties shall jointly designate an attorney licensed in the state of Washington with experience in the preparation of condominium declarations for mixeduse commercial condominiums to draft the Condominium Declaration, and supervise the preparation for the survey map and plans, for Condominium B for review and approval by the Parties, which approval shall not be unreasonably withheld, conditioned or delayed.

Declaration and the survey map and plans for Condominium B shall accurately identify the boundaries of each Unit within Condominium B, any appurtenant easements, and the Common Elements and the Limited Common Elements as actually constructed with respect to each Unit. The Condominium B Declaration shall set forth the formula for determining the allocated interests of each Unit, each Unit's undivided interest in any Common Elements or Limited Common Elements, each Unit's votes and each Unit's share of any Assessments or Common Elements, including each Unit's share of any assessments imposed under the Master Covenants. The cost of preparing the Condominium B Declaration and survey map and plans shall be divided between Developer and City in accordance with their respective percentage interests in the Phase II Building based on a square foot basis, which for the City shall include space leased or purchased. Recordation of the Condominium Declaration and survey map and plans for Condominium B is a condition precedent to the sale or lease of any portion of the Phase II Building whether to City, Library or any other person.

g. Formation of Additional Condominium to be Located Entirely Within the Garage Unit. During construction of the Parking Structure and Lot 7 Garage, and in order for Developer to be able to purchase 180 parking stalls from the City pursuant to Section 2.1(ii) hereof, City will either create an additional condominium within the Garage Unit of Condominium A, or subdivide the Garage Unit into additional Units to allow for the sale of individual parking stalls to Developer to the extent necessary to allow Developer the ability to satisfy its obligations under Section 2.1(ii) hereof. This additional condominium, if so created, will be referred to as Condominium C.

To the extent that any of the Developer Parking is selected by Developer to be within the Lot 7 Garage, City shall also condominiumize the Lot 7 Garage to the extent necessary to allow Developer the opportunity to satisfy its obligations under Section 2.1(ii) hereof. The Parties shall jointly designate the same attorney who created Condominium B to create Condominium C and any other condominiums needed to address the sale of individual parking stalls to Developer.

The Declaration and the survey map and plans for Condominium C shall accurately identify the boundaries of each Unit within Condominium C, any appurtenant easements, and the Common Elements and the Limited Common Elements as actually constructed, with respect to each Unit. The Condominium C Declaration shall set forth the formula for determining the allocated interests of each Unit, each Unit's undivided interest in any Common Elements or Limited Common Elements, each Unit's votes and each Unit's share of any assessments or Common Elements, including each Unit's share of any assessments imposed under the Master Covenants. The cost of preparing the Condominium C Declaration and survey map and plans shall be divided between Developer and City in accordance with their respective percentage interests in the Phase II Building based on a square foot basis, which, for the City, shall include space leased or purchased. Recordation of the Condominium Declaration and survey map and plans for Condominium C is a condition precedent to the sale or lease of any portion of the Developer Parking.

h.. Condominiums Restricted to Commercial Uses.

(i) The Condominium A Declaration shall provide that all condominium units shall be used for commercial uses only, which shall be limited to the leasing, operation and maintenance of retail, restaurant, entertainment, commercial, public library and office establishments and related facilities and, as to the Parking Garage Units only, parking garages, and not for any residential use. Since Condominium A shall be restricted to nonresidential use in the Condominium A Declaration, the provisions of Article 4 of the Condominium Act do not

apply to any transfer of Units within Condominium A pursuant to this Agreement, and Developer does hereby voluntarily and intentionally waive the provisions of RCW 64.34.400-465, inclusive.

- (ii) The Condominium B Declaration shall provide that all condominium units shall be used for commercial uses only, which shall be limited to the leasing, operation and maintenance of retail, restaurant, entertainment, commercial, public library and office establishments and related facilities and not for any residential use. Since Condominium B shall be restricted to nonresidential use in the Condominium B Declaration, the provisions of Article 4 of the Condominium Act do not apply to any transfer of Units within Condominium B pursuant to this Agreement, and City does hereby voluntarily and intentionally waive the provisions of RCW 64.34.400-465, inclusive.
- 8.2 <u>Construction of the of Phase II Building</u>. Except for the City design of Civic Components and the City's construction of the civic tenant improvements, the Developer shall design and construct the Phase II Building. In the event the Library Amendment is not executed, the Developer shall have the right to lease this space for private use and the City's obligation to purchase approximately 15,000 square feet of Library space and 5,000 square feet of expansion space shall automatically terminate and be of no further force and effect.

Mutual Cooperation. It is of critical importance to the Parties that throughout the design and construction of the Phase II Building, the Parties each have a meaningful opportunity for input and review, and that approvals for any portion of the construction which affects the other will be sought from the City and the Developer, and that such approval will not be unreasonably withheld, conditioned or delayed. At all times, the intent of the Parties is to cooperate in good faith to design the Phase II Building in a manner which meets all requirements of law and is consistent with all of the Design Review Documents for the Town Center Project.

Payment of Developer's Construction Costs. City agrees to purchase or lease portions of the Phase II Building as follows: (a) all of Developer's hard and soft costs of the purchase, design, development and construction of the Phase II Building attributable to the City Hall space as set forth in Exhibit U; (b) fifty percent (50%) of Developer's hard and soft costs of the purchase, design, development and substantial completion of the construction of the Enclosed Square, which, in any event, shall be no less than \$1,000,000; and (c) in the event the Library Amendment is executed and subject to Section 11 hereof, all of the hard and soft costs of the design, development and construction of the shell and core of the Library, and Library expansion space. Soft costs shall include a 4% development fee.

The City shall purchase or rent the following Civic Components within 15 days of substantial completion, but subject to more specific provisions of this Agreement: City shall lease the City Hall Space, City shall purchase the Enclosed Square, City shall purchase the Library Space and Library Expansion Space. Developer shall enter into a Guaranteed Maximum Price Contract that guarantees a construction price excluding of change orders ("GMP Contract") with a construction contractor for the construction of the Phase II Building. The GMP shall identify the following costs as they relate to the Phase II Building. (a) costs associated with the construction that exclusively benefit the Library and the Library expansion space, if applicable,

(b) costs associated with construction that exclusively benefit the City Hall space; (c) costs associated with the construction that exclusively benefit the retail or commercial, (d) costs associated with the construction of the Enclosed Square and that portion to be to be purchased by the City.

The GMP shall be presented to and approved by the City in writing. If the City does not approve the GMP, the Parties shall work together in good faith to resolve areas of objection and reduce costs. Upon City approval of the GMP, the GMP shall, subject to change order, become the basis for the purchase or lease of the Civic Components of the Phase II Building with general costs not identified in (a)-(d) above allocated in a square footage basis.

Prior to the sale of the Phase II Properties, , the Parties shall also enter into a purchase agreement setting forth the terms and conditions of the purchase by the City of the Enclosed Square and Library, if applicable. , Such purchase agreements shall require, among other things, the preparation and recording of Condominium B Declaration, and delivery of good title to the City and Library spaces, as one or more condominium units within Condominium B. In the event the Library Amendment is not executed, the Developer shall have the right to lease this space for private use and the City's obligation to purchase approximately 15,000 square feet of Library space and 5,000 square feet of expansion space shall automatically terminate and be of no further force and effect. Closing costs shall be allocated between the parties in the same manner that closing costs are allocated in Section 21 of this Agreement on the sale of Lots. In no event shall rent commence under the City Hall Lease until the City has completed its tenant improvements, has vacated the University Building constructed on Lot 2, and is open for business in the City Hall space leased under the City Hall Lease.

- 8.4 <u>Conditions Precedent to Developer's Purchase of Phase II Properties.</u> As conditions precedent to Developer's obligation to close on the Phase II Properties, the following conditions must be met to the reasonable satisfaction of Developer:
- a. <u>Building Permit</u>. The City has issued a building permit for the Phase II Building;
- b. <u>Financing Commitment</u>. Developer has secured a commitment letter from an institutional lender or other financer reasonably acceptable to Developer for financing at least 75% of the anticipated cost of the shell and core construction of the proposed Phase II Project;
- c. <u>Marketable, Insurable Title.</u> The City has provided evidence of good, marketable, and insurable title that is free and clear of any encumbrances except Permitted Exceptions as identified in Section 18.
- d. <u>Recorded Easements</u>. The City has recorded all Easements described in Section 4 above pertaining to or affecting the development of the Phase II Properties;
- e. <u>Conceptual Site Plans and Construction Documents</u>. The City has created the construction design documents for the Civic Components of the Phase II Building;

- f. Approved Budget. The City shall have approved a guaranteed maximum price (GMP) for the shell and core construction of the Phase II Building. The GMP shall be based in part upon the City's construction documents and Developer shall not warrant or guarantee that the City's documents do not contain errors, omissions, or defects. The City assumes all risk of cost overruns caused by errors, omissions, or defects in the construction documents. The City and Developer shall have agreed on that portion of construction costs for the civic portions of the Phase II Building.
- g. <u>Executed Lease and Purchase Agreements</u>. The City shall have executed the City Hall Lease in form and substance, consistent with the terms set forth in Exhibit U and otherwise reasonably acceptable to the Parties, and the Parties have executed Purchase or Lease Agreements for the purchase or lease of the Civic Components of the Phase II Building.
- h. <u>Performance to Date</u>. City has reasonably performed, observed and complied with all of the material covenants, agreements, obligations and conditions required of it in this Agreement as of the Closing Date of the Phase II Properties;
- i. <u>Representations</u>. The material representations and warranties of the City set forth in this Agreement are true and correct on and as of the Closing Date; and
- j. <u>Lender Assurances</u>. To the extent requested or required, the City shall provide all reasonable assurances to Developer's lender that it has the ability to timely meet its obligations under the City Hall Lease.
- 8.5 <u>Conditions Precedent to City's Obligation to Sell the Phase II Properties.</u> As conditions precedent to City's obligation to close on the sale of the Phase II Properties, the following conditions must be met to the reasonable satisfaction of City:
- a. <u>Building Permits Submitted</u>. Developer has submitted a complete building permit application for the Phase II Project;
- b. <u>Recorded Easements</u>. The Developer has recorded all Easements described in Section 4 above pertaining to or affecting the development of the Phase II Properties;
- c. <u>Financing Commitment</u>. Developer has provided the City a commitment letter from an institutional lender for at least 75% of the anticipated cost of the shell and core construction of the proposed Phase II Project or other evidence reasonably acceptable to City of Developer's financial ability to pay for the costs of the anticipated construction of the Phase II Project;
- d. Approved Budget. The Developer shall have approved the construction documents and a guaranteed maximum price (GMP) for the shell and core construction of the Phase II Building as they relate to the cost of the Civic Components. The GMP shall be based in part upon the City's construction documents and Developer shall not warrant or guarantee that the City's documents do not contain errors, omissions, or defects. The City assumes all risk of cost overruns caused by errors, omissions, or defects in the construction documents. The City and Developer shall have agreed on that portion of construction costs for the civic portions of the

Phase II Building;

- e. <u>Performance</u>. Developer has reasonably performed, observed and complied with all of the material covenants, agreements, obligations and conditions required of it by this Agreement as of the Closing Date of the Phase II Properties;
- f. <u>Representations</u>. The material representations and warranties of Developer set forth in this Agreement are true and correct on and as of the Closing Date; and,
- g. No Bankruptcy. Neither Developer nor its manager (i) have applied for or consented to the appointment of a receiver, custodian or trustee for it or any of its property, , (ii) have failed generally or admitted in writing its inability to pay its debts as they become due, (iii) have liquidated or dissolved, (iv) have filed a petition or action for relief relating to any federal or state bankruptcy, reorganization, insolvency, moratorium or similar statute or any other law or laws for the relief or of relating to debtors, or (v) have made an assignment for the benefit of its creditors or entered into an agreement of composition with its creditors, nor (vi) have had a petition filed against Developer, its manager or any of its managing members under any federal or state bankruptcy, reorganization, insolvency, moratorium or similar statute, or any other law or laws for the relief of or relating to debtors.
- 8.6 Tenant Improvement Build-out of City Hall and Library. City shall, at its cost, be responsible for the design and construction of tenant improvement build-out of the interior of the City Hall and Library condominium units as a public work in compliance with all laws applicable to construction of a public work. Following its lease or purchase, as applicable, of the Civic components of the Phase II Building, and its award of a construction contract to construct such tenant improvements, City shall cause its contractor(s) to construct the tenant improvements for the City Hall/Library spaces at its sole cost and expense.
- 8.7 <u>Construction</u>; <u>Prevailing Wage</u>. The Phase II Project will be constructed according to the Construction Documents. Developer and the City (to the extent of any work performed by the City to the Phase II Project), will require their respective contractor (and require their respective contractor to require of the subcontractors) to pay the prevailing wage to the workers, laborers and mechanics if applicable to this Phase of the Project, as may be required by the Washington State Department of Labor and Industries for the particular craft in the particular geographic area.

9. Phase III of the Project.

9.1 Purchase and Construction of Phase III Properties.

- a. <u>Purchase</u>. The City will sell and Developer will purchase Lot 1, together with any lot ("Second Phase III Lot") on Exhibit J for the prices set forth in Exhibit J, so long as such other Lot (i) has a purchase price of no less than \$1,260,000, and (ii) is anticipated to be used in whole or in part for construction of a building suitable for a use which can generate tax revenue for the City. (Lot 1, together with the Second Phase III Lot, shall collectively be referred to as the "Phase III Properties".)
 - b. <u>Timing of Purchase and Closing</u>. In no event may the purchase of the

Phase III Properties close before (1) Developer purchases and commences construction on the Phase II Property and (2) City commences payment of rent University Building Leases for the Second and Third Floor Space. Except as provided herein, there shall be no obligation for Developer to purchase the Phase III Properties on any particular time schedule.

- c. <u>City Continued Occupancy to Lot 1</u>. Notwithstanding the Close of the Phase III Properties, the City shall have the right to remain in possession of Lot 1, without charge, other than payment of utilities, until thirty (30) days after the City-constructed tenant improvements have been substantially completed and a certificate of occupancy issued for the Second and Third Floor Space in the University Building. In the event the Developer's construction of the University Building is substantially complete and the City remains in possession of Lot 1, any City occupancy beyond four months after close of Lot 1 will extend the Minimum Project Completion Date by a corresponding number of days.
- d. <u>No Encumbrances</u>. In addition to the foregoing, during the term of the Lot 1 Promissory Note (defined below), the Developer may not encumber Lot 1 with any liens without the prior written consent of the City. Developer may, notwithstanding the foregoing, utilize Lot 1 as a construction staging area and for on-site construction offices for the trades as well as site supervisors and Developer's staff according to the terms set forth in Section 4 of this Agreement.
- e. <u>Lot 1 Note</u>. In payment of the purchase price, Developer shall deliver a Promissory Note for the amount of the purchase price as set forth in Exhibit J, in form and substance satisfactory to City, ("Lot 1 Note") which Note will bear interest at 150 basis points in excess of the six month LIBOR rate. Interest only payments shall be due and payable on the first day of each month during the term hereof. The entire principal balance of the Lot 1 Note shall be due and payable in full 120 days following the date of Closing of Lot 1.
- f. <u>City's Mortgage</u>. The Lot 1 Note shall be secured by a first lien Deed of Trust on Lot 1 ("Lot 1 Mortgage"). Any failure to pay the Lot 1 Note on the maturity date shall constitute an event of default that entitles the City to foreclose on the Lot 1 Mortgage.

Commitment of the Second Phase III Lot.

- g. <u>Lot 1 Development</u>. Developer shall, at such time of any development of Lot 1, submit a complete building permit application for a building which has potential economic benefit to the City.
- 9.2 <u>Conditions Precedent to Developer's Purchase of Phase III Properties.</u> As conditions precedent to Developer's obligation to close on the Phase III Properties, the following conditions must be met to the reasonable satisfaction of Developer:
- a. <u>Building Permit</u>. The City has issued a building permit for the Second Phase III Lot;
- b. <u>Financing Commitment</u>. Developer has secured a commitment letter from an institutional lender or other financer reasonably acceptable to Developer for financing 75 percent of the purchase and build-out of the Second Phase III Lot;

- c. <u>Marketable Title</u>. The City has provided evidence of good, marketable, and insurable title that is free and clear of any encumbrances except Permitted Exceptions, identified according to the process set forth in Section 18. Permitted Exceptions for Lot 1 shall include the City Mortgage and the City's occupancy right at Section 9.1(c) and 9.1(f).
- d. <u>Recorded Easements</u>. The City has recorded all the necessary Easements described in Section 4 above pertaining to the Phase III Properties, if any;
- e. <u>Approved Conceptual Site Plans and Construction Documents</u>. The City has approved of the Phase III Project Conceptual Site Plans and Construction Documents;
- f. <u>Performance to Date</u>. The City has reasonably performed, observed and complied with all of the covenants, agreements, obligations and conditions required of it by this Agreement as of the Closing Date of the Phase III Properties;
- g. <u>Termination of Leases</u>. The City has terminated all tenant leases applicable to any portion of Lot 1, and there are no tenants remaining in occupancy on Lot 1; and,
- h. <u>Representations</u>. The material representations of City set forth in Section 19 of this Agreement are true and correct on and as of the Closing Date.
- 9.3 <u>Conditions Precedent to City's Obligation to Sell the Phase III Properties.</u> As conditions precedent to City's obligation to sell the Phase III Properties to the Developer, the following conditions must be met to the reasonable satisfaction of City prior to the Closing Date:
- a. <u>Financing Commitment</u>. Developer has secured a commitment letter from an institutional lender or other financer reasonable acceptable to the City for financing of 75 percent of the purchase and build-out of the Second Phase III Lot;
- b. <u>Rent Commencement</u>. Rent has commenced under the conditions set forth in Exhibits S and T.
- c. <u>Building Permit Application</u>. Developer has submitted a complete building permit application to the City for the Second Phase III Lot;
- d. <u>Recorded Easements</u>. The Developer has recorded all the necessary Easements described in Section 4 above pertaining to the Phase III Properties, if any;
- e. <u>Performance</u>. Developer has reasonably performed, observed and complied with all of the material covenants, agreements, obligations and conditions required of it by this Agreement as of the Closing Date;
- f. <u>Representations</u>. The material representations and warranties of Developer set forth in this Agreement are true and correct on and as of the Closing Date of the Phase III Properties; and,
 - g. No Bankruptcy. Neither Developer nor its manager (i) have applied for or

consented to the appointment of a receiver, custodian or trustee for it or any of its property, (ii) have failed generally or admitted in writing its inability to pay its debts as they become due, (iii) have liquidated or dissolved, (iv) have filed a petition or action for relief relating to any federal or state bankruptcy, reorganization, insolvency, moratorium or similar statute or any other law or laws for the relief or of relating to debtors, or (v) have made an assignment for the benefit of its creditors or entered into an agreement of composition with its creditors, nor (vi) have had a petition filed against Developer, its manager or any of its managing members under any federal or state bankruptcy, reorganization, insolvency, moratorium or similar statute, or any other law or laws for the relief of or relating to debtors.

h. Mortgage. Developer has executed the Lot 1 Note and Deed of Trust.

10. Phase IV of the Project.

Date, Developer may purchase any unpurchased Lots that are identified in Exhibit J, in any order in Developer's sole discretion, upon fifteen (15) days; prior written notice to the City of Developer's desire to purchase and a desired date of Closing. City agrees to sell Developer the Lots so requested for the Purchase Price set forth in Exhibit J, on the Closing Date set forth in Developer's notice to City, or as otherwise agreed by the Parties. Phase IV will be deemed complete when Developer has, in any combination of phases, completed the Developer's Minimum Commitment.

10.2 Developer's Right to Purchase Additional Parking

The Developer shall have the right to purchase 150 additional parking stalls within the Lot 7 Parking Garage at a price of \$20,000 per stall, at the closing of Lot 6. At that time, the Developer shall also have the right to purchase additional stalls in excess of the 150 stalls, also within the Lot 7 Parking Garage, but only with the approval of the Association. This right shall extend through the Option Expiration Date.

- 10.3 <u>Conditions Precedent to Developer's Purchase of Phase IV Properties.</u> As conditions precedent to Developer's obligation to close on the purchase of one or more of the Phase IV Properties, the following conditions must be met to the reasonable satisfaction of Developer prior to the Closing Date of the Lots being purchased:
- a. <u>Building Permit</u>. To the extent submitted, the City has issued a building permit;
- b. <u>Financing Commitment</u>. Developer has secured a commitment letter from an institutional lender or other financer reasonable acceptable to Developer for financing at least 75 percent of the anticipated cost of construction intended on the purchased Lots;
- c. <u>Marketable Title</u>. The City has provided evidence of good, marketable, and insurable title that is free and clear of any encumbrances except Permitted Exceptions, identified according to the process set forth in Section 18.
 - d. <u>Recorded Easements</u>. The City has recorded all the necessary Easements

described in Section 4 above pertaining to the Phase IV Properties, if any;

- e. <u>Approved Conceptual Site Plans and Construction Documents</u>. The City has approved the submitted Conceptual Site Plans and Construction Documents for the construction intended on the purchased Lots;
- f. <u>Performance to Date</u>. The City has reasonably performed, observed and complied with all of the covenants, agreements, obligations and conditions required of it by this Agreement as of the Closing Date of the Phase IV Properties; and,
- g. <u>Representations</u>. The material representations of City set forth in this Agreement are true and correct on and as of the Closing Date of the Phase IV Properties.
- 10.4 <u>Conditions Precedent to City's Obligation to Sell Phase IV Properties</u>. As conditions precedent to City's obligation to close on the sale of one or more of the Phase IV Properties to the Developer, the following conditions must be met to the reasonable satisfaction of City:
- a. <u>Financing Commitment</u>. Developer shall have submitted to the City a commitment letter from an institutional lender or other financer reasonable acceptable to City, for financing at least 75 percent of the construction intended on the purchased Lots;
- b. <u>Building Permit</u>. Developer has submitted a complete building permit application for the construction intended to be developed on any purchased Lots;
- c. <u>Recorded Easements</u>. The Developer has recorded all the necessary Easements described in Section 4 above pertaining to the Lots intended to be constructed upon;
- d. <u>Performance to Date</u>. Developer has reasonably performed, observed and complied with all of the covenants, agreements, obligations and conditions required of it by this Agreement as of the Closing Date;
- e. <u>Representations</u>. The material representations and warranties of Developer set forth in this Agreement are true and correct on and as of the Closing Date; and,
- f. No Bankruptcy. Neither Developer nor its managers (i) have applied for or consented to the appointment of a receiver, custodian or trustee for it or any of its property, (ii) have failed generally or admitted in writing its inability to pay its debts as they become due, (iii) have liquidated or dissolved, (iv) have filed a petition or action for relief relating to any federal or state bankruptcy, reorganization, insolvency, moratorium or similar statute or any other law or laws for the relief or of relating to debtors, or (v) have made an assignment for the benefit of its creditors or entered into an agreement of composition with its creditors, nor (vi) have had a petition filed against Developer or any of its members or managers under any federal or state bankruptcy, reorganization, insolvency, moratorium or similar statute, or any other law or laws for the relief of or relating to debtors.

11. <u>Library Related Changes to this Agreement.</u>

- 11.1 <u>Intent.</u> On or about July 19, 2006, the City and the Library District entered into an agreement which references Lot 12 as the proposed site for its University Place Branch Library to be constructed by the City. In January 2007, the City, Library District and Developer came together for a charrette to explore design concepts for a mixed use building containing the Library, City Hall, retail, and office use. On February 21, 2007, the City and Developer individually and together expressed their enthusiasm and desire for the Library to be part of an active and vibrant retail and civic oriented mixed use building the Civic Components of which are on Lot 9 of the Phase II Property The Library District adopted a Resolution naming the Lot 9, instead of Lot 12, as its preferred location. The City will work in good faith with the Library District to negotiate an agreement relating to the design and construction of the Library in the Phase II Building which is acceptable to the City and Library, and to the Developer.
- 11.2 <u>Library Amendment</u>. In the event the City reaches an agreement with the Library District for construction of a Library in the Phase II Building, which is reasonably acceptable to the Developer, the City and the Developer shall amend this Agreement to reflect any necessary changes.
- 11.3 <u>Library Encumbrances</u>. Developer acknowledges that the City has disclosed its recorded commitment to build a library on Lot 12 and that the Library District has recorded a lien on Lot 11 to secure the City's performance ("Library Mortgage"). In the event that Lot 11 or Lot 12 are conveyed to the Developer under this Agreement, such conveyance is subject to the Library's rights. In the event the conditions of any encumbrances are met to the Library's satisfaction, the City shall take such steps needed to remove the encumbrance from the property.
- 12. Option to Purchase the Option Lots; Right of First Refusal on Option Lots; Lease of Lots 11 and 12.
- 12.1. Option to Purchase the Option Lots. City hereby grants to Developer an option to purchase any lots not purchased in Phases I IV after the Minimum Project Completion Date so long as Developer has met the Developer's Minimum Commitment until August 31, 2012 (the "Option Expiration Date"). All of the Option Lots shall be closed subject to the preconditions set forth in Sections 10.3(c) through (f) hereof.
- 12.2 <u>Right of First Refusal on the Option Lots</u>. In addition, City hereby grants Developer a right of first refusal to purchase any of the Option Lots not purchased by the Option Expiration Date until December 31, 2017 (the "Right of First Refusal"). The terms of the Right of First Refusal shall be as follows:
- (i) City shall have the right to attempt to sell any of the Option Lots to a bonafide third party purchaser at any time after the Option Expiration Date at fair market value;
- (ii) In the event that a third party purchaser accepts the City's offer, or a third-party purchaser proposes to purchase any one or more of the Option Lots at a price the City is willing to accept, the City must first give Developer written notice of that offer including all terms thereof, mailed to Developer's last known address with a copy to Developer's counsel noted herein, and Developer shall have twenty (20) business days following the City's mailing of the offer to Developer and Developer's counsel to decide whether Developer wants to purchase

the Option Lot(s) at that offered purchase price and terms. Developer's decision to accept or decline the offer must be in writing and mailed or personally delivered to the City at the address provided herein.

- (iii) If the Developer declines the offer, the City may sell the Option Lot(s) that were the subject of the offer to the third party purchaser, provided however, that should the third-party's purchase fail to close for any reason prior to the expiration date of the Right of First Refusal, then the City shall again be required to offer the Option Lot(s) to Developer on whatever new terms it is offering the Option Lot(s) on or is willing to accept for the Option Lot(s), before selling it to others.
- (iv) If the Developer accepts the offer, the Developer shall be obligated to close on the purchase of the subject Lot(s) on the terms accepted.
- 12.3 <u>Lease of Lots 11 & 12 for Additional Surface Parking</u>. Once Developer has obtained construction financing for the Developer's Minimum Commitment, or commenced construction for the Developer's Minimum Commitment, whichever is earlier, in consideration of the Developer improving Lots 11 and 12 for interim parking purposes, and for providing security and maintenance thereof, the City shall make Lots 11 and 12 available for public parking, until Lots 11 and 12 are sold to someone other than City, or Developer's Right of First Refusal on said Lots expires, whichever is earlier. Any such surface parking constructed on Lots 11 and 12 will be at Developer's sole cost.
- 13. <u>Public and Private Art</u> The City and the Developer shall coordinate with one another in providing for public and private art within the Project and will jointly develop a program for the unified integration of art into the Project. The City or its designated representatives may participate with and provide input to Developer on Developer's use of private art.

14. Master Covenants for Town Center Project.

Developer and City shall enter into covenants, conditions and restrictions ("Master Covenants') which shall be recorded against the Town Center Property prior to the Closing of the Phase II Properties to ensure that the Town Center Project and the various buildings constructed thereon will be owned, developed, operated and maintained as an attractive setting for retail, office, public, hospitality, and residential uses in an urban environment. If Lot 2 has been developed with the University Building, the Parties agree that Developer may exclude Lot 2 from being subjected to the Master Covenants.

- a. <u>Common Areas</u>. The Master Covenants shall set forth a definition for Common Areas that shall include, at a minimum, (1) all parking stalls located within the Parking Structure and the Lot 7 Garage, except the Developer Parking owned by Developer and the Transit Stalls owned by City; and (2) public squares, streets and sidewalk improvements within the public right of ways of or adjacent to the Project as may be more particularly shown on the Binding Site Plan.
- b. <u>Association; Common Expenses</u>. The Master Covenants shall provide for the creation of a master association, which shall have the responsibility, among other things, to

allocate operation and maintenance costs related to the Common Areas of the Town Center Property ("Common Expenses") among the owners of the Lots located within the Town Center Property ("Master Association").

i. <u>Included</u>. Common Expenses may include insurance, employment costs for personnel involved in the operation and maintenance of the Common Areas, maintenance and repair costs, utilities, landscaping, security costs, routine elevator maintenance and operating costs of those elevators serving more than one owner (except those Common Expenses excluded below). The Common Expenses related to the elevators shared by the buildings on Lots 8, 9, and 10 shall be allocated on a proportional basis based on the floors served. The identification and allocation of any other Common Expenses shall be agreed upon by the Parties prior to the recording of the Master Covenants.

ii. Excluded. Common Expenses shall not include:

- (a) the initial cost of construction of the Parking Structure or the Lot 7 Garage, which shall be the sole cost and responsibility of City;
- (b) the cost of construction of the Common Areas, including those obligations of the City set forth in the City's Minimum Commitment, which shall be the sole cost and responsibility of the City;
- (c) costs associated with operation and maintenance of such public squares, street and sidewalk improvements and other improvements constructed by the City as a part of the City's Minimum Commitment that are ordinarily performed by the City in City-owned public squares, streets and sidewalk improvements, which shall be the sole cost and responsibility of City;
- (d) capital expenses such as the cost of repair or replacement of any portion of the Parking Structure, including the elevators in the Parking Structure and Lot 7 Garage, which shall be the City's sole cost and responsibility; and,
- (e) the capital and maintenance cost of elevators that serve the City Hall Space only, which shall be the sole cost and responsibility of the City.
- c. <u>Allocation of Interests</u>. Except as otherwise provided in this Section 14, the proportionate share of the costs and expenses of the budget to be paid by the owner of each Lot for any calendar year shall be equal to the square footage of the improvements on each owner's Lot, in proportion to the square footage of the improvements on all of the Lots in the Town Center Property. The proportionate shares and percentages shall be adjusted to reflect any changes that may occur as a result of changes in the Town Center Property, or any amendments to the Binding Site Plan. The City's proportional share shall not include the square footage of the rights of way, Market Square, the Parking Structure, or Lot 7 Garage.
- (i) In the event that the airspace or the improvements on a Lot have been condominimized, the Board of the condominium association for any such condominium, shall serve as the Lot's delegated representative to the Master Association and be responsible for the payment of the Common Expenses owed for said Lot.

- (ii) The board of the association of the condominium located on a particular Lot shall, from there, allocate the Common Expenses Lot to the owners of units in the condominium, based on the square footage area of a unit divided by the aggregate square footage of all the Units in said Condominium(s) on said Lot(s).
- (iii) In the event that there is more than one condominium association on a Lot, the Common Expenses for the Lot shall be allocated to the Boards of the Associations of the condominiums on said Lot based on the total square footage of all the units in each condominium, to the total square footage of the Lot.
- d. <u>Common Area Parking</u>. The Master Covenants shall provide for the ongoing operation and maintenance of Common Areas. If any parking stalls are reserved for certain public uses during the day, the costs of operation and maintenance of such parking stalls shall only be treated as a Common Area for the hours during which such parking stalls are available for public parking purposes. Use of Common Area parking shall be allocated on the basis of use 24 hours a day on a 7 day week basis amongst all of the Lot Owners.
- e. Regulation of Uses. Lots within the Town Center Property shall be used only for purposes allowed by the zoning for the Town Center Property. All uses and activities on each Lot shall comply, at the sole expense of each owner, with all Requirements of Law. All uses and operations shall be carried out so as not to cause a nuisance to other Lots. The Master Covenants may include use restrictions agreed upon by the City, Developer, the Library, if the Library Amendment is executed, and any other person who is an owner of a Lot within the Town Center Project at the time the sale of the Phase II Properties is closed. Further, the Master Covenants shall require the Association to adequately address the security and access needs of the diverse users. Particularly, the Master Covenants shall provide that the ramp system and four vehicular access points from Drexler and one from Market Place, as well as the staircase in the Parking Structure, remain open to the Developer and the public at all times. In addition, the Master Covenants shall contain the following restrictions as they relate to parking in the Town Center Property:
- (i) Initially, and except for the Transit Stalls or privately-owned parking, use of the Common Area parking shall be regulated as follows: Except as otherwise expressly provided in this Agreement, during the hours of 8:00am and 10:00pm, Monday through Friday, the Parking Structure and Lot 7 Garage shall be restricted to "Short Term Parking." For the purpose of this Agreement, Short Term Parking means use of a parking stall by the same motor vehicle for not more than four (4) consecutive hours. These initial parking restrictions shall be perpetual for at least five years. All Common Area parking shall be available on a first-come first-serve basis to the public.
- (ii) No more than ten percent (10%) of the stalls shall be designated for compact cars.
- (iii) The Transit Stalls may be designated from 6:00 AM until 10:00 AM for the exclusive use of carpool and park and ride transit users.
 - (iv) Further, the Master Covenants will require that ,except as may be

prohibited under accessibility laws, City employees be restricted to parking only in the area described in this Agreement as City Employee Parking during working hours and shall open the City Employee Parking lot as being available to the public on a first-come first-serve basis between the hours of 6:00 PM and midnight, Tuesday through Thursday, 6:00 PM through 2:00 AM, Friday, and 8:00 AM through 2:00 AM Saturday and Sunday.

- (v) The Association shall implement all necessary measures to enforce such parking restrictions, which may include tasteful signage and/or meters that monitor the entrance and exit of users throughout said hours. Further, the Association shall have an architectural control committee ("ACC") to implement and enforce other parking restrictions approved by the Board of the Master Association.
- (vi) The City reserves the right to impose a parking charge on any Common Area parking if owners and operators of multi-level parking garages located in urban regional shopping center mixed-use developments in the greater Tacoma metropolitan area assess a use charge, provided that any parking charges assessed shall first be utilized to pay garage operations and maintenance expenses.

f. Other Terms.

- (i) To the extent permitted by law, the Master Covenants shall contain other commercially reasonable terms and conditions customarily found in mixed-use developments located in suburban areas within the greater Tacoma metropolitan area comparable to the Town Center Project.
- (ii) All of the terms in this Section 14 shall be transcribed into the Master Covenants and when recorded, shall become perpetually binding on any successors, heirs and assigns of the Lots in the Town Center Property, absent Lot 2, in Developer's discretion.
- (iii) The Master Covenants shall provide that all disputes be resolved first by nonbinding mediation, then by binding arbitration if nonbinding mediation is unsuccessful in resolving any such dispute.
- 15. Disclaimer; City Not Liable for Construction of Town Center Project. Notwithstanding any provision of this Agreement to the contrary, City is under no obligation to, nor shall it construct or supervise the construction of the Town Center Project on the properties sold to Developer pursuant to this Agreement. It is understood and agreed that City's rights to approve Construction Drawings and/or Contract Documents for the Town Center Project as provided in this Agreement and its right to inspect the ongoing construction of the Town Center Project is for the sole purpose of protecting its rights under this Agreement to the extent it is the owner of the Phased Properties and a prospective tenant of the new City Hall Space and a portion of the University Building, and shall not, except for the City design of the Civic Components and City construction of any Tenant Improvements, constitute any representation or warranty, express or implied, as to the adequacy of the design or any obligation on City to ensure that work or materials are in compliance with the Design Development Documents for the Town Center Project, the Construction Drawings or the Contract Documents for the Town Center Project or any building requirement imposed by any governmental agency.

- 16. <u>Permit Issuance; Changes; Inspections; Substantial and Final Completion; Other Construction Terms.</u>
- 16.1 <u>Review Stages</u>. The Parties agree that the review described in Sections 16.4, 16.6 and 16.7 below is the City's contractual review right while review described in Section 16.5 below is the City's governmental regulatory review.
- 16.2 <u>Required Compliance</u>. Any failure of the City to address any noncompliance with applicable rules and regulations at the contractual review stage shall in no way affect the City's regulatory authority to require compliance during the permit review process.
- development on any Lots, or matters requiring the consent or approval of City under this. Agreement, the City shall expedite its review and not unreasonably withhold, condition or delay its approval, and will issue written notice of approval or disapproval. All contractual, non-regulatory approvals to be issued by City shall be issued by City's Construction Representative, and Developer may rely on all decisions and actions taken by City's Construction Representative as binding upon City for all contractual, non-regulatory purposes. The approvals required of City pursuant to this Agreement shall not be deemed to relieve Developer of any obligation otherwise existing under this Agreement with respect to adequacy of documents, coordination or other requirements of Developer hereunder. Although Developer will have the responsibility to obtain all necessary permits for the development of the Town Center Project, the City agrees it will assist the Developer in working with Pierce County in obtaining a sewer permit and will assist with any other relevant jurisdictions for the purpose of expediting those processes.

16.4 City's Regulatory Review and Approval Process.

The Developer shall submit applications and the City shall process applications in accordance with all permit review processes set forth in the University Place Municipal Code. The City shall, whenever possible, process Developer's permits on an expedited basis.

16.5 City's Contractual Review.

- a. <u>Pre-Application Submittal Meetings</u>. The City and Developer shall participate in pre-application submittal meetings to facilitate the expedited approval of Phased Construction Documents and permit issuance for all Land Use, Site Development, Building Permits, and Fire Prevention Permits. City may participate in all design meetings with Developer, Architect, and other design professionals as appropriate in the course of the development of the Phased Construction Documents in order to facilitate the expedited approval of such Phased Construction Documents in accordance with the terms of this Agreement. The Developer shall submit Site Development and Building construction drawings to the City for expedited comments prior to the permit application for each site plan and structure to help expedite permit review. The Developer shall submit conceptual site plans for all phases of the Development to the City prior to purchasing the Lots to which the construction drawings pertain, which proposed development must be compatible with any prior completed Phased development and with the Minimum Project described in this Agreement.
 - b. <u>Submittal of Construction Documents</u>. Following the development of the

Conceptual Site Plan for each Phase, Developer shall cause its Architect to prepare construction drawings for the improvements intended on said Lots ("Construction Drawings") and detailed specifications ("Detailed Specifications") (Construction Drawings and Detailed Specifications, collectively, the "Construction Documents") for the Lot(s) and/or Phase of the Project at issue and shall submit same to City for review and comment to the extent necessary for coordination with any City design or improvement. The intention of the Parties is to cooperate in good faith to provide a completed design which meets all requirements of law and is consistent with the Minimum Project and the Nonbinding Proposed Conceptual Site Plan in all material respects prior to the closings of the respective purchases in each Phase of the Project.

c. <u>Changes to Construction Documents</u>. All proposed significant changes in the Construction Documents shall be accompanied by a statement from the Architect delineating the nature and extent of the change and the same shall be submitted to City's Construction Representative for review and comment to the extent necessary for coordination with any City design or improvement.

16.6 Review and Inspections during the Course of Construction.

- a. <u>City Inspection</u>. City shall have the right, but not the obligation, to have an independent consulting architect, engineer or other appropriate consultant retained to inspect the construction of the Town Center Project as it progresses and to review the construction work and its compliance with the applicable Construction Documents and this Agreement. The costs of such independent consultant shall be paid by City. City shall provide written notice to Developer of such inspection and the inspection shall be coordinated with Developer and its contractors so as to not interfere with or delay construction of the Town Center Project.
- b. <u>Notice of Corrections</u>. If during the course of such construction City shall determine that the construction is not proceeding in accordance with the applicable Construction Documents or this Agreement, City shall give notice in writing to Developer specifying the particular deficiency or omission and Developer shall thereupon take, or cause to be taken all steps necessary to seek to enforce the construction contracts to correct same. The failure of City to observe deficiencies or omissions or to give such notice shall not give rise to any liability for City and shall not be considered a waiver of any right of City under this Agreement.

16.7 Certificates of Substantial and Final Completion.

- a. <u>Substantial Completion</u>. "Substantial Completion" means when all of the work designated by Developer to do to a particular building or other improvements on a particular Lot(s) is sufficiently complete in accordance with the Construction Documents such that the owner or intended tenant may occupy or utilize such building or other improvement for its intended use.
- b. <u>Notice of Substantial Completion</u>. Developer shall give notice in writing to City at least thirty (30) days prior to the date upon which Developer anticipates the work will be Substantially Complete.
 - c. Inspection; Punchlist. During the fifteen (15) business day period after the

delivery of the estimated completion notice, City, Developer, Architect, and its general contractor shall meet on one or more occasions, if necessary, and tour to inspect and review the work to determine whether the work is Substantially Complete. The Parties shall prepare the Punch List to be completed prior to Final Completion. The completion of the Punch List shall not be required in order for the work to be Substantially Complete. Following Substantial Completion, Developer shall cause all Punch List items to be completed promptly in accordance with the Construction Documents.

- d. <u>Final Completion</u>. Developer shall give notice in writing to City at least fifteen (15) days prior to the date upon which Developer anticipates the work will have achieved Final Completion. "Final Completion" means that construction of a building or other improvements on a particular Lot(s) have been completed to the reasonable satisfaction of the City and the City has issued all final certificates of occupancy for the building or other improvements on a particular Lot(s).
- e. <u>Certificate of Completion</u>. Once Final Completion has occurred, Developer shall file a Notice of Completion with City. Once the City confirms that all improvements intended to be constructed are complete, within fifteen (15) business days after receipt of the Notice of Completion, City shall furnish the Developer with a Certificate of Completion. The Certificate of Completion shall be a conclusive determination that the Parties' agreements with respect to the Developer's construction obligations for the applicable phase of the Town Center Project have been met. The Certificate shall be in a form that enables it to be recorded in the official records of Pierce County, Washington.
- 16.8 <u>Hiring and Training Programs</u>. Developer shall request contractors and subcontractors hired to work on various phases of the Town Center Project to implement a recruitment strategy that encourages hiring of City residents and other targeted groups and provide apprenticeship training opportunities.
- 16. 9 <u>Construction Staging</u>. A plan for construction staging shall be prepared by Developer and approved by City prior to commencement of construction, such approval shall not be unreasonably withheld, conditioned, or delayed.
- 16.10 Project Manager. The project manager for development of the Town Center Project shall identified by Developer prior to Phase II, and thereafter, if the project manager is no longer affiliated with Developer, Developer shall designate a new experienced project manager only after consultation with and approval of City. There shall be no change in the project manager or superintendent assigned to the Town Center Project without the prior written consent of City. Developer may assign other qualified construction personnel to the Town Center Project as needed to construct the Town Center Project in accordance with the requirements of this Agreement so as to achieve Substantial Completion of each phase of the Town Center Project on or before the Substantial Completion Date for such phase.

17. Closing Details.

17.1 <u>Purchase Price</u>; <u>Closing Dates</u>. All purchases of Lots within the Town Center Property shall be purchased for the Purchase Price set forth in Exhibit J ("Purchase Price"),

- 17.2 <u>Earnest Money Deposit</u>. Developer shall be required to pay to City, a non-refundable Earnest Money Deposit in the amount of EIGHT HUNDRED AND FIFTY THOUSAND DOLLARS (\$850,000), in the following manner:
- a. <u>Initial Earnest Money Deposit</u>. Upon Closing of the Phase I Property, Developer shall pay to City, the Initial Earnest Money Deposit, which is the sum of SIX HUNDRED THOUSAND DOLLARS (\$600,000).
- b. <u>Second Earnest Money Deposit</u>. On July 31, 2008, Developer shall pay to the City a second earnest money deposit in the amount of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000).
- c. <u>Applicable toward Purchase Price</u>. Exhibit J indicates that \$850,000 of the total Earnest Money Deposit shall be applicable toward the Purchase Prices in the amounts allocated to each Lot as set forth therein.
- d. <u>Earnest Money Promissory Note</u>. Developer agrees to execute simultaneously with the execution of this Agreement, the Earnest Money Promissory Note attached hereto as Exhibit LL.
- 17.3 Payment of Balance of Purchase Price. Developer shall pay the balance of the Purchase Price for the Lots being purchased in a particular Phase of the Project, in cash or immediately available funds upon Closing, taking into account any credits available under Section 17.4 below, except for the purchase of Lot 1, which will be purchased in accordance with the terms set forth in Section 9.1(e) and 9.1 (f).
- Application of Earnest Money Deposit. The City may use those portions of the Earnest Money Deposit released to it up to the full Earnest Money Deposit amount to pay its carrying costs on the Lots in the Town Center Project until they are sold to Developer. The Earnest Money Deposit shall be applied as a credit to the purchase of each Lot in the following manner: The Deposit may only be applied to offset that monthly addition to the purchase price set forth in the second column of Exhibit J.
- 17.5 <u>Escrow Agent</u>. Developer shall identify an agent as escrow agent ("Escrow Agent") and title insurer ("Title Company").

18. Title to Property.

- 18.1 <u>Title to Property</u>. Upon each Closing, the City shall execute and deliver to Developer a bargain and sale deed in the form attached hereto as Exhibit Z, ("Deed") conveying fee title to the Lots or airspace condominium unit of the Town Center Property to be acquired, subject to the Permitted Exceptions determined in accordance with Section 18.4.
- 18.2 <u>Title Insurance</u>. On the Closing Date for each Phased purchase, City shall cause the Title Company to issue Developer an Standard Owner's Policy of Title Insurance (each, a "Title Policy"), with liability in the amount of the Purchase Price, insuring good and marketable title to the Lots or airspace condominium unit to be acquired by Developer, against any loss or damage by reason of defects in City's title to the Lots or airspace condominium unit to be

acquired, other than the Permitted Exceptions. Developer may, at its sole cost and expense, request endorsements to the Title Policy, but the availability of extended coverage or such endorsements shall not be a condition precedent to closing, unless necessary to assure Marketable Title.

- 18.3 <u>Title Review</u>. The Title Company shall provide City and Developer with a preliminary commitment for the entire Town Center Property ("Title Commitment") (all lots within the Binding Site Plan) within twenty-one (21) days following full execution of this Agreement, together with complete copies of any exceptions identified in Schedule B thereof. The Title Company shall also issue an updated Title Commitment for the applicable Lot(s) or airspace condominium units within twenty-one (21) days after Developer delivers City written notice that it is purchasing one or more of the Phase II, Phase III or Phase IV Properties. Developer shall conduct its review of each Title Commitment in accordance with the following procedures:
- Developer's Notice. Developer shall have thirty (30) days from the date of 18.4 receipt of the Title Commitment for the entire Town Center Property to notify City in writing of its approval or disapproval of each exception in Schedule B of the Title Commitment. Failure to deliver such notice by that date shall constitute Developer's approval of all exceptions in Schedule B. Developer shall not be entitled to disapprove the general exceptions (other than those to be removed upon issuance of an extended coverage owner's policy if Developer provides the Title Company with an ALTA survey) or any exceptions created by or on the account of Developer or exceptions approved by Developer and recorded in connection with the proposed redevelopment of the Town Center Property. Covenants, conditions, restrictions, reservations, rights-of-way and easements presently of record or which were previously approved by or deemed approved by Developer, Library encumbrance on Lots 11 and 12, subject to Section 11, non-delinquent real estate taxes, special assessments and local improvement district and utility local improvement district assessments hereinafter levied against the Property, the condominium declaration and survey map and plans for any condominium where the Developer is acquiring a condominium unit, shall be deemed Permitted Exceptions and shall not be objected to by Developer. Notwithstanding any other provision of this Agreement to the contrary, City shall not record any mortgage or deed of trust, against the Town Center Property, other than the Lot 1 Mortgage and the Library Mortgage, which would not be released of record as of an applicable Closing Date without the prior written approval of Developer. Exceptions deemed approved pursuant to this Section 18.4 or not disapproved by Developer within the time period set forth above shall be Permitted Exceptions.
- 18.5 <u>City's Notice</u>. City shall have ten (10) days after receipt of Developer's notification in which to notify Developer whether or not it elects to cure or remove any of the disapproved exceptions of which City receives timely notice pursuant to Section 18.4. City's failure to so notify Developer shall constitute City's election to not remove all such exceptions. City shall remove all exceptions it elects to remove on or before the applicable Closing Date. City shall remove any mortgage, deed of trust or monetary lien created by or arising through the actions of City (with the exception of the Library Mortgage) prior to or upon Closing of the applicable lot or condominium unit.
 - 18.6 <u>Developer's Election</u>. If City does not elect to remove all exceptions disapproved

by Developer, Developer may elect to terminate this Agreement by written notice to City given within ten (10) days following City's notice, in which event this Agreement shall automatically terminate, and the City shall return the Earnest Money Deposit remaining herein, and neither party hereto shall have any further rights or obligations under this Agreement. If Developer does not elect to terminate this Agreement within the time frame set forth herein then disapproved exceptions that City has not elected to remove shall become Permitted Exceptions for the Town Center Property.

- 18.7 New Exceptions. For any new title exceptions caused by the City, except those specifically contemplated by this Agreement, of which Developer is first notified by the Title Company after the Permitted Exceptions for the Town Center Property have been set pursuant to Sections 18.4 and 18.5 above, the City shall cause the exception to be removed prior to closing of that lot.
- Exceptions determined in accordance with this Agreement, Developer may elect to proceed with the closing despite such noninsurability, thereby accepting any such matters as Permitted Exceptions, or Developer may terminate this Agreement by written notice to City in which event this Agreement shall automatically terminate, Developer shall receive a refund of any Earnest Money Deposit remaining and except as otherwise expressly provided herein, and neither party hereto shall have any further rights or obligations under this Agreement.
- 18.9 <u>Survey</u>. Developer, at its sole cost and expense, shall have the right to obtain an ALTA survey of the Town Center Property ("Survey") to be prepared and presented to Developer and City no later than sixty (60) days prior to the Phase I Property closing of the Phase I Property. Developer and City shall thereafter have the same review rights and review time frames regarding the Survey as are set forth in Sections 18.4 and 18.5 with respect to review of title. The Survey shall be updated at Developer's expense within thirty (30) days after either (a) City delivers written notice of Substantial Completion of the structured parking garage to be constructed on Lots 8, 9 and 10; or, (b) Developer delivers to City written notice of its intent to purchase one or more of the Phase II or Phase III Properties.

19. Right to Inspect; "AS-IS" Sale; City's Representations.

- 19.1 Right to Inspect. Developer shall have 60 days from the date of execution of this Agreement to conduct an investigation of the Lots to determine the condition of the Town Center Property for the development of the Project. Prior to the conveyance of any Town Center Lots, the City shall permit representatives of Developer to have access, without charge, to the Town Center Property, at any and all reasonable times for the purpose of obtaining data and making various tests necessary to carry out Developer's obligations under this Agreement.
- 19.2 <u>Acceptance of Town Center Property in AS-IS Condition</u>. Developer acknowledges that, upon its completion of its inspection as set forth in 19.1, it has had an opportunity to and has conducted a thorough investigation of the Town Center Property and is in all respects knowledgeable and familiar with the present condition and state of repair of the Town Center Property. Developer acknowledges that any purchase of the various Lots constituting the Town Center Property is being made based solely upon reports given to

Developer by City and Developer's inspection and investigation of the Town Center Property and that, subject to Section 19.3 and 25.1, the various Lots constituting the Town Center Property are being sold to Developer in an "AS-IS" condition and state of repair, and with all faults, of any kind or nature and without any representations or warranties, express, implied or statutory, except as provided for herein.

20. Operation of Property Pending Closing.

- 20.1 <u>Operations Pending Closing</u>. At all times before the closing of the sale of one or more Lots constituting the Town Center Property, City shall have the right to manage, lease and operate such Lots in the Town Center Property as it determines in its reasonable discretion, and shall have the right to retain all rents or other income paid in connection therewith.
- (a) City shall not construct any buildings or install any other permanent improvements on, in or under the Town Center Property (except as otherwise expressly provided herein) without the prior written consent of Developer, which consent shall not be unreasonably withheld, and
- (b) City shall operate, manage, use or lease the Town Center Property in a manner that is consistent and compatible with the redevelopment, use and operation of that portion of the Town Center Property already purchased by Developer for redevelopment; provided however, that the City shall not permit any residential use of the Town Center Property prior to redevelopment. Any lease or other rental agreement hereinafter entered into by City of a Lot constituting a part of the Town Center Property shall provide that it may be terminated upon sale of such Lot to Developer pursuant to this Agreement upon twenty (20) days' notice without payment of any cancellation or termination fee.
- (c) City shall have the right to salvage and take such building improvements and fixtures from the existing City Hall as the City may deem necessary and subject to Developer's approval, so long as such salvage shall not affect the structural integrity of the buildings. The City shall present a list of intended salvage items to Developer for Developer's approval prior to any salvage work.
- 20.2 <u>Condition of Title</u>. City agrees from and after the date hereof until the closing of the sale of a Lot constituting a part of the Town Center Property to Developer or the termination of this Agreement that it will not encumber such Lots within the Town Center Property with any mortgage or deed of trust that will not be paid off or reconveyed prior to closing of such Lot of the Town Center Property.
- 21. <u>Closing</u>. Closing shall take place in the offices of Title Company, acting as Escrow Agent. As used in this Agreement, "Closing" and "Closing Date" means the date on which all appropriate documents are recorded and proceeds of the sale are available for disbursement to City. Developer and City shall place into escrow all instruments, documents and moneys necessary to complete each sale of a Lot of the Town Center Property in accordance with this Agreement.
- 21.1 <u>Delivery to Escrow</u>. On or before each Closing Date, the following documents and moneys shall be delivered to Escrow:

- 21.1.1 By City. City shall deliver the following original documents, duly executed and acknowledged by City:
 - a. the Bargain and Sale Deed;
 - b. a Real Estate Excise Tax Affidavit;
 - c. FIRPTA Affidavit:
 - d. any other documents or instruments required of City at Closing under the terms of this Agreement;
 - e. any other documentation as may be required by the Title Company to be signed by City and/or recorded at Closing that are consistent with the provisions of this Agreement; and
 - f. City's share of closing costs.
 - 21.1.2 <u>By Developer</u>. Developer shall deliver the following original documents, duly executed and acknowledged by Developer:
 - a. a Real Estate Excise Tax Affidavit;
 - b. any other documents or instruments required of Developer at Closing under the terms of this Agreement;
 - c. any other documentation as may be required by the Title Company to be signed by the Developer and/or recorded at Closing that are consistent with the provisions of this Agreement; and
 - d. Developer's share of Closing costs.

21.3 Share of Closing Costs.

- a. <u>Seller's Closing Costs</u>. In connection with each Closing, Seller shall pay the real estate excise tax, if any, the cost of the Title Policy with liability in an amount equal to the Purchase Price for the Lot being acquired to the extent of the premium for standard owner's coverage, one-half of the escrow fees, all recording fees necessary and customary to be paid for by the Seller or otherwise contracted for under the terms of this Agreement, and Seller's attorneys' fees.
- b. <u>Buyer's Closing Costs</u>. In connection with each Closing, Buyer shall pay the cost of the Title Policy to the extent in excess of the premium for standard owner's coverage (if Buyer elects to obtain extended coverage), together with all endorsements to the Title Policy requested by Buyer, all survey costs, one-half the escrow fees, all recording fees, all costs associated with Buyer's financing including title premiums and recording costs and Buyer's attorneys' fees.

- Prorations. All utilities and special assessments shall be prorated as of the Closing. Because City is exempt from property taxes, no proration of ad valorem property taxes is required; however, Developer shall be responsible for payment of all property taxes and all special assessments and local improvement district assessments which affect the applicable Lot, from and after the Closing Date.
- Possession. Developer shall be entitled to possession of each Lot of the Town Center Properties on the applicable Closing Date, free and clear of all liens, encumbrances and exceptions other than the Permitted Exceptions, and any liens, encumbrances or other exceptions arising through the actions of Developer or its agents, employees or consultants.
- To aid general economic development and the 22. Business Improvement Area. revitalization, and to facilitate the cooperation of merchants, businesses, and residential property owners which assists trade, economic viability, and livability, the City and Developer agree to jointly pursue, exercising good faith efforts and due diligence: (a) operation under a special charter that would establish a business improvement area ("BIA") for the Planned Action Area, for the following minimum purposes: (i) decoration of any public places; (ii) sponsorship or promotion of public events which are to take place on or in public places; (iii) furnishing of music in any public place; and (iv) providing professional management, planning, and promotion for the area, including the management and promotion of retail trade activities in the area; and, (b) the levy of special assessments on all businesses and multifamily residential or mixed-use projects within the area and specially benefited by a business improvement area to pay in whole or in part the damages or costs incurred in connection therewith.
- Leasing of Market Square During Term of Agreement. The City shall control the use of 23. the Market Square as public right of way. In the event the City allows retail use of Market Square for placement of kiosks for other than at City or public special events such as fairs, festivals, farmers markets, or parades, the City shall, until the Option Expiration Date, assign Developer as City's exclusive leasing agent for such retail use and will share revenues therefrom The City shall control the size, number, location, use, and design standards for any such kiosk, and any leases are subject to City approval.
- 24. Intentionally Omitted.
- City's and Developer's Representations & Covenants. 25.
 - 25.1 City's Representations & Covenants.
- City is a municipal corporation duly organized and validly existing under a. the laws of the State of Washington and has full legal right, power and authority to own its property and carry on its business as now being conducted. All corporate action on the part of City necessary for the authorization, execution, delivery and performance of this Agreement has been duly taken to permanently bind the City for the full term of the Agreement to perform all terms set forth herein. The signatory on behalf of the City has full power and authority to bind and deliver this Agreement.
- This Agreement when executed and delivered by City, and assuming it has been duly authorized, executed and delivered by Developer, will be the legal, valid and binding

agreement of City, enforceable in accordance with its terms, except to the extent that the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

- c. No consent, approval, permission, authorization, order or license of any person or any other Governmental Body is necessary in connection with the execution, delivery and performance of this Agreement by City or any transaction contemplated hereby, except as may have already been obtained by City prior to the date of this Agreement.
- d. There is no provision in City's organizational documents which would be contravened by the execution and delivery of this Agreement or by the performance of any provision, condition, covenant or other term required to be performed by City under this Agreement.
- e. Other than those already disclosed to Developer at or before the time of execution of this Agreement, there is now no pending or threatened litigation, administrative proceeding, or other legal or governmental action with respect to the Property.
- f. To the best of City's actual knowledge, any information that City has delivered to Developer, either directly or through City's agents, is accurate and City has disclosed all material facts concerning the operation, development, or condition of the Town Center Property that are known to the City. Among others, City has provided all of the documents regarding Hazardous Materials (if any) on and adjacent to the Town Center Property.
- g. This Agreement and all other documents delivered to Escrow for the Close of Escrow have been duly authorized, executed and delivered by City, are binding obligations of the City, and do not violate the provisions of any agreements to which the City is a party.
- h. City shall promptly notify Developer of any facts that would cause any of the representations contained in this Agreement to be untrue as of the Close of Escrow.
- i. City shall not permit any liens, encumbrances or easements to be placed on the Town Center Property other than the Permitted Exceptions, the Library Mortgage, and the Lot 1 Mortgage. City may record documents that may be required to carry out its obligations under this Agreement with the consent of the Developer which shall not be unreasonably withheld, conditioned or delayed.
- j. City shall not, without Developer's written consent, enter into any agreement regarding the sale, rental, management, repair, improvement, or any other matter affecting the Town Center Property that would be binding on Developer or the Town Center Property after the Close of Escrow, except as otherwise agreed in this Agreement.
 - k. City shall not intentionally permit any act of waste on the Property.
- l. <u>City's Representations regarding Hazardous Substances</u>. Notwithstanding Section 19.2 above, the City makes the following representations to Developer to the best of City's knowledge, such knowledge being the actual knowledge of the City's executive staff and

City Council:

- (1) City has provided to Developer all information, records, and studies in City's possession concerning the condition of the Town Center Property and Hazardous Substances on the Property, but makes no representations whatsoever of the accuracy of such reports;
- (2) Except as disclosed to Developer, there are now no material physical or mechanical defects of the property; and,
- The Property complies with all laws and ordinances, and all rules and regulations of all authorities having jurisdiction over the seller, the property, or the use thereof, relative to any Hazardous Material. As used herein, "Hazardous Material" means any hazardous or toxic substance, material, waste or similar term which is regulated by local authorities, the state of Washington and/or the federal government, including, but not limited to, any material, substance, waste or similar term which is: (a) defined as a hazardous material under the laws of the state of Washington; (b) defined as a hazardous substance under section 311 of the federal water pollution control act (33 U.S.C. §1317); (c) defined as a hazardous waste substance under section 101 of federal resource conservation and recovery act (42 U.S.C. §6901 et. Seq.); (d) defined as a hazardous waste substance under section 101 of the comprehensive environmental response, compensation and liability act, (42 U.S.C. §9601 et. Seq.); (e) defined as a hazardous waste or toxic substance, waste, material or similar term in any rules and regulations, which are adopted by any administrative agency including, but not limited to the environmental protection agency, the occupational safety and health administration, and any such similar state or local agency having jurisdiction over the Property whether or not such rules and regulations have the force of law; or (f) defined as a hazardous or toxic waste, substance, material or similar term in any statute, regulation, rule or law enacted by local authorities, the state of Washington, and/or the federal government.

THE CITY MAKES NO OTHER REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE PHYSICAL CONDITION AND VALUE OF ALL OR ANY PORTION OF THE TOWN CENTER PROPERTY, THE PRESENCE OR ABSENCE OF HAZARDOUS SUBSTANCES ON ALL OR ANY PORTION OF THE TOWN CENTER PROPERTY, SOILS CONDITIONS, OR OTHER PHYSICAL CHARACTERISTICS OF ALL OR ANY PORTION OF THE TOWN CENTER PROPERTY OR THE SUITABILITY OF ALL OR ANY PORTION OF THE TOWN CENTER PROPERTY FOR DEVELOPER'S **MAKES** INTENDED DEVELOPMENT, AND CITY NO REPRESENTATION WHATSOEVER REGARDING THE FINANCIAL FEASIBILITY OF ALL OR ANY PORTION OF THE TOWN CENTER PROJECT. UPON RECORDING OF THE CONVEYANCE DEED TO ONE OR MORE LOTS CONSTITUTING THE TOWN CENTER PROPERTY, DEVELOPER SHALL BE DEEMED TO HAVE ACCEPTED SUCH LOT OF THE TOWN CENTER PROPERTY IN ITS "AS-IS, CONDITION AND STATE OF REPAIR AND DOES HEREBY WAIVE AND RELEASE AND AGREES TO DEFEND, INDEMNIFY AND HOLD CITY, ITS OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS HARMLESS

FROM ANY AND ALL DAMAGES, LOSSES, LIABILITIES, COSTS AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND COSTS) AND CLAIMS THEREOF, WHETHER DIRECT OR INDIRECT, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, WHICH MAY ARISE ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE LOT OF THE TOWN CENTER PROPERTY OR ANY REQUIREMENT OF LAW APPLICABLE THERETO. DEVELOPER UNDERSTANDS AND AGREES THAT ALL PHASED PROPERTY WILL BE CONVEYED BY BARGAIN AND SALE DEED, AND, EXCEPT AS OTHERWISE AGREED UPON IN WRITING BY THE PARTIES, IT WILL BE SOLD AS IS, WITH NO WARRANTIES OR REPRESENTATIONS, EXCEPT THAT TITLE SHALL BE DELIVERED IN GOOD CONDITION, MARKETABLE AND INSURABLE, SUBJECT ONLY TO THE PERMITTED EXCEPTIONS. THIS SECTION 19 SHALL SURVIVE CLOSING AND NOT MERGE INTO THE CONVEYANCE DEED FOR THE AFFECTED LOTS IN THE TOWN CENTER PROPERTY.

25.2 Developer's Representations and Covenants.

- a. Developer is a limited liability company duly organized and validly existing under the laws of the State of New York qualified to do business in the State of Washington and has the power to own its property and carry on its business as now being conducted in the State of Washington.
- b. All limited liability company action on the part of Developer and all corporate or other action on the part of its managers and members necessary for the authorization, execution, delivery and performance of this Agreement have been duly taken. Developer has full power and authority to enter into, execute and deliver this Agreement and to perform its obligations under this Agreement.
- c. This Agreement when executed and delivered by Developer, and assuming it has been duly authorized, executed and delivered by City, will be the legal, valid and binding agreement of Developer, enforceable in accordance with its terms, except to the extent that the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws, affecting the rights of creditors generally, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).
- d. No consent, approval, permission, authorization, order or license of any person or of any Governmental Body is necessary in connection with the execution, delivery and performance of this Agreement by Developer or any transaction contemplated hereby, except as may have already been obtained by Developer prior to the date of this Agreement.
- e. There is no provision in Developer's certificate of formation or limited liability company agreement nor any provision in the organizational documents of any member or manager of Developer which would be contravened by the execution and delivery of this Agreement or by the performance of any provision, condition, covenant or other term required to be performed by Developer under this Agreement.

- f. Other than as disclosed to City prior to the date of this Agreement, there is no pending or threatened litigation, tax claim, action, dispute or other proceeding of any nature whatsoever affecting Developer or any manager of Developer which could have a material adverse effect on the legal existence or powers of Developer or any manager or member thereof, or its financial conditions or operations or have a material adverse effect on the ability of Developer or any manager of Developer to perform its obligations under this Agreement and neither Developer nor any manager of Developer is in default with respect to any Requirements of Law that might result in any such effect.
- g. Developer represents and agrees that the Phased Properties will be used for the purpose of timely redevelopment as set forth in this Agreement. It is the intent of the Parties that Developer will purchase the Lots to build the improvements as set forth in Exhibit D.
- h. Developer covenants to make available for the review of the City at Developer's counsel's office, upon reasonable notice and within reasonable hours, any commitment for financing obtained as may be considered reasonably necessary by the City to satisfy any of the financing preconditions set forth in Sections 7.3, 8.3, 9.3 and 10.3 hereof. However, protecting the confidentiality of Developer's financing and other related information is of the utmost importance to Developer, therefore, duplication of any such information will generally be prohibited, and shall not be permitted without the express written consent of the Developer.

26. <u>Intentionally Deleted</u>.

27. Indemnification.

- 27.1 <u>Developer's Indemnification</u>. Developer shall protect, defend, indemnify, and save harmless City and its respective officers, officials, employees and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments, or costs of any kind whatever (hereinafter "claims"), arising out of or in any way resulting from Developer's officers, employees, agents, contractors and/or subcontractors of all tiers, acts or omissions, performance or failure to perform this Agreement. Developer's obligations under this Section 27.1 shall include, but not be limited to:
- a. The duty to promptly accept tender of defense and provide defense to City at Developer's own expense.
- b. The duty to indemnify and defend City from any claim, demand and/or cause of action brought by or on behalf of any of Developer's employees or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of Developer's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects City only, with a full and complete indemnity and defense of claims made by Developer's employees or agents. The Parties acknowledge that these provisions were mutually negotiated and agreed upon by them.
- c. Developer shall indemnify and defend City from and be liable for all damages and injury which shall be caused to owners of property on or in the vicinity of the

construction of those portions of the Town Center Project under Developer's control or which shall occur to any person or persons or property whatsoever arising out of this Agreement, whether or not such injury or damage is caused by negligence of the Developer's General Contractor or caused by the inherent nature of the construction. The City shall require any construction contractors that perform work related to the City's Minimum Commitment, to name Developer as an additional insured from and after the execution of this Agreement until issuance of a certificate of completion of such work, and City shall provide evidence of the same to Developer upon request.

Notwithstanding the provisions contained in Section 27.1 above, Developer's obligation to indemnify City shall not extend to any claim, demand or cause of action to the extent caused by the negligence of City or breach of this Agreement by City.

Notice of Claim. Any person making a claim for indemnification pursuant to this Section 27.2 (an "Indemnified Party") must give Developer written notice of such claim (an "Indemnification Claim Notice") promptly after the Indemnified Party receives any written notice of any action, lawsuit, proceeding, investigation or other claim (a "proceeding") against or involving the Indemnified Party by a government entity or other third party, or otherwise discovers the liability, obligation or facts giving rise to such claim for indemnification; provided that the failure to notify or delay in notifying Developer will not relieve Developer of its obligations pursuant to this Section 27.2 except to the extent that the Developer's ability to defend against such claim is actually prejudiced thereby. Such notice shall contain a description of the claim and the nature and amount of such loss (to the extent that the nature and amount of such loss is known at such time).

28. <u>Insurance Requirements</u>.

- 28.1 <u>Developer's Insurance</u>. From and after the execution of this Agreement and until issuance of a certificate of completion with respect to the entire Town Center Project, Developer shall maintain and shall cause its general contractor to maintain property insurance in builder's risk form, commercial general liability insurance, and worker's compensation insurance as required under Exhibit AA. Prior to commencement of construction, Developer shall procure and maintain for the duration of this Agreement and/or shall cause its general contractor to procure and maintain insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the performance of work hereunder by Developer, its agents, representatives, employees, and its general contractor. The cost of such insurance shall be paid by Developer and/or its general contractor or its consultants. If at any time any of the policies required under Exhibit AA to this Agreement shall be or become unsatisfactory to City due to a change in form or substance, Developer shall, upon notice to that effect from City, promptly obtain a new policy from a qualified insurer, and shall submit the same to City, with certificates and endorsements, for approval.
- 28.2 <u>Verification of Coverage</u>. Developer shall furnish or cause its general contractor(s) to furnish City with certificates of insurance and endorsements required by this Agreement. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms approved by City and are to be received and approved by City prior to the

commencement of construction of all or any portion of the Town Center Project. City reserves the right to require complete certified copies of all required policies at any time.

- 28.3 <u>General Contractor</u>. Developer shall include its general contractor as an additional insured under its policies, or shall furnish separate certificates of insurance and policy endorsements from the general contractor upon demand.
- 28.4 <u>Construction Liens</u>. Upon Final Completion of the Town Center Project and upon City's request during the progress of the Town Center Project, Developer shall submit evidence that all payrolls, material bills and its other indebtedness relating to the work have been paid. Developer shall notify City upon the filing of any Lien or the service of any notice in connection with the Town Center Project, and shall remove or discharge or bond around any such Lien within thirty (30) days of filing.

29. <u>Damage and Destruction; Condemnation</u>.

29.1 <u>Damage and Destruction</u>. After the happening of any casualty to all or any portion of the Town Center Project, Developer shall give City prompt written notice thereof generally describing the nature and cause of such casualty and the extent of the damage or destruction to the Town Center Project. If, prior to the Substantial Completion of the Town Center Project, damage or destruction occurs, Developer shall cause reconstruction and restoration of the Town Center Project in accordance with the applicable Construction Documents and the provisions of this Agreement.

29.2 Condemnation.

- Condemnation by Third Party Prior to Closing Date. In the event condemnation proceedings are threatened against a material portion of the Town Center Project by anyone other than the City, and the same occurs prior to the Closing Date for such Lot, either Party shall have the right by giving written notice of such decision to the other within fifteen (15) days after receiving written notice of such condemnation proceedings to terminate this Agreement, in which event this Agreement shall automatically terminate, all Earnest Money Deposits previously paid in cash pursuant to Section 17 hereof shall be returned to Developer, all work product prepared by or on behalf of Developer for development of the Town Center Project shall immediately and without payment of additional consideration be assigned to City, and neither party shall have any further rights or obligations to the other under this Agreement. Upon termination of this Agreement, Developer will thereafter have no rights to purchase any remaining portion of the Town Center Property. If neither party elects to terminate this Agreement, the Agreement shall remain in full force and effect, Developer shall accept the Town Center Property or Lot affected thereby in its then condition and state of repair, the applicable Purchase Price shall not be affected thereby and all condemnation awards payable to the property owner by reason of such condemnation, if any, shall be paid or assigned to Developer upon closing. In the event Developer elects to complete the purchase of the Town Center Property or affected Lot, it is expressly agreed that City shall have no obligation to repair or restore same.
- b. <u>Partial Condemnation After Closing Date</u>. In the event of a partial condemnation of the Town Center Project or Lot after a Closing Date, to the extent that the

Town Center Project may still be constructed in accordance with the Construction Documents for the affected phase or Lot, or may be constructed in accordance with the Construction Documents for the affected phase or Lot as modified by changes acceptable to Developer and City, Developer shall proceed to construct the Town Center Project or phase in accordance with the Construction Documents, as modified, if applicable. Any such partial condemnation proceeds shall be payable to Developer.

- c. <u>Condemnation by City</u>. City shall be deemed in material breach of this Agreement in the event that it threatens or commences condemnation proceedings against all or any of the Town Center Properties prior to or after the Closing Date for any Lot in the Town Center Project, until the Option Expiration Date, at which time rights under this provision shall terminate.
- 30. <u>Property Taxes</u>. Except to the extent this Agreement provides otherwise or the Parties hereto agree otherwise in writing hereafter, any and all property taxes and assessments levied against the Town Center Property and the Town Center Project or any portion thereof after the Closing Date for such Lot shall be paid by Developer.

31. Default.

- 31.1 <u>Developer Default</u>. The following events shall constitute an "Event of Default" by Developer:
- a. If any of the representations made by Developer in Section 25 become untrue in any material respect or if the Developer knowingly makes misrepresentations of any other material facts and the City relies on them to its detriment;
- b. If Developer or its manager files a petition for bankruptcy or if Developer or its manager make a general assignment for the benefit of Developer's creditors, or if a receiver is appointed on account of Developer's insolvency and any such petition or appointment is not dismissed within ninety (90) days;
- c. If Developer fails to complete Developer's Minimum Project by the Minimum Project Completion Date and does not submit the Notice of Delay in a timely manner (unless the Minimum Project Completion Date is deemed extended pursuant to Section 5.2 hereof);
- d. If Developer fails to pay Extension Fees for the Extension of the Minimum Project Completion Date (unless none are due or none are owed under the terms of Section 5.2 hereof);
- e. If Developer fails to submit a complete building permit application for Phase I Building within sixty (60) days of execution of the Agreement;
 - f. If Developer fails to complete the Phase I Project as set forth in 5.1.2(a);
- g. If Developer fails to complete Developer's Minimum Project by the Outside Extension Date;

- h. If Developer fails to purchase Lot 2 when so obligated under the terms of this Agreement;
- i. If Developer fails to purchase the Developer Parking when so obligated under the terms of this Agreement;
- j. If Developer fails to pay any portion of the total Earnest Money Deposit when due as provided in Section 17 of this Agreement; or,
- k. If Developer has failed to pay the Lot 1 Promissory Note in full by the Maturity Date set forth therein.

31.2 Required Notices; City Remedies upon Developer's Default.

- a. <u>Notice of Default</u>. Upon any monetary Event of Default by Developer, City shall give Developer ten (10) business days' written notice of the same and an opportunity to cure any such Event of Default ("Notice of Default"). Upon any non-monetary Event of Default by Developer, City shall give Developer thirty (30) days' written notice of the same and an opportunity to cure any such Event of Default ("Notice of Default"). If the default cannot reasonably be cured within thirty (30) days, Developer shall not be in default under this Agreement if Developer shall within the thirty (30) day period commence such cure and thereafter in good faith diligently and continuously prosecute such cure to completion.
- b. <u>Termination of Agreement</u>. In the event that Developer does not cure an Event of Default within the aforementioned timeframes, and provided City is not then in Default of this Agreement, City shall have the right to terminate this Agreement and give Developer notice of the same ("Notice of Termination"), provided that the effective date of any such termination shall not be any earlier than a date which is forty (40) days from the date that the Notice of Default was issued.
- c. Retention of Earnest Money Deposit. In the event that this Agreement is terminated under the provisions set forth above, then City shall be entitled to retain no more than the amount set forth in the Earnest Money Deposit Promissory Note as its sole and exclusive remedy against Developer. THE PARTIES ACKNOWLEDGE THAT CITY'S ACTUAL DAMAGES IN THE EVENT OF SUCH A DEFAULT BY DEVELOPER WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR SIGNATURES BELOW, THE PARTIES ACKNOWLEDGE THAT THE AMOUNT SET FORTH IN THE EARNEST MONEY DEPOSIT PROMISSORY NOTE HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF CITY'S DAMAGES AND AS CITY'S EXCLUSIVE REMEDY AGAINST DEVELOPER IN THE EVENT OF A DEFAULT ON THE PART OF DEVELOPER.

City: CITY OF UNIVERSITY PLACE, a Washington municipal corporation

By

Name: Robert W. Jean, City Manager

Developer: UPTOWN CENTER DEVELOPMENT LLC, a New York limited liability company,

By _____ Name: Aaron Lichtman, Member

- d. <u>Specific Performance</u>. In the alternative, City may commence a suit for injunctive relief or specific performance of Developer's obligations hereunder.
- e. <u>Foreclose Lot 1 Mortgage</u>. If an Event of Default occurs with respect to Section 31.1(k) above, City shall be entitled to foreclose the Lot 1 Mortgage as its sole and exclusive remedy for said failure.
- f. <u>Termination of Options and Right of First Refusal</u>. If this Agreement is terminated prior to the Option Expiration Date, the Option and the Right of First Refusal on the Option Lots shall automatically be terminated on the effective date of termination of this Agreement pursuant to the Notice of Termination.
- 31.3 <u>City Default</u>. The following events shall constitute an "Event of Default" by City:
 - a. If City fails to substantially complete City's Minimum Commitment by July 31, 2009;
 - b. If City fails to have that portion of the Parking Structure under, over and across Lot 9 ready to support Developer's construction by January 15, 2008;
 - c. If City fails to have that portion of the Parking Structure, under, over and across Lot 10 ready to support Developer's construction by June 1, 2008;
 - d. If City fails to have that portion of the Parking Structure under, over and across Lot 8 ready to support Developer's construction by April 1, 2008;
 - e. If City fails to have that portion of the Parking Structure under, over and across Lot 7 ready to support Developer's construction within 11 months following Developer providing the City with: (i) the desired grid; (ii) load requirements if more than typically contained in four stories of construction; and (iii) any desired circulation, all of the aforementioned items being based upon the needs of an identified tenant or tenants;
 - f. If City fails to purchase the City's public portion of the Enclosed Square when obligated to do so under the terms of this Agreement;

- g. If City fails to purchase the Library from Developer when obligated to do so under the terms of this Agreement, as it may be hereafter amended to take into account any contract between the City and the Library District;
- h. If City fails to execute the City Hall Lease when obligated to do so under the terms of this Agreement;
- i. If City fails to sell Developer any one or more of the Lots provided for herein despite all of the City's preconditions set forth herein having been met for that particular phase or Lot(s);
- j. If City fails to sell Developer any one or more of the Option Lots pursuant to the terms of the Option or the Right of First Refusal set forth in Section 12 herein, despite Developer's acceptance of the terms proposed to it by City;
- k. If any of the representations made by City in Section 25 become untrue in any material respect or if the City knowingly makes misrepresentations of any other material facts and the Developer relies on them to its detriment; or
- 1. If City files a petition for bankruptcy and any such petition or appointment is not dismissed within ninety (90) days.
- m. If City is in material breach of any obligation under any lease agreement between Developer, as Landlord, and City, as Tenant, including, but not limited to the City Hall Lease and the University Building Lease.
 - n. If City fails to obtain financing to construct the Parking Structure.

31.4 Required Notices; Developer's Remedies upon City's Default.

- a. Notice of Default. Upon any monetary Event of Default by City, Developer shall give City ten (10) business days' written notice of the same and an opportunity to cure any such Event of Default ("Notice of Default"). Upon any non-monetary Event of Default by City, Developer shall give City thirty (30) days' written notice of the same and an opportunity to cure any such Event of Default ("Notice of Default"). If the default cannot reasonably be cured within thirty (30) days, City shall not be in default under this Agreement if City shall within the thirty (30) day period commence such cure and thereafter in good faith diligently and continuously prosecute such cure to completion.
- b. <u>Termination of Agreement</u>. In the event that City does not cure an Event of Default within the aforementioned timeframes, and provided Developer is not then in Default of this Agreement, Developer shall have the right to terminate this Agreement and give City notice of the same ("Notice of Termination"), provided that the effective date of any such termination shall not be any earlier than a date which is forty (40) days from the date that the Notice of Default was issued.
 - c. Refund of Earnest Money Deposit. In the event that this Agreement is

terminated under the provisions set forth above for that certain Event of Default listed in Section 31.3(f) above, then Developer shall be entitled to a full refund of all the Earnest Money Deposit paid up until the date of City's default, including any applicable cure period described herein.

- d. <u>Limited Monetary Damages</u>. In the event of an Event of Default pursuant to Sections 31.3(a) through (e), then the Developer shall be entitled, in addition to any other remedies available hereunder, to the following monetary damages, limited from what may otherwise available at law, for each day that passes between the timeframes set forth in Section 31.3 (a) through (e) to the date when the obligations set forth in Section 31.3(a) through (e) are substantially completed: (i) an amount equal to any penalties incurred by Developer to retailers as a result of City's Event of Default hereunder; and, (ii) an amount equal to any interest incurred by Developer on any financing as a result of City's Event of Default hereunder.
 - e. <u>Specific Performance</u>. Developer may commence a suit for injunctive relief or specific performance of City's obligations hereunder,
 - f. Waiver. Developer may elect to waive such City Event of Default.
- 31.5 <u>Rights and Remedies Cumulative</u>. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by either party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default by the other party.

32. <u>Dispute Resolution</u>.

- 32.1 <u>Policy</u>. The Parties shall use good faith efforts to resolve all claims, disputes and other matters in question between the Parties arising out of or relating to this Agreement, or the performance of services thereunder (each a "Matter in Dispute") using the procedures set forth herein.
- 32.2 <u>Senior Management</u>. If a Matter in Dispute arises, the aggrieved party shall promptly notify the other party to this Agreement in writing of the dispute, but in any event within fifteen (15) days after the dispute arises. If the Parties shall have failed to resolve the Matter in Dispute within fifteen (15) days after delivery of such notice, each party shall nominate a senior officer of its management with authority to bind such party to meet at a mutually agreed location to attempt to resolve the Matter in Dispute. Should the Matter in Dispute involve the general contractor in any way, a senior officer of general contractor shall also attend the meeting. Should the senior officers be unable to resolve the Matter in Dispute within fifteen (15) days of their nomination, the Parties shall submit the Matter in Dispute to Mediation as provided in Section 32.3 below as a condition precedent to pursuing other alternative dispute procedures or litigation.
- 32.3 <u>Mediation</u>. If prior to Final Completion a dispute arises between City and Developer regarding construction of the Town Center Project, the adequacy of any drawings or specifications, or the responsibility for any costs associated with Change Orders or any other matter arising under this Agreement, the Parties shall proceed in good faith to resolve such dispute as expeditiously as possible and shall cooperate so that the progress of design and

construction of the Town Center Project is not delayed. If, however, the Parties are unable to resolve the dispute, they agree to utilize the mediation process contained herein, which will be nonbinding but a condition precedent to having said dispute decided in court by a judge or jury; provided, however, that the City and Developer may agree in writing to waive this condition.

- 32.4 <u>Mediation Process</u>. City or Developer, by delivering written notice to the other, may refer any dispute described above to any natural person not employed by either City or Developer or an affiliate of either who shall also be a construction professional with at least five (5) years' experience in the Pierce County metropolitan commercial real estate market, and any successor thereto approved by City and Developer ("Mediator").
- 32.5 <u>Consideration of Disputes or Claims</u>. Upon receipt by the Mediator of written notice of a dispute, either from City or Developer, the Mediator shall convene a hearing to review and consider the dispute. Both City and Developer shall be given the opportunity to present their evidence at this hearing. Both City and Developer are encouraged to provide exhibits, calculations and other pertinent material to the Mediator for review prior to the hearing.
- 32.6 <u>Construction Site Visit</u>. The Mediator may visit the site of the Town Center Project to keep abreast of construction activities and to develop familiarity with the work in progress. The frequency, exact time, and duration of these visits shall be as mutually agreed upon among the Mediator, City and Developer, but only as necessary to address a dispute. In the case of an alleged changed condition or construction problem, it will be advantageous, but not absolutely necessary for the Mediator to view such conditions. Photographs and descriptions of these conditions by both Parties will suffice, if a site visit by the Mediator would cause delay to the construction of the Town Center Project.
- 32.7 <u>Procedures</u>. Upon the first referral to the Mediator of a dispute hereunder, the Mediator shall, with the agreement of the Parties, establish procedures for the conduct of any hearings for consideration of disputes and claims. The conduct of the Mediator's business shall, in general, be based on this Agreement and if applicable, the Construction Documents.
- 32.8 <u>Independence of Mediator</u>. It is expressly understood that the Mediator is to act impartially and independently in the consideration of facts and conditions surrounding any dispute presented by City and Developer, and that the recommendations concerning any such dispute are advisory only. The Mediator's recommendations shall be based on the pertinent agreement provisions, and the facts and circumstances involved in the dispute. The recommendations shall be furnished in writing to the Parties.
- 32.9 <u>City Responsibility</u>. City shall furnish the Mediator one copy of all documents it might have, other than those furnished by the Developer, which are pertinent to the performance of the Mediator.
- 32.10 <u>Coordination</u>. The Parties will coordinate to effectively assist the Mediator's operation.
- 32.11 <u>Developer Responsibility</u>. Developer shall furnish the Mediator one copy of all Construction Documents including all applicable contracts, interpretative geotechnical reports, progress schedules and updates, monthly progress reports, and other documents pertinent to the

performance of the Agreement and necessary to the Mediator's work.

- 32.12 Payment. The fees charged by the Mediator shall be shared equally by the Parties. Payments shall be full compensation for work performed, services rendered, and for all materials, supplies, travel, office assistance and support and incidentals necessary to serve. Payment for services rendered by the Mediator and for the Mediator's expenses shall be at the rate or rates established by the Mediator, which in any event shall not exceed the usual and customary rate or rates prevailing in Pierce County, Washington, for mediation services of the sort described herein. The Mediator may submit invoices for payment for work completed not more often than once per month during the progress of the work. Such invoices shall be in format approved by both Parties, and accompanied by a general description of activities performed during that period. The value of work accomplished for payment shall be established from the billing rate and hours expended by the Mediator. The invoiced amount shall be divided in half and clearly stated. A copy is to be sent to City and Developer for payment. Satisfactorily submitted invoices shall be paid within sixty (60) days.
- 32.13 <u>Litigation</u>. Only after the mediation has concluded, may either party seek resolution of the Matter in Dispute through litigation; provided however, that this Section 32 shall not be applicable to or required prior to the filing of a suit for injunctive relief or specific performance.
- 33. <u>Prohibition Against Transfers of Interest in Developer or Assignment of this Agreement.</u> Developer acknowledges that City is relying upon the personal knowledge, expertise and experience of Developer and its Managing Member, Aaron Lichtman, in entering into this Agreement. Accordingly, Developer's rights under this Agreement may not be assigned nor its duties and obligations delegated except as otherwise provided for in this Agreement, without the prior written consent of City, which may not be unreasonably withheld, conditioned or delayed.
- 33.1 <u>Transfers of Interests in Developer</u>. Developer shall not (a) sell, transfer, convey, assign, dispose or encumber any interest in Developer or any interest in any member or manager of Developer, (b) admit any additional or substitute member in Developer or any member or manager in Developer; (c) change the manager or managing member of Developer, or (d) change or transfer the ownership interests of the member of Developer or any manager in Developer without the prior written consent of City, which consent may not be unreasonably withheld, conditioned or delayed.
- 33.2 <u>Definition of Transfer</u>. As used herein, a "transfer" includes any sale, transfer, conveyance, assignment, mortgage, pledge or other disposition of any interest in Developer or any interest in any manager of Developer, whether voluntary or involuntary, by operation of law or otherwise, including transfers to a trustee in bankruptcy, receiver or assignee for the benefits of creditors, any merger, consolidation, liquidation or dissolution of Developer or any manager of Developer and includes the withdrawal or admission of members in Developer or any manager of Developer and the sale, transfer, mortgage, pledge or encumbrance of a membership interest in Developer or any interest in any manager of Developer. The execution and delivery by Developer or any manager of Developer of any joint venture agreement, partnership agreement, declaration of trust, option or other agreement whereunder any other person may become entitled, directly or indirectly, to the rights of Developer under this Agreement, or other

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benefits derived or to be derived therefrom shall in each case be deemed to be a transfer of Developer's interest for the purpose of this Section and shall require the prior written consent of City, such consent not to be unreasonably withheld, conditioned or delayed.

- 33.3 <u>No Assignment of Agreement</u>. Developer shall not voluntarily or involuntary sell, transfer, convey, assign or otherwise dispose of its rights under this Agreement, in whole or in part, without the prior written consent of City. City acknowledges that Developer may assign its rights under this Agreement to a lender solely in connection with construction of the Project on the Town Center Property.
- 33.4 <u>Transfer of the Town Center Project Site Prior to and After Substantial Completion and Stabilized Occupancy of the Town Center Project.</u> Except for Permitted Transfers described at Section 33.5, Developer shall not sell, transfer, lease (other than space leases of the retail space without options to purchase), convey, encumber (except to a construction lender) or enter into a contract of sale or other conveyance of all or any part of or any interest in the Town Center Property or any Lot thereof (except for "pre-sale agreements" with individual homeowners to purchase residential units), except as follows:
- a. Prior to Substantial Completion of the Developer's Minimum Project, City may withhold its consent in its sole and absolute discretion.
- b. After Substantial Completion, but prior to Stabilized Occupancy of the Developer's Minimum Commitment, the City may not unreasonably withhold, condition or delay its consent to any such transfer. For purposes of this Agreement "Stabilized Occupancy of Developer's Minimum Commitment" means that each of the following conditions have been met for a period of six consecutive months: (a) 95 percent of all retail space has been leased to tenants who are in occupancy and paying rent, (b) the Ticket Venue, if constructed, is open for business, and (c) the Hotel, if constructed, is open for business.
 - c. After Substantial Completion and Stabilized Occupancy of the Developer's Minimum Commitment, no consent of the City shall be required for a Transfer under this Section.
- 33.5 <u>Permitted Transfers</u>. Notwithstanding anything to the contrary, Developer shall be permitted to transfer:
- a. its interests in any portion of the Town Center Property prior to closing on the sale thereof with City to any member or manager of Developer or any affiliate of Developer with at least 50 percent or more ownership in the Developer.
- b. its interests in Lot 1 and/or air space over Lot 7 to a transferee before Substantial Completion of the improvements contemplated thereon under the terms of this Agreement, or prior to Closing on the purchase of Lot 1 and/or air space over Lot 7, provided that:

- (i) the transferee of the air space condominium unit over Lot 7 Parking Garage is an owner of a ticket venue that has been approved by the City and is reasonably experienced in operating the approved ticket venue, or an entertainment real estate investment trust ("EREIT") who has a tenant who is reasonably experienced in operating or owning a first run multi-plex cinema movie theater or arts theater, and Developer demonstrates to the City that the movie theater will meet the Developer's Minimum Commitment as set forth in Sections 2.1 through 2.3;
- (ii) the transferee of Lot 1 is an owner or operator of an established hotel chain or a is a hospitality real estate investment trust ("HREIT") who has a tenant who is reasonably experienced in operating or owning a Hotel of the kind contemplated by the Parties for the Project, and Developer demonstrates to the City that the transferee will assume the Developer's Minimum Commitment as set forth in Section 2.1 through 2.3;
- (iii) the transferees of both Lots are subject to the terms of this Agreement; and,
- (iv) the transferees are of the same or better level of experience for the Project as Developer.
- c. to any special purpose entity created by Developer for the purposes of owning or developing any portion of the Town Center Property as may be required by Developer's lender or elected by Developer.
- 34. <u>Taxes and Contributions</u>. Developer assumes full and exclusive responsibility and liability for withholding and paying, as may be required by law, all federal, state and local taxes and contributions with respect to, assessed against, or measured by Developer's earnings hereunder, or salaries or other contributions or benefits paid or made available to any persons retained, employed or used by or for Developer in connection with its services, and any and all other taxes and contributions applicable to its services for which Developer may be responsible under any laws or regulations, and shall make all returns and/or reports required in connection with any and all such laws, regulations, taxes, contributions and benefits.

35. Miscellaneous.

Notwithstanding anything contained herein to the contrary, neither party guarantees or warrants to the other party the successful leasing of the built space, sales averages, or sales totals.

- 35.1 <u>Burden and Benefit</u>. The covenants and agreements contained herein shall be binding upon and inure to the benefit of the successors and permitted assigns of the respective Parties hereto.
- 35.2 <u>No Continuing Waiver</u>. Any waiver by either of the Parties of any breach of any covenant herein contained to be kept and performed by the other party shall not be deemed or considered as a continuing waiver, and shall not operate to bar or prevent the damaged party from declaring a forfeiture for any succeeding breach, either of the same condition or covenant or otherwise.

- 35.3 <u>Nondiscrimination</u>. Developer will not discriminate and shall ensure that Architect, its general contractor(s) and all other contractors engaged by Developer in connection with the Town Center Project do not discriminate in employment on the basis of race, color, creed, religion, political ideology, age (except legitimate minimum age and retirement provisions), sex, marital status, sexual orientation, national origin, veteran status or the presence of any sensory, mental or physical handicap (unless based on a bona fide occupational qualification) in regard to any position for which the employee is qualified in compliance with all applicable federal, state and local laws, rules and regulations. This requirement shall apply to, but not be limited to the following: employment, recruitment or recruitment advertising, layoff, demotion or termination, rates of pay or other forms of compensation and selection for training, including apprenticeships. Any violation of this provision shall be considered an Event of Default under this Agreement and City shall have all of the rights and remedies provided under Section 31 of this Agreement.
- 35.4 <u>Neutral Authorship</u>. In connection with the execution and delivery hereof, each party has been represented by counsel. Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of both Parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.
- 35.5 <u>Terminology</u>. All personal pronouns used in this Agreement, whether used in the masculine, feminine and neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.
- 35.6 <u>Complete Agreement; Amendment</u>. This Agreement, together with the exhibits annexed hereto or referred to herein, is intended to be the entire agreement of the Parties with regard to the subject matter hereof and may only be amended with the written consent of both Parties.
- 35.7 <u>Severability</u>. Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.
- 35.8 <u>Relationship of Parties</u>. Developer and City shall not be construed as joint venturers or general partners, and neither shall have the power to bind or obligate the other party except as set forth in this Agreement. Developer shall have no right or authority, express or implied, to commit or otherwise obligate City in any manner whatever except to the extent specifically provided herein or specifically authorized in writing by City.
- 35.9 <u>No Third Party Rights</u>. The provisions of this Agreement are intended solely for the benefit of, and may only be enforced by, the Parties hereto and their respective successors and permitted assigns. None of the rights or obligations of the Parties herein set forth (or implied) is intended to confer any claim, cause of action, remedy, defense, legal justification, indemnity, contribution claim, set-off, or other right, whatsoever upon or otherwise inure to the

benefit of any contractor, Architect, subcontractor, worker, supplier, mechanic, architect, insurer, surety, guest, member of the public, or other third parties having dealings with either of the Parties hereto or involved, in any manner, in the Town Center Project.

35.10 Representatives.

- 35.10.1 <u>Representatives of Developer.</u> Developer shall consult with City on initial assignments of personnel assigned to the Town Center Project. Developer agrees that the person with overall responsibility for the work for the Town Center Project shall be designated by Developer prior to Phase II. City shall have the right to approve any changes in the personnel named above, such approval not to be unreasonably withheld.
- 35.10.2 <u>Representatives of City.</u> City shall designate a representative authorized to act on City's behalf with respect to the Town Center Project. City or such authorized representative shall promptly render decisions to avoid delay in the orderly process of design and construction of the Town Center Project. The initial representative of City shall be Steve Sugg. City's Representative may be changed by City from time to time.
- 35.11 Notices. Any notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to either party hereto by the other party, shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the party to whom it is addressed or in lieu of such personal service, three (3) days after it is deposited in the United States mail, first-class postage prepaid, certified or registered, return receipt requested, addressed as follows, sent via facsimile transmission with machine confirmation of receipt followed by a "hard copy" mailed regular mail, within one (1) business day to the fax number listed as follows:

City: City of University Place 3715 Bridgeport Way University Place, Washington 98464

Attn: City Manager Facsimile: (206) 460-2546

With a copy to: City of University Place 3715 Bridgeport Way University Place, Washington 98466

Attn: City Attorney Facsimile: (206) 460-2546

and to: K & L Gates LLP 925 Fourth Avenue, Suite 2900 Seattle, Washington 98104-1158

Attn: Jay A. Reich

Facsimile: (206) 623-7022

Developer: Uptown Center Development LLC 1560 Broadway, 10th Floor New York, New York 10036 Attn: Aaron Lichtman Facsimile: 646-292-3551

With a copy to: Gordon, Thomas, Honeywell et al. 1201 Pacific Avenue, Ste. 2100 Tacoma, Washington 98401 Attn: Jemima J. McCullum

Facsimile: (253) 620-6565

With a copy to:

Tara Rosenbaum, Esq. 1560 Broadway, 10th Floor New York, New York 10036 Facsimile: 646-292-3551

Either party may change its address for the purposes of this Section by giving written notice of such change to the other party in the manner provided in this Section.

- 35.12 <u>Non Waiver of Governmental Rights</u>. Except as required herein, the City shall not be required to take any discretionary action relating to development of the improvements to be constructed on the Town Center Property, including, but not limited to, zoning and land use decisions, permitting, or any other governmental approvals.
- 35.13 <u>Captions</u>. The captions of this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement.
- 35.14 <u>Counterparts</u>. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.
- 35.15 <u>Further Assurance</u>. Each party hereto agrees that it will execute or furnish such documents and further assurances to the other or to proper authorities as may be necessary for the full implementation and consummation of this Agreement and the transactions contemplated hereby.
 - 35.16 Intentionally Omitted.
- 35.17 No Brokers. Each party represents to the other that no brokers have been involved in this transaction or the sale of the Town Center Property to Developer pursuant to the provisions of this Agreement. In the event of a claim for broker's fee, finder's fee, commission or other similar compensation in connection with any provision of this Agreement, City, if such claim is based upon any agreement alleged to have been made by City, hereby agrees to indemnify Developer against and hold Developer harmless from any and all damages, liabilities, costs, expenses and losses (including, without limitation, reasonable attorneys' fees and costs) which Developer may sustain or incur by reason of such claim, and Developer, if such claim is

based upon any agreement alleged to have been made by Developer, hereby agrees to indemnify City against and hold City harmless from any and all damages, liabilities, costs, expenses and losses (including, without limitation, reasonable attorneys' fees and costs) which City may sustain or incur by reason of such claim. The provisions of this Section 35.17 shall survive the last to occur of the termination of this Agreement or the final completion of the Town Center Project by Developer.

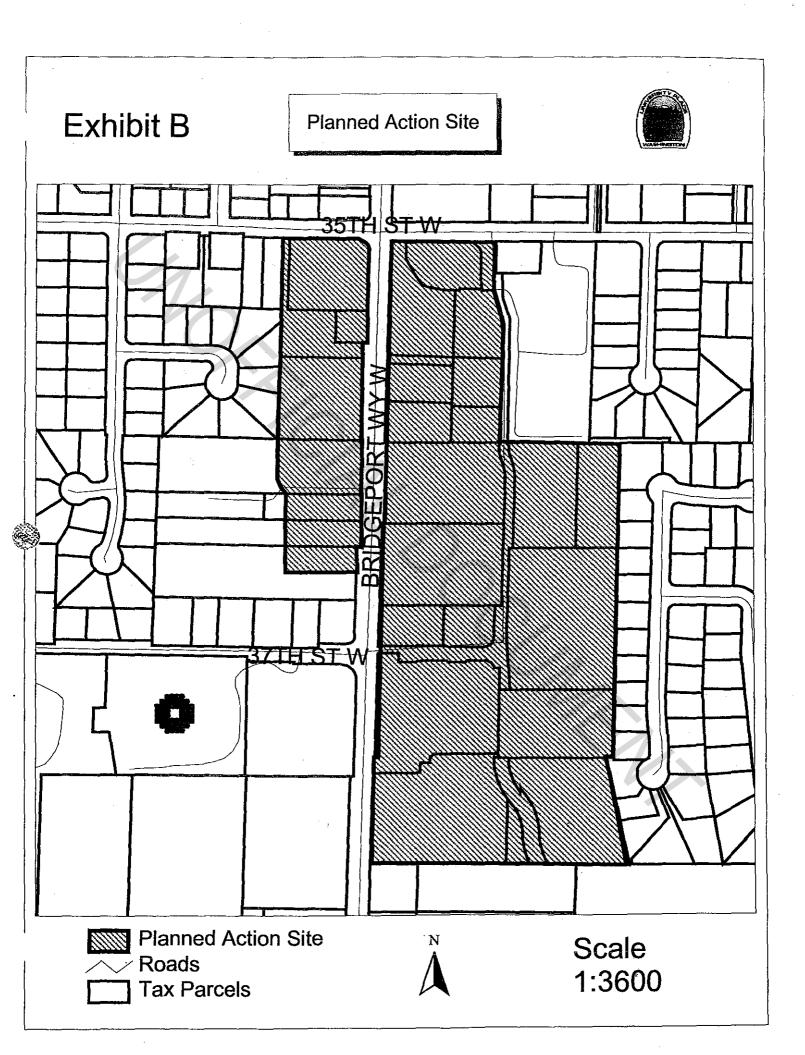
- 35.18 Employees of Developer. At all times and for all purposes of this Agreement, each party shall act in an independent capacity and not as an agent or representative of the other party. The Parties, in the performance of this Agreement, will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever, nor will the Contractor make any claim of right, privilege or benefit which would accrue to an employee under Chapter 41.06 RCW, Chapter 23B.16 RCW, or Title 51 RCW. Each party shall enter all contracts with others, whether for employment or otherwise, as principal and not as agent for the other. Neither party shall use the other's credit, nor purport to incur obligations on behalf of the other.
- 35.19 Memorandum of Agreement. Promptly following execution hereof, the Parties shall record a Memorandum of this Agreement in the real property records of Pierce County, Washington that is mutually agreeable to the Parties hereto and shall be attached hereto at that time as Exhibit MM.
- 35.20 Attorneys' Fees. Each party shall be responsible for payment of the legal fees of its counsel in the event of any litigation, mediation, arbitration or other proceeding brought to enforce or interpret or otherwise arising out of this Agreement.
- 35.21 <u>Waiver of Jury Trial</u>. CITY AND DEVELOPER HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM ARISING OUT OF THIS AGREEMENT, WHETHER NOW OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE AND HEREBY CONSENT AND AGREE THAT ANY SUCH CLAIM SHALL BE DECIDED BY TRIAL WITHOUT A JURY. EITHER PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE WAIVER AND AGREEMENT CONTAINED HEREIN.
- 35.22 <u>Survival of Provisions</u>. All of the following provisions of this Agreement shall survive any expiration or earlier termination of this Agreement and any Closing, settlement or other similar event which occurs under this Agreement: 3, 4, 11, 12, 14, 19.3, 27, 29.2(c), and 33. Except as expressly provided herein, all other representations, warranties, covenants, and agreements contained in this Agreement shall merge into the applicable deed of conveyance and shall not survive such closing as they relate to that Lot, Space, or Building or shall otherwise terminate at the Option Expiration Date or other termination of this Agreement.
- 35.23 No Municipal Conflict of Interest. No member, official or employee of the City shall make any decision relating to the Agreement which affects his or her personal interests or

the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

- 35.24 <u>Non-Liability of City, Officials, Employees, and Agents.</u> No member, official, employee or agent of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement.
- 35.25 <u>Applicable Law</u>. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington, without regard to principles of conflicts of laws, and venue shall lie in Pierce County, Washington
- 35.26 <u>Cooperation</u>. The Parties will cooperate with each other, to the extent permitted by the applicable law, in every reasonable way in carrying out the transactions contemplated by this Agreement, in fulfilling all of the conditions to be met by the Parties in connection with this Agreement, and in obtaining and delivering all required documents. In addition, the Parties will cooperate with each other, to the extent permitted by applicable law, in obtaining all necessary permits and land use approvals.
- 35.27 <u>Time is of the Essence</u>. Subject to the terms set forth in Section 5.2 of this Agreement, time is of the essence of this Agreement. All periods of time referred to herein shall include Saturdays, Sundays, Jewish, and legal holidays in the State of Washington, except that if the last day of any period falls on any Saturday, Sunday or legal holiday, the period shall be extended to the next business day.
- 35.28 <u>Consent</u>. Whenever the consent of a party is required, unless otherwise expressly stated, such consent shall not be unreasonably withheld, delayed, or conditioned.
- 35.29 OFAC. Each party represents and warrants to the other that it is not listed in Executive Order 13224 Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit or Support Terrorism, as amended ("Executive Order 13224"), and each party has no present, actual knowledge that any other persons or entities holding any legal or beneficial interest whatsoever in each party are included in, owned by, controlled by, knowingly acting for or on behalf of, knowingly providing assistance, support, sponsorship or services of any kind to, or otherwise knowingly associated with any of the persons or entities referred to or described in Executive Order 13224, or banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first above written.

Developer:	City:
UpTown Center Development LLC, a New York limited liability company	City of University Place, a Washington municipal corporation
By:Name:	By:
Title:	Title:



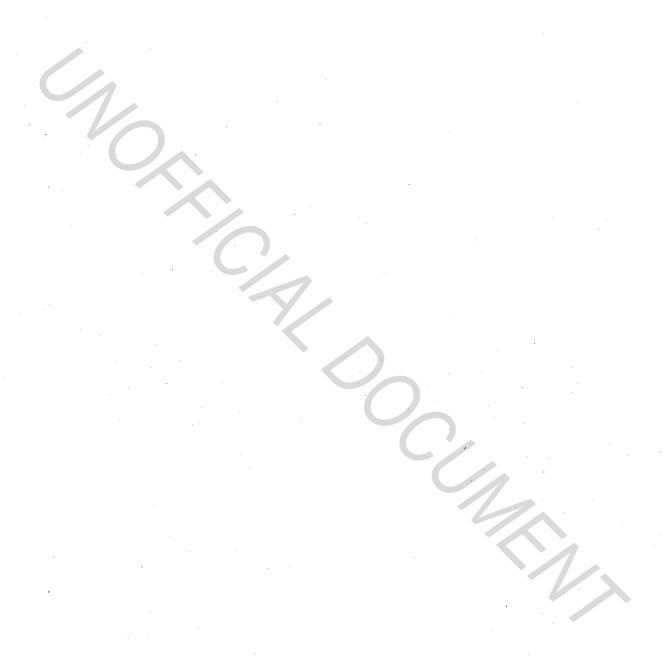


Exhibit B

UNIVERSITY PLACE TOWNCENTER

A POHTION OF THE NW. 1/4 AND THE NE. 1/4 OF SECTION 15, TOWNSHIP 20 NORTH, RANCE 2 EAST OF THE WILLAMETTE MERIDIAN, CITY OF UNIVERSITY PLACE, WASHINGTON.

SITE

LEGAL DESCRIPTION



VICINITY MAP

OWNER'S FREE CONSENT

KNOW ALL PECULE BY THESE PRESENTS HAT THE CITY OF UNMERSIATE PLACE. THE MINISTERIOR ATTEST THAT WE ARE THE CEAL OWERS OF THE PROPERTY CONTAINED WITH THE BOUNDAIRS OF THIS BOWN OF SITE PLAN WE PLACE BRINGHES SITE PLAN WEN, THE RESE CONSENT AND IN ACCORDING WITH ORD RESPECT.

DEDICATION

N WINESS WHEREOF WE HAVE SET OUR HAND AND SEAL.

THE OF UNPERSITY PLACE

R.W. JESPN, CARTY MANAGER

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OLE OF THE THE TOTAL A HALL DURING THE AND CHARE AND SAD MAINT OF WAY.

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ATAL SOUTH BATH.

RE OF BROOKEDORY WATH.

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DEVELOPMENT SERVICES DIRECTOR APPROVALS:

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A PORTION OF LAND WITHIN THE MORTH HALF OF SECTION 15, TOWNSHIP 20 MORTH, RANGE 2 EAST, WAL., DESCRIBED AS FOLLOWS:

ASSESSOR/TREASURER

2-1-07 DATE I HEREN CERTIFY THAT ALL STATE, AND COUNTY TACES HERETOFORE LEWED AGAINST THE PROPERTY AND RECORDS OF MY OFFICE, HAVE BEEN FULLY PAUD AND DISCHARGED. Ke Madon

CITY ENGINEER

NO. 2002. CELET.

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SOUND OCTATOR. WEST 370,79 FEET.

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HONGS GORTH GHYZVE ESST 1283 BTET.
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HOLD BROWN OF 191.3 FETT.

3

1-31-07 P OTHER BEDGE

FIRE PREVENTION

1.81.07 De De Marine

RECORDING CERTIFICATE

FILED FOR RECORD AT THE REQUEST OF THE CITY OF UNIVERSITY PLACE AUDITORS FEE NO. _

AUDITOR'S CERTIFICATE PIERCE COUNTY AUDITOR

THE BROWS WEST ALGNO SALD SOUTH LINE LAZEN FEET TO THE ENSTERLY RIGHT OF WAY LINE OF MAKE AND THE GREAT CHANGEST CHANGES CHANGEST CHANGEST CHANGEST CHANGEST CHANGEST CHANGEST CHANGES

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BY The for record this 154 day of Fe*brua. Y* 2001, at 39 minites past 102.4. M. Records of the prefice county auditor, tacoma, washington.

RECORDING NUMBER 2007 020 1 520 3

ALT MC (4-14) IN C. M. T. M. T.

SURVEYOR'S CERTIFICATE

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MELVIN F. GARLAND P





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SHEET 10F9

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ALONE SAON PREST ROAT OF WAY 100.00 FEE!
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UNIVERSITY PLACE TOWNCENTER
A PORTION OF THE NW. 1/4 AND THE NE 1/4 OF SECTION IS, TOWNSHIP 20 NORTH, RANGE 2 EAST OF THE
THE WALLAWETTE MENDIAN, CITY OF UNIVERSITY PLACE, WASHINGTON

LEGAL DESCRIPTIONS (commo real section s)

TRAT PART OF BROORDICKT WIY, SOTH STREET WEST AND DRECKER ANDARE, WEST LING WITHEN THE MARTHEST QUARTER AND MORPELST QUARTER AS TOLDING. TO MORPH, RAMSE 2 EAST, RM, DESCREED AS FOLLINGS. THAT PLAT OF BROODD'STEM VLYNG KATH OF THE TRAILOWING DESCRIBED LINE. COMMISSION ALT THE KATHLEGST CONNEX TO THE KATHLEGST CHANGE OF SUB-CASH OF THE SAST ALKADE, RECEIVE THE REGISER THAT ALKADE THE SAST ALKADE RECEIVE THE REGISER THAT ALKADE THE SAST ALKADE RECEIVE THE REGISER THAT ALKADE THE RECEIVE WHILL THE RECOVERY WAY THE THAT THE SAST AND THE SAST ALKADE THE

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HENSE SOUTH ONSOLYT EAST FEET TO THE BEGINNING OF A CURNE TO THE LEST, THE RADIUS POINT OF MAYS DEARS SOUTH BEDWITT EAST, 181,38 FEET,

DOCEPT THE WORTH 265 FEET THEREOF

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AND EXCEPT BRIDGEPORT HAY ON THE EAST. EXCEPT THE WEST 400 FEETS

PARCEL R. (022015-2-258) THE EAST 240 FEET OF THE PROPERTY DESCRIBED AS FOLLOWS:

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THE EAST & FEET OF THE PROPERTY DESCRIBED AS FOLLOWS.

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PARCEL V (022015-1-107) HE NORTH 255 FEET OF THE FOLLOWING DESCRIBED PROFERTY:

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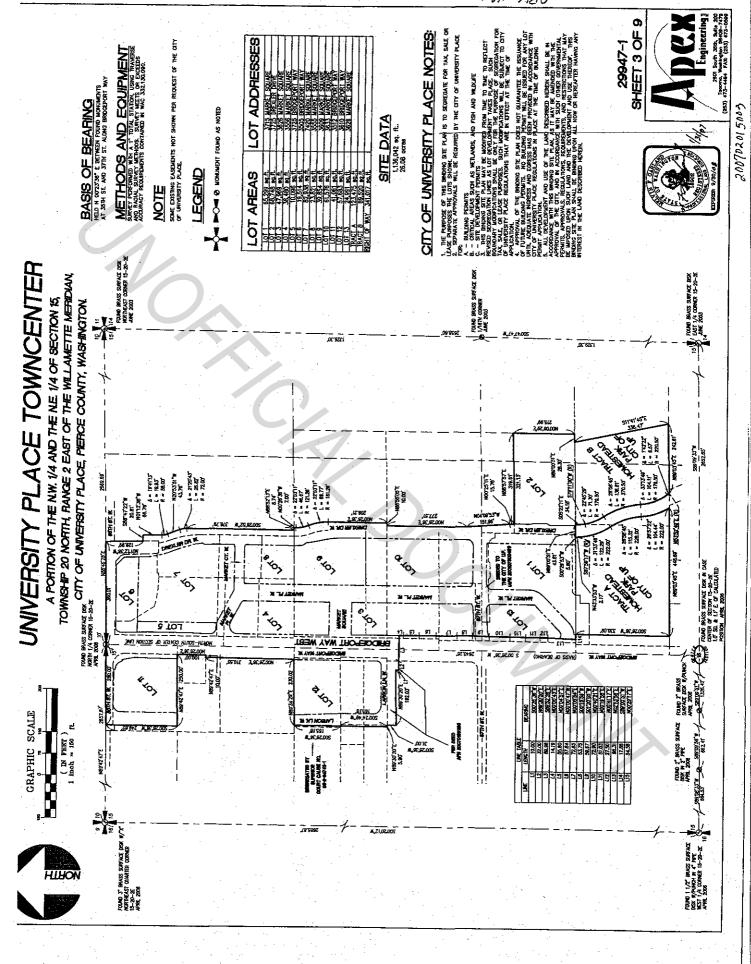
THE OWNERS SOUTH OTSIGN, WEST, GROUD FIELD ALLOW THE WEST LINE OF SUB-COUNTING WAY AS COMPETED BY INCOMPRESSED SUB-MASSED CASA, AND REET TO THE ESTEEMS AND THE OWNERS THE AMERIES SELECTED LINES. THE AMERIES SELECTED THE OWNERS THE AMERIES SELECTED THE OWNERS SELECTED THE OWNERS STATES AND THE OWNERS STATES THE AMERIES THE SELECTED THE OWNERS STATES THE OWNERS STATES THE AMERICAN THE OWNERS STATES THE STATES STATES STATES THE OWNERS STATES STATES THE OWNERS STATES STATES THE OWNERS STATES STATES STATES STATES STATES STATES THE S

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DUDDY THE NEST 3 FEET THEREOF CONNETED TO PERCE COUNTY FOR ADDITIONAL MISHT OF MAY FOR BRIDGEPORT MAY BY DEED RECORDED UNDER RECORDING MARRIER REPORTATIONS

29947-1 SHEET 2 OF 9

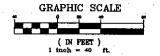


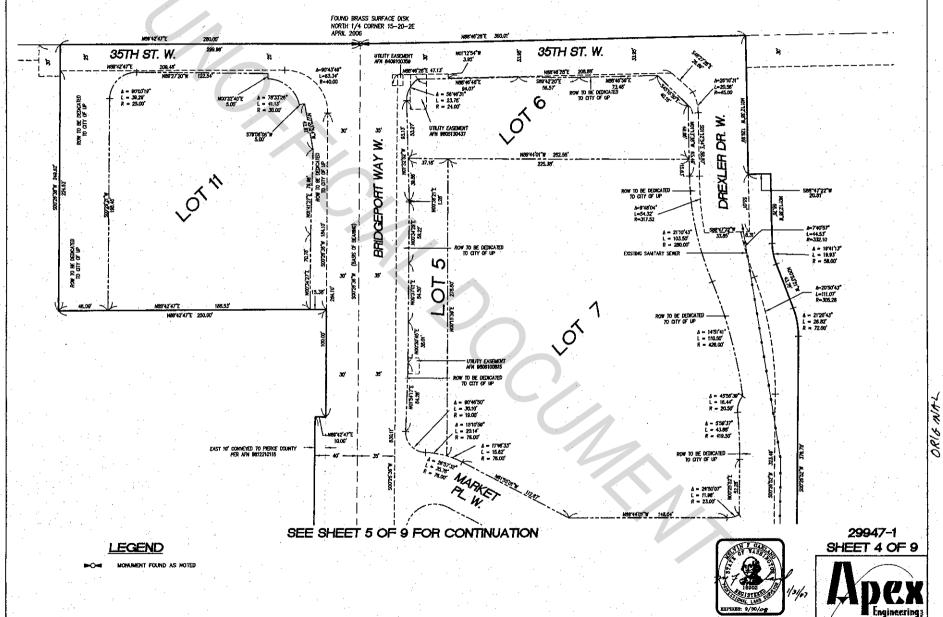




UNIVERSITY PLACE TOWNCENTER

A PORTION OF THE N.W. 1/4 AND THE N.E. 1/4 OF SECTION 15, TOWNSHIP 20 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, CITY OF UNIVERSITY PLACE, WASHINGTON.

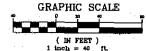


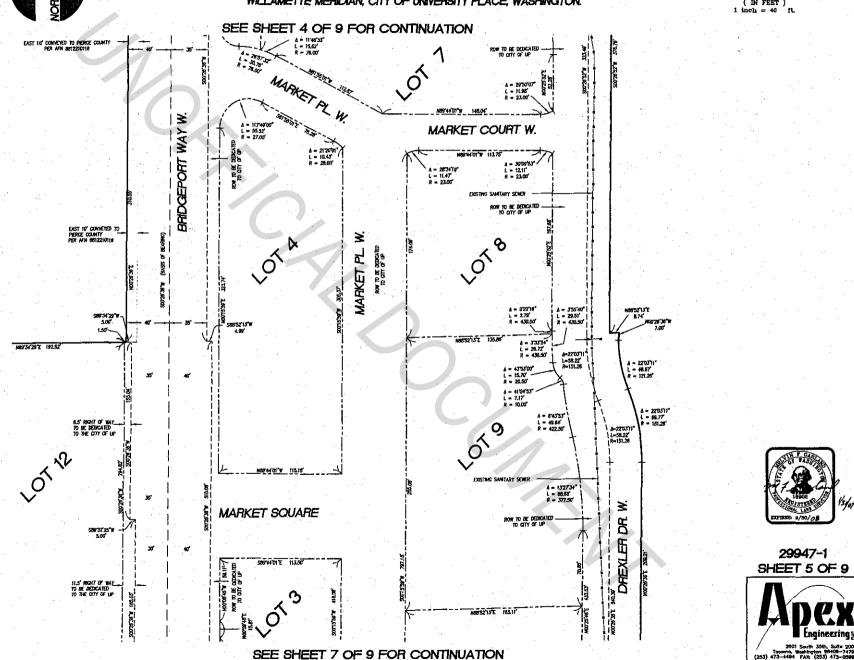


2801 South 38th, Sulta 200 Tocomo, Washington 98409-7479 (253) 473-4494 FAX: (253) 473-0599

UNIVERSITY PLACE TOWNCENTER

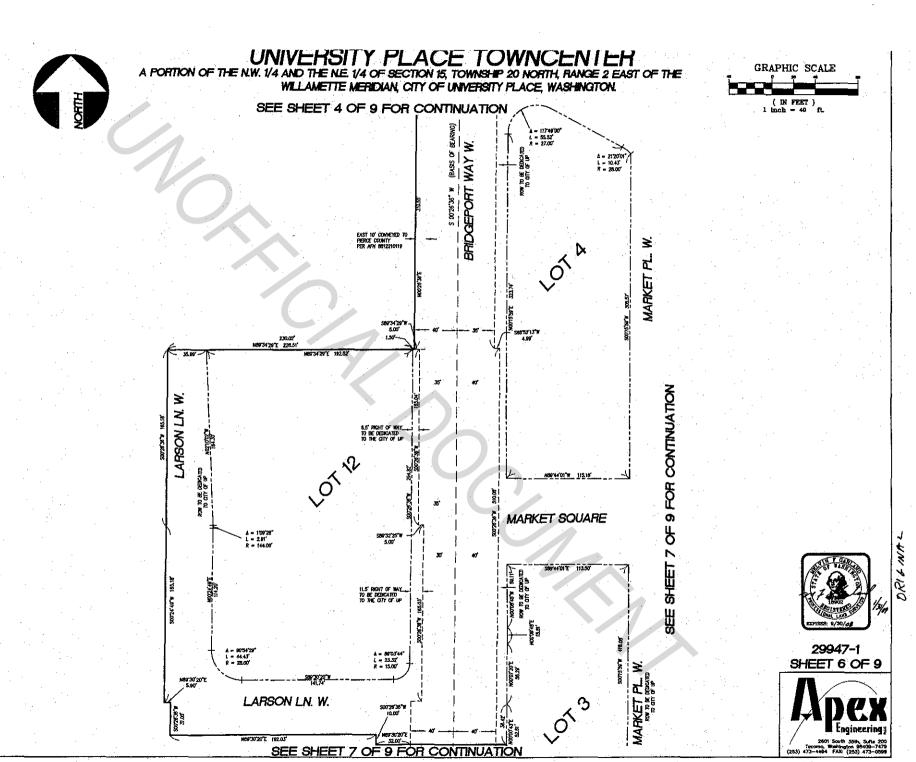
A PORTION OF THE N.W. 1/4 AND THE N.E. 1/4 OF SECTION 15, TOWNSHIP 20 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, CITY OF UNIVERSITY PLACE, WASHINGTON.





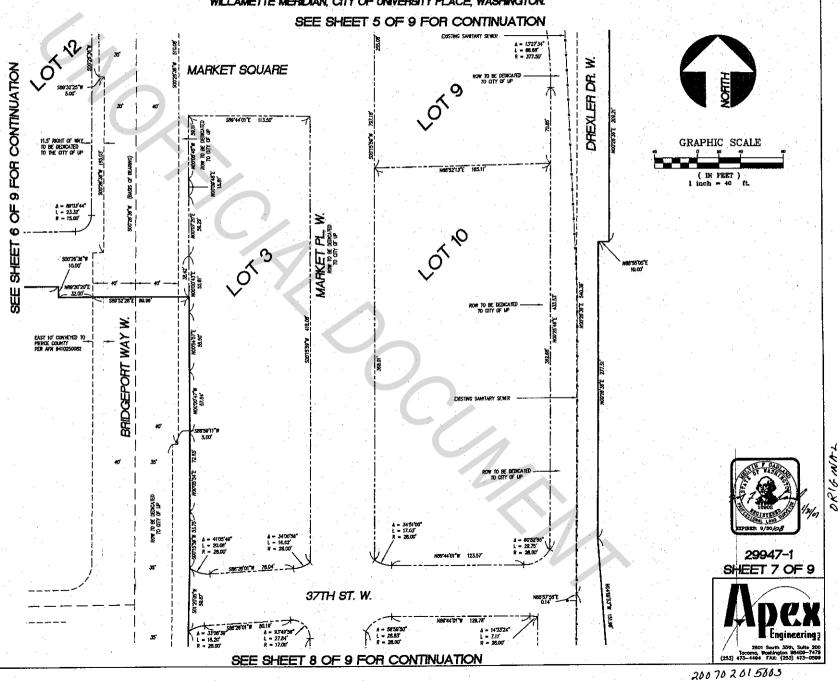
SEE SHEET 7 OF 9 FOR CONTINUATION

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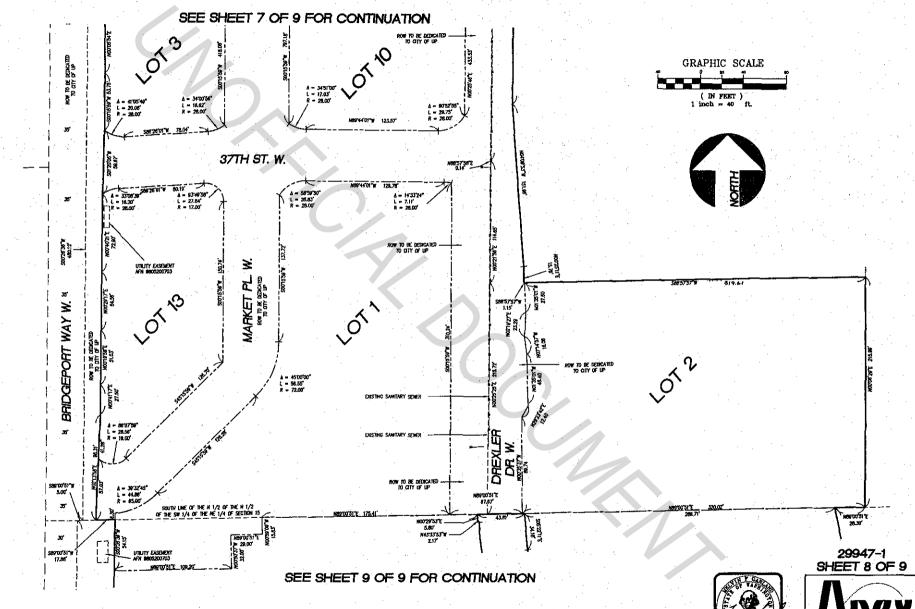


UNIVERSITY PLACE TOWNCENTER

A PORTION OF THE N.W. 1/4 AND THE N.E. 1/4 OF SECTION 15, TOWNSHIP 20 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, CITY OF UNIVERSITY PLACE, WASHINGTON.



UNIVERSITY PLACE TOWNCENTER
A PORTION OF THE N.W. 1/4 AND THE N.E. 1/4 OF SECTION 15, TOWNSHIP 20 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, CITY OF UNIVERSITY PLACE, WASHINGTON.





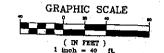


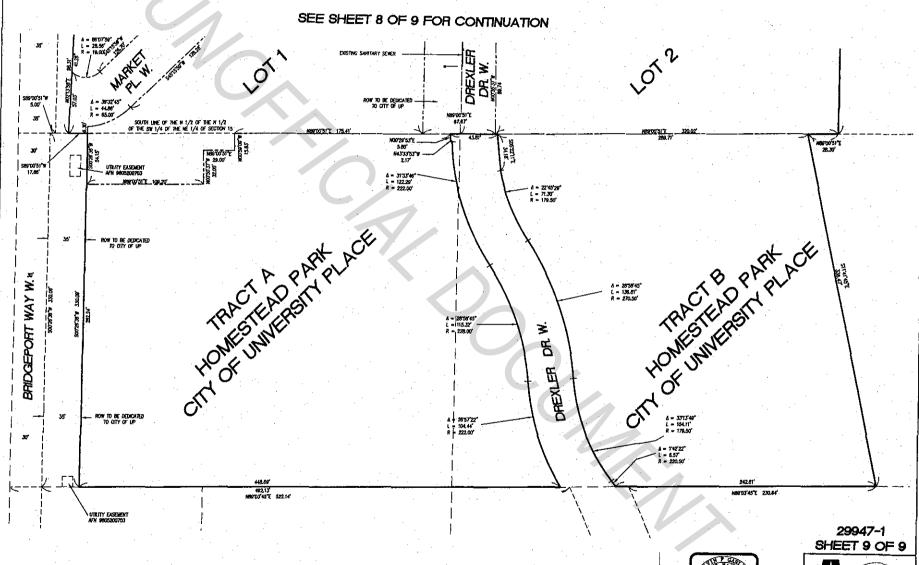
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UNIVERSITY PLACE TOWNCENTER
A PORTION OF THE N.W. 1/4 AND THE N.E. 1/4 OF SECTION 15, TOWNSHIP 20 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, CITY OF UNIVERSITY PLACE, WASHINGTON.

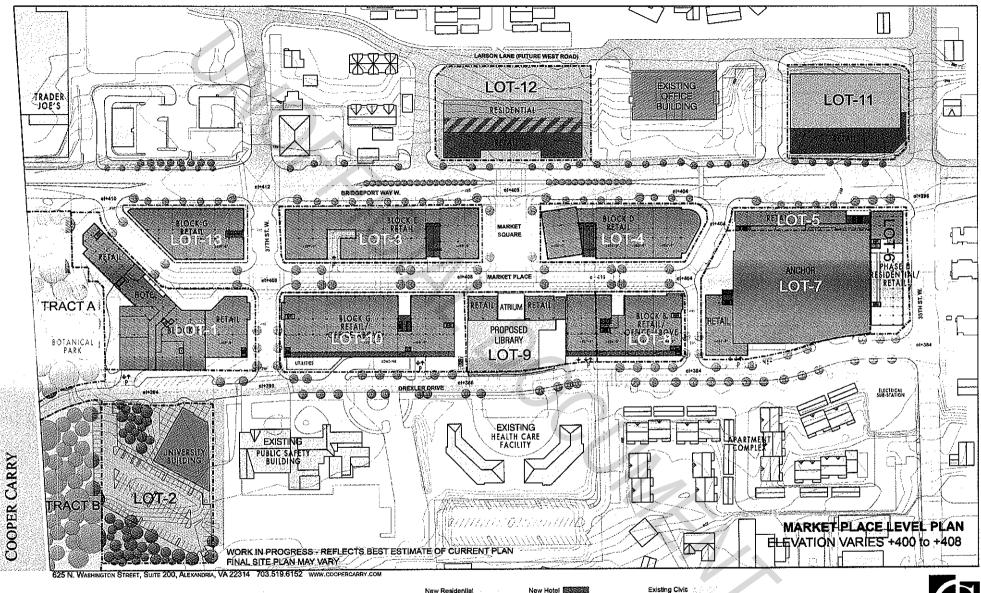




Engineering / 2807 South 35th, Suthe 200 Tecome, Weshington 98409-7479 (253) 473-4494 FAIC (253) 473-0689



Exhibit D



UPTOWN CENTER DEVELOPMENT

122° WEST, UNIVERSITY PLACE, WA, PROJECT # 206180, May 15, 2007

New Office

New Civic

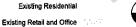








Exhibit I

Exhibit I

Development Team

1. ARCHITECTURAL SERVICES

Belay Architecture, Tacoma, Washington Cooper Carry, New York, New York and Alexandria, Virginia Laurence Qamar, Town Planning, Portland, Oregon Andre Soluri Architect P.C., New York, New York

2. CONSTRUCTION

Rushforth Taylor Construction, Tacoma, Washington

3. CONSTRUCTION ADMINISTRATION

Belay Architecture, Tacoma, Washington Project Manager, TBD Rushforth Taylor Construction, Tacoma, Washington Real Assets Property Services Inc., Seattle, Washington

4. ENGINEERING

Apex Engineering, Tacoma, Washington Geo Engineers, Port Orchard, Washington Petra Engineering, Tacoma, Washington

5. LEASING

C. Gray & Associates, Inc. Portland, Oregon. Real Assets Property Services Inc., Seattle, Washington

6. LEGAL

Local Counsel: Jemima J. McCullum, Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim LLP, Tacoma, Washington General Counsel: Tara Rosenbaum, Rosenbaum & Associates, New York, New York



Exhibit J

EXHIBIT J Purchase Price

	Use	Purchase Price @ DDA Signing	Additional Purchase Price for Each Additional Month from June 1, 2007 to Closing
2	Office	\$970,721.76	\$0.00
9	Civic Building / Retail	\$472,967.64	\$1,252.94
8	Retail/Office	\$815,897.26	\$1,989.75
1	Hotel/Retail	\$1,724,546.59	\$0.00
4	Retail	\$1,287,541.60	\$3,239.27
3	Retail	\$1,592,627.20	\$4,006.82
10	Retail/Office	\$2,109,050.40	\$5,143,40
7	Ticket Venue	\$2,960,984.12	\$6,927.75
5	Retail	\$360,439.07	\$843.31
12	Retail/Residential	\$2,336,229.33	\$4,818.22
6	Residential	\$868,395.95	\$1,629.99
11	Retail/Residential	\$1,827,262.78	\$3,429.80
13	Retail	\$1,099,604.00	\$0.00
	Total	\$18,426,267.70	\$33,281.25



Exhibit L

After recording, please return to: The City of University Place 3715 Bridgeport Way West University Place, WA 98466

NON-EXCLUSIVE EASEMENT

Grantor:

City of University Place, a Washington municipal

corporation

Grantee:

UPtown Center Development LLC, a New York limited

liability company

Tax Parcel

Number:

Tract B, University Place Towncenter Binding Site Plan,

Rec. No. 200702015003

RECITALS

A. The City of University Place, ("Grantor"), having an address of 3715 Bridgeport Way West, University Place, Washington, is the owner of certain real property legally described as follows:

Tract B, University Place Towncenter Binding Site Plan, Recorded February 1, 2007 under Recording Number 200702015003, Records of Pierce County Washington, Situated in the City of University Place, County of Pierce, State of Washington,

which property shall be burdened by the Easement created herein and shall hereafter be referred to as the "Burdened Property."

B. **UPtown Center Development LLC**, a New York limited liability company ("Grantee"), and having an address of 1560 Broadway, 10th Floor, New York, NY 10036, is the owner of certain real property legally described as follows:

Lot 2, University Place Towncenter Binding Site Plan, Recorded February 1, 2007 under Recording Number 200702015003, Records of Pierce County Washington, Situated in the City of University Place, County of Pierce, State of Washington,

which property shall be benefited by the Easement created herein and shall hereafter be referred to as the "Benefited Property." Grantee intends to build an office building on the Benefited Property (the "Building"), and requires the Easement described herein for additional parking to support the Building on the Benefited Property.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged and received:

1. <u>Grant of Easement</u>. Grantor hereby grants, conveys, and warrants unto Grantee, its successors and assigns, a non-exclusive easement (the "Easement") over, under, upon, and across the Burdened Property, which Easement is legally described as follows:

The North twenty (20) feet of Tract B, University Place Towncenter Binding Site Plan, Recorded February 1, 2007 under Recording Number 200702015003, Records of Pierce County Washington, Situated in the City of University Place, County of Pierce, State of Washington.

- 2. <u>Purpose of Easement</u>. The Easement shall be for the purposes of public surface parking, including the installation, maintenance, repair, and or removal of all parking facilities.
- 3. <u>Binding on Successors and Assigns</u>. This Easement shall run with the land and be binding upon and inure to the benefit of the Grantee's personal representatives, heirs, successors, and assigns.
- 4. <u>Grantor's Warranties of Title</u>. Grantor warrants that the Grantor has good title to the Burdened Property and warrants Grantee title to and quiet enjoyment of the Easement conveyed herein.
- 5. <u>Additional Terms</u>. The Parties further agree to the following covenants and terms:
 - a. <u>Access.</u> Grantee shall have the right without prior institution of any suit or proceeding at law, at times as may be necessary, to enter the Easement for the purposes herein stated.

- b. <u>Structures</u>; <u>Improvements</u>. Grantor covenants that no structure shall be erected, installed or placed in over or under the Easement area. To the extent that any such structure is erected, installed or placed in, over or under the Easement by Grantor, Grantee shall give written notice to Grantor and shall have ten (10) days to remove said encroachment. Upon expiration of the aforementioned cure period, Grantee shall have the right to remove the encroachment at Grantor's sole expense.
- c. <u>Maintenance</u>. The Grantee shall bear all costs and expenses of maintenance of the Easement.
- d. <u>Shared Parking</u>. Grantee agrees that any parking constructed within the Easement shall be available for use by the general public. However, nothing contained in this Easement Agreement shall be deemed to be a gift or dedication to the general public or for the general public or for any public purpose whatsoever. This agreement shall be strictly limited to and for the purposes expressed herein. No individual shall be deemed to have acquired a: (i) prescriptive easement; (ii) easement by implication; or (iii) any other right, title or interest in the Burdened Property as a result of the use of the Easement created by this Easement Agreement.
- e. <u>Termination</u>. In the event that the Building to be constructed on the Benefited Property is ever abandoned or removed, this Easement shall be conclusively, automatically and irrevocably terminated. Except as otherwise described in this Section 5(e), the Easement is intended to be perpetual.

IN WITNESS WHEREOF, executed this day of Janu	, the Grantor has caused this instrument to lary, 2007.	be
	Robert W. Jean, City Manager The City of University Place	_
STATE OF WASHINGTON)		
) ss COUNTY OF PIERCE)		
Notary Public in and for the State personally appeared on behalf corporation: Robert W. Jean, City	, 2007, before me,e of Washington, duly commissioned and swo of the City of University Place, a municipy Manager of the City of University Place, at as to the form the foregoing instrument a	rn, pal ınd

acknowledged the said instrument to be the free and voluntary act and deed of said

municipal corporation, for the purposes therein, and on oath stated that he is authorized to execute the said instrument on behalf of said municipal corporation.

WITNESS MY HAND AND OFFICIAL SEAL HERETO AFFIXED THE DAY AND YEAR FIRST ABOVE WRITTEN.

	Notary Public State of Washington, residing at: My commission expires
Approved as to Form:	
Janean Parker, City Attorney	

After recording, please return to: The City of University Place 3715 Bridgeport Way West University Place, WA 98466

NON-EXCLUSIVE EASEMENT

Grantor:

City of University Place, a Washington municipal

corporation

Grantee:

UPtown Center Development LLC, a New York limited

liability company

Tax Parcel

Number:

Tract B, University Place Towncenter Binding Site Plan,

Rec. No. 200702015003

RECITALS

A. The City of University Place, ("Grantor"), having an address of 3715 Bridgeport Way West, University Place, Washington, is the owner of certain real property legally described as follows:

Tract B, University Place Towncenter Binding Site Plan, Recorded February 1, 2007 under Recording Number 200702015003, Records of Pierce County Washington, Situated in the City of University Place, County of Pierce, State of Washington,

which property shall be burdened by the Easement created herein and shall hereafter be referred to as the "Burdened Property."

B. **UPtown Center Development LLC**, a New York limited liability company ("**Grantee**"), and having an address of 1560 Broadway, 10th Floor, New York, NY 10036, is the owner of certain real property legally described as follows:

Lot 2, University Place Towncenter Binding Site Plan, Recorded February 1, 2007 under Recording Number 200702015003, Records of Pierce County Washington, Situated in the City of University Place, County of Pierce, State of Washington,

which property shall be benefited by the Easement created herein and shall hereafter be referred to as the "Benefited Property." Grantee intends to build an office building on the Benefited Property (the "Building"), and requires the Easement described herein for additional parking to support the Building on the Benefited Property.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged and received:

1. <u>Grant of Easement</u>. Grantor hereby grants, conveys, and warrants unto Grantee, its successors and assigns, a non-exclusive easement (the "Easement") over, under, upon, and across the Burdened Property, which Easement is legally described as follows:

The North twenty (20) feet of Tract B, University Place Towncenter Binding Site Plan, Recorded February 1, 2007 under Recording Number 200702015003, Records of Pierce County Washington, Situated in the City of University Place, County of Pierce, State of Washington.

- 2. <u>Purpose of Easement</u>. The Easement shall be for the purposes of public surface parking, including the installation, maintenance, repair, and or removal of all parking facilities.
- 3. <u>Binding on Successors and Assigns</u>. This Easement shall run with the land and be binding upon and inure to the benefit of the Grantee's personal representatives, heirs, successors, and assigns.
- 4. <u>Grantor's Warranties of Title</u>. Grantor warrants that the Grantor has good title to the Burdened Property and warrants Grantee title to and quiet enjoyment of the Easement conveyed herein.
- 5. <u>Additional Terms</u>. The Parties further agree to the following covenants and terms:
 - a. <u>Access.</u> Grantee shall have the right without prior institution of any suit or proceeding at law, at times as may be necessary, to enter the Easement for the purposes herein stated.

- b. <u>Structures; Improvements</u>. Grantor covenants that no structure shall be erected, installed or placed in over or under the Easement area. To the extent that any such structure is erected, installed or placed in, over or under the Easement by Grantor, Grantee shall give written notice to Grantor and shall have ten (10) days to remove said encroachment. Upon expiration of the aforementioned cure period, Grantee shall have the right to remove the encroachment at Grantor's sole expense.
- c. <u>Maintenance</u>. The Grantee shall bear all costs and expenses of maintenance of the Easement.
- d. Shared Parking. Grantee agrees that any parking constructed within the Easement shall be available for use by the general public. However, nothing contained in this Easement Agreement shall be deemed to be a gift or dedication to the general public or for the general public or for any public purpose whatsoever. This agreement shall be strictly limited to and for the purposes expressed herein. No individual shall be deemed to have acquired a: (i) prescriptive easement; (ii) easement by implication; or (iii) any other right, title or interest in the Burdened Property as a result of the use of the Easement created by this Easement Agreement.
- e. <u>Termination</u>. In the event that the Building to be constructed on the Benefited Property is ever abandoned or removed, this Easement shall be conclusively, automatically and irrevocably terminated. Except as otherwise described in this Section 5(e), the Easement is intended to be perpetual.

IN WITNESS WHEREOF executed this day of Janu	, the Grantor has caused this instrument to be lary, 2007.
	Robert W. Jean, City Manager
	The City of University Place
STATE OF WASHINGTON)	
COUNTY OF PIERCE) ss	
	, 2007, before me,, a
	e of Washington, duly commissioned and sworn,
• • • • • • • • • • • • • • • • • • • •	of the City of University Place, a municipal was manager of the City of University Place, and

executed, attested, and approved as to the form the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said

municipal corporation, for the purposes therein, and on oath stated that he is authorized to execute the said instrument on behalf of said municipal corporation.

WITNESS MY HAND AND OFFICIAL SEAL HERETO AFFIXED THE DAY AND YEAR FIRST ABOVE WRITTEN.

	Notary Public State of Washington, residing at: My commission expires
10	
Approved as to Form:	
Janean Parker, City Attorne	y



After recording, please return to: The City of University Place 3715 Bridgeport Way West University Place, WA 98466

NON-EXCLUSIVE EASEMENT

Grantor: City of University Place, a Washington municipal corporation

Grantee: UPTown Center Development LLC, a New York limited liability

company

Tax Parcel

Number: Tract A, University Place Towncenter Binding Site Plan, Rec.

No. 200702015003

RECITALS

A. The City of University Place, ("Grantor"), having an address of 3715 Bridgeport Way West, University Place, Washington, is the owner of certain real property legally described as follows:

Tract A, University Place Towncenter Binding Site Plan, Recorded February 1, 2007 under Recording Number 200702015003, Records of Pierce County Washington, Situated in the City of University Place, County of Pierce, State of Washington,

which property shall be burdened by the Easement created herein and shall hereafter be referred to as the "Burdened Property."

- B. **UPtown Center Development LLC**, a New York limited liability company ("**Grantee**"), and having an address of 1560 Broadway, 10th Floor, New York, NY 10036, is the owner of certain real property legally described as follows:
 - Lot 1, University Place Towncenter Binding Site Plan, Recorded February 1, 2007 under Recording Number 200702015003, Records of Pierce County Washington, Situated in the City of University Place, County of Pierce, State of Washington,

which property shall be benefited by the Easement created herein and shall hereafter be referred to as the "Benefited Property." Grantee intends to build a hotel and/or other improvements on the Benefited Property (collectively, the "Building"), and requires the Easement described herein for a no-build area abutting Lot 1 to allow construction of the Building on Lot 1.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged and received:

1. <u>Grant of Easement</u>. Grantor hereby grants, conveys, and warrants unto Grantee, its successors and assigns, a non-exclusive easement (the "Easement") over, under, upon, and across the Burdened Property, which Easement is legally described as follows:

The North twenty (20) feet of Tract A, University Place Towncenter Binding Site Plan, Recorded February 1, 2007 under Recording Number 200702015003, Records of Pierce County Washington, Situated in the City of University Place, County of Pierce, State of Washington.

- 2. <u>Purpose of Easement</u>. The Easement shall be for the purposes of preventing any structures or other improvements from being located within said area and to allow for the construction of the Building on Lot 1.
- 3. <u>Binding on Successors and Assigns</u>. This Easement shall run with the land and be binding upon and inure to the benefit of the Grantee's personal representatives, heirs, successors, and assigns.
- 4. <u>Grantor's Warranties of Title</u>. Grantor warrants that the Grantor has good title to the Burdened Property and warrants Grantee title to and quiet enjoyment of the Easement conveyed herein.
- 5. <u>Additional Terms</u>. The Parties further agree to the following covenants and terms:
 - a. <u>Structures</u>. Grantor covenants that no structure shall be erected, installed or placed in over or under the Easement area. To the extent that any such structure is erected, installed or placed in, over or under the Easement by Grantor, Grantee shall give written notice to Grantor and Grantor shall have ten (10) days to remove said encroachment. Upon expiration of the aforementioned cure period, Grantee shall have the right to remove the encroachment at Grantor's sole expense. Nothing herein shall prevent the City from the

maintenance of existing, or the placement of new trees and vegetation and landscaping within the Easement area.

- b. <u>Maintenance</u>. The Grantor shall bear all costs and expenses of maintenance of the Easement.
- c. <u>Termination</u>. In the event that the Building to be constructed on the Benefited Property is ever abandoned or removed, this Easement shall be conclusively, automatically and irrevocably terminated. Except as otherwise described in this Section 5(e), the Easement is intended to be perpetual.

IN WITNESS WHE executed this day o	REOF, the Grantor has caused this instrument to be f January, 2007.
	Robert W. Jean, City Manager The City of University Place
STATE OF WASHINGTON) ss
COUNTY OF PIERCE	j
Public in and for the State appeared on behalf of the C Jean, City Manager of th approved as to the form the to be the free and voluntary	of Washington, duly commissioned and sworn, personally city of University Place, a municipal corporation: Robert W. e City of University Place, and executed, attested, and foregoing instrument and acknowledged the said instrument act and deed of said municipal corporation, for the purposes hat he is authorized to execute the said instrument on behalf
WITNESS MY HAND AND FIRST ABOVE WRITTEN.	OFFICIAL SEAL HERETO AFFIXED THE DAY AND YEAR
	Notary Public State of Washington, residing at: My commission expires
Approved as to Form:	
Janean Parker, City Attorney	
Jangan Faiker, Gily Alloiney	



Exhibit N

After recording, please return to: The City of University Place 3715 Bridgeport Way West University Place, WA 98466

PERPETUAL AND NON-EXCLUSIVE EASEMENT

Grantor:

UPtown Center Development LLC, a New York limited

liability company

Grantee:

City of University Place, a Washington municipal

corporation

Tax Parcel

Number:

Lot 2, University Place Towncenter Binding Site Plan,

Rec. No. 200702015003

RECITALS

- A. **UPtown Center Development LLC**, a New York limited liability company ("**Grantor**"), and having an address of 1560 Broadway, 10th Floor, New York, NY 10036, is the owner of certain real property legally described as follows:
 - Lot 2, University Place Towncenter Binding Site Plan, Recorded February 1, 2007 under Recording Number 200702015003, Records of Pierce County Washington, Situated in the City of University Place, County of Pierce, State of Washington,

which property shall be burdened by the Easement created herein and shall hereafter be referred to as the "Burdened Property."

B. The City of University Place, a Washington municipal corporation ("Grantee"), having an address of 3715 Bridgeport Way West, University Place, Washington, is a municipal corporation responsible for the maintenance of a public storm water conveyance system for the public, health, safety, and welfare, which shall be benefited by the Easement created herein.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged and received:

- 1. <u>Grant of Easement</u>. Grantor hereby grants, conveys, and warrants unto Grantee, its successors and assigns, a non-exclusive perpetual easement (the "Easement") over, under, upon, and across the Burdened Property, which Easement is legally described in the attached Exhibit A, the location of which is more particularly shown on the map attached hereto as Exhibit B each respectively incorporated herein by this reference.
- 2. <u>Purpose of Easement</u>. The Easement shall be for the purposes of ingress, egress, and utilities for use by Grantee for a stormwater drainage conveyance system, including the installation, maintenance and repair thereof.
- 3. <u>Binding on Successors and Assigns</u>. This Easement shall run with the land and be binding upon and inure to the benefit of the Grantee's personal representatives, heirs, successors, and assigns.
- 4. <u>Grantor's Warranties of Title</u>. Grantor warrants that the Grantor has good title to the Burdened Property and warrants Grantee title to and quiet enjoyment of the Easement conveyed herein.
- 5. <u>Additional Terms</u>. The Parties further agree to the following covenants and terms:
 - a. Access. Grantee shall have the right without prior institution of any suit or proceeding at law, at times as may be necessary, to enter the Easement for the purposes herein stated, provided however, that Grantee shall provide Grantor at least two (2) days prior notice before commencing any work within the Easement, including construction of the storm water drainage conveyance system and the maintenance activity described below, except as may otherwise be impractical due to exigent circumstances.
 - b. <u>Structures; Improvements.</u> Grantor covenants that no permanent structure shall be erected in the Easement area that would impact the Grantee's use of the Easement for the purposes herein stated.
 - c. <u>Maintenance</u>. The Grantee shall bear all costs and expenses of maintenance of the Easement, and the improvements anticipated therein, including but not limited to the aforementioned storm water drainage conveyance system. In the event that Grantee fails to

maintain the Easement and the improvements therein as may now or hereinafter be created, or the same require repair and such repair or replacement is not made within a reasonable time after such a condition arises, Grantor shall have the right, after ten (10) days prior written notice to Grantee, to maintain the Easement area at the sole cost of Grantee, which may include repair and/or replacement of the improvements therein.

IN WITNESS WHEREOF, executed this day of	, the Grantor has caused this instrument to be, 2007.
	Aaron Lichtman, Member Uptown Center Development LLC, a New York limited liability company
STATE OF WASHINGTON)	
COUNTY OF PIERCE) ss	
personally appeared on behalf of U and executed, attested, and approach acknowledged the said instrument Development, LLC, for the purposes	, 2007, before me,, ate of Washington, duly commissioned and sworn, PTown Center Development LLC: Aaron Lichtman, oved as to the form the foregoing instrument and to be the free and voluntary act and deed of UP is therein, and on oath stated that he is authorized to lif of said UPtown Center Development LLC.
WITNESS MY HAND AND OFFICIA FIRST ABOVE WRITTEN.	AL SEAL HERETO AFFIXED THE DAY AND YEAR
	Notary Public State of Washington, residing at: My commission expires
Acceptance by the City	
The above perpetual non-exclus Manager, after execution of said l	sive easement was duly accepted by the City Easement.
	Robert W. Jean, City Manager

STATE OF WASHINGTON)) ss
COUNTY OF PIERCE)
personally appeared on bell Robert W. Jean, City Mana and approved as to the foinstrument to be the free and	f, 2007, before me,, the State of Washington, duly commissioned and sworn, half of the City of University Place, a municipal corporation: ager of the City of University Place, and executed, attested, orm the foregoing instrument and acknowledged the said divoluntary act and deed of said municipal corporation, for the ath stated that he is authorized to execute the said instrument corporation.
WITNESS MY HAND AND FIRST ABOVE WRITTEN.	OFFICIAL SEAL HERETO AFFIXED THE DAY AND YEAR
	Notary Public State of Washington, residing at: My commission expires
Approved as to Form:	
Janean Parker, City Attorr	ney

Exhibit A

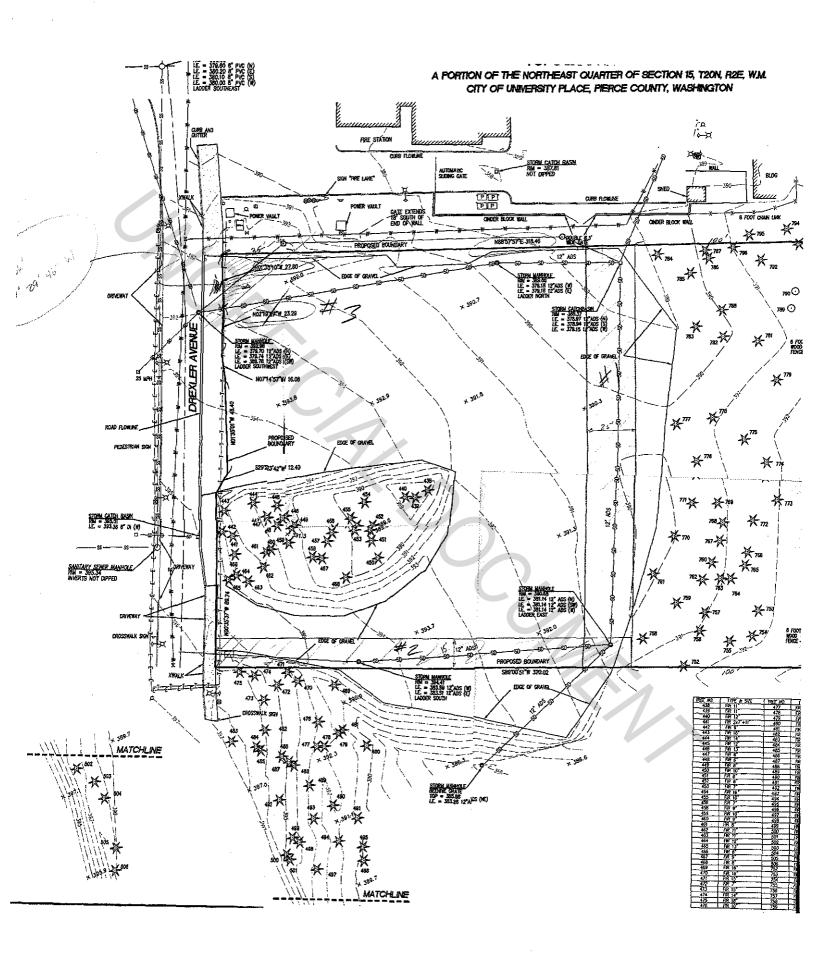
The Easement is legally described as follows:

- #1 THE WEST 25 FEET OF THE EAST 125 FEET OF LOT 2 OF BINDING SITE PLAN RECORDED UNDER AUDITOR'S RECORDING NO. 200702015003.
- #2 THE SOUTH 15 FEET OF THE WEST 202.02 FEET OF LOT 2 OF BINDING SITE PLAN RECORDED UNDER AUDITOR'S RECORDING NO. 200702015003.
- #3 BEGINNING AT THE NORTHWEST CORNER OF LOT 2 OF BINDING SITE PLAN RECORDED UNDER AUDITOR'S RECORDING NO. 200702015003, THENCE NORTH 88° 57' 57" EAST A DISTANCE OF 35 FEET, THENCE SOUTH 50° 29' 46" WEST A DISTANCE OF 44.36 FEET, THENCE NORTH 01° 35' 10" WEST A DISTANCE OF 27.6 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH AND SUBJECT TO COVENANTS, EASEMENTS AND RESTRICTIONS OF RECORD.

Exhibit B

(See the attached map indicating the location of the Easement)



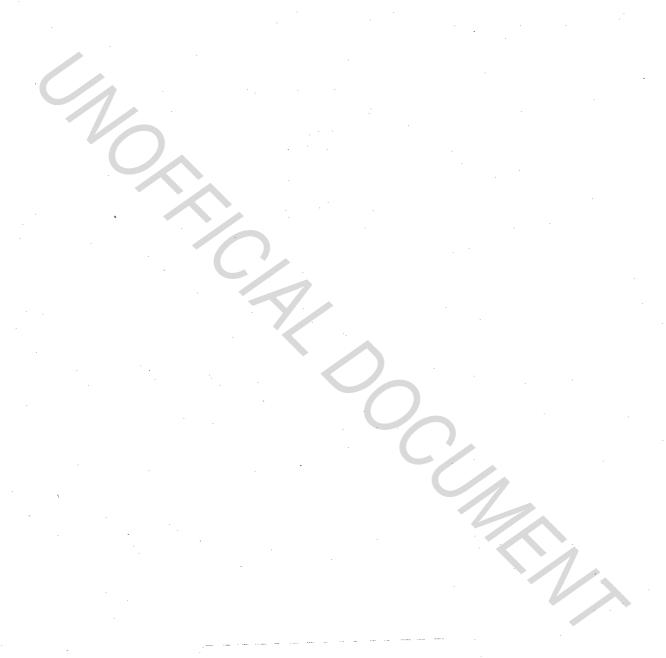


Exhibit O

After recording, please return to: The City of University Place 3715 Bridgeport Way West University Place, WA 98466

PERPETUAL AND NON-EXCLUSIVE EASEMENT

Grantor:

Pierce County Fire Protection District #3

Grantee:

City of University Place

Assessor's Tax

Parcel Number:

#022015-1-228

RECITALS

- A. PIERCE COUNTY FIRE PROTECTION DISTRICT #3, ("Grantor), having an address of 3631 74th Avenue W., University Place, Washington, is the owner of certain real property, which is legally described in Exhibit A, attached hereto and incorporated by reference herein, which property shall be burdened by the Easement created herein and shall hereafter be referred to as the "Burdened Property".
- B. CITY OF UNIVERSITY PLACE, a municipal corporation of the State of Washington ("Grantee"), having an address of 3715 Bridgeport Way West, University Place, Washington, is the owner of certain real property, which is legally described in Exhibit B, attached hereto and incorporated by reference herein, which property shall be benefited by the Easement created herein and shall hereafter be referred to as the "Benefited Property".

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged and received:

1. <u>Grant of Easement</u>. Grantor hereby grants, conveys and warrants unto Grantee, its successors and assigns, a perpetual and non-exclusive easement (the "Easement'), legally described in Exhibit C, attached hereto and incorporated by reference herein, subject to the rights of the Grantor to have and maintain Grantor's underground utilities within the Easement area.

- 2. <u>Purpose of Easement</u>. The Easement shall be for the purposes of ingress, egress, and private utilities to the benefited property, including, but not limited to fire and emergency access, surface parking and the installation, maintenance, repair, and or removal of any and all utility facilities.
- 3. Binding on Successors and Assigns. This Easement shall run with the land and shall be binding upon and inure to the benefit of the Grantee's personal representatives, heirs, successors, and assigns.
- 4. <u>Grantor's Warranties of Title</u>. Grantor warrants that the Grantor has good title to the Burdened Property and warrants Grantee good title to and quiet enjoyment of the Easement conveyed herein.
- 5. <u>Additional Terms</u>. The Parties further agree to the following covenants and terms:
- a. Access: Gate. Grantee shall have the right without prior institution of any suit or proceeding at law, at times as may be necessary, to access the Easement for the purposes herein stated. Grantee's use of the Easement, however, shall not, impede the Grantor's use of the Easement for underground utilities and use of the existing electronic gate or any replacement gate in the same footprint (the "Gate") on the Burdened Property, which may encroach into the Easement.
- b. <u>Structures: Other Improvements</u>. Grantor covenants that Grantor will not erect or place any structure or other improvement in, over or under the Easement, except for the Gate and underground utilities, and, to the extent that any such structure or other improvement is erected or placed in, over or under the Easement, Grantee shall give written notice to Grantor and 10 days to remove the encroachment. Upon expiration of the aforementioned cure period, Grantee shall have the right to remove the encroachment at Grantor's sole expense.
- c. <u>Maintenance</u>. Grantee shall bear all costs and expenses of maintenance of the Easement, provided however, that Grantor shall bear all costs and expenses related to maintenance of the Gate and related tracking (if any), which may encroach into the Easement,

IN WITNESS WHEREOF, the Grantor has caused this instrument to be executed this 9 day of FEB, 2007.

RICHARD D. BLEECKER FIRE CHIEF
Print name Title

Pierce Co. Fire Protection District #3

STATE OF WASHINGTON)
COUNTY OF PIERCE)
On this day of February, 2007, before me, Julie Bonney, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared on behalf of Pierce County Fire Protection District No. 3,
Richard Bleecker, Fire Chief Print name and title
and executed, attested, and approved as to the form the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of Pierce County Fire Protection District No. 3, for the purposes therein, and on oath stated that Richard Blecker is authorized to execute the said instrument on behalf of said Pierce County Fire Protection District No. 3,.
WITNESS MY HAND AND OFFICIAL SEAL HERETO AFFIXED THE DAY AND YEAR FIRST ABOVE WRITTEN. Notary Public State of Washington, residing at: Spanaucay Washington expires 5-5-0 1 Acceptance by the City
The above perpetual non-exclusive easement was duly accepted by the City Manager, after execution of said Easement.
Robert W. Jean, City Manager
Approved as to Form:
Janean Parker, City Attorney

Exhibit A

Grantor's Burdened Property is legally described as follows:

THAT PORTION OF THE SOUTH HALF OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER AND OF THE NORTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 20 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, PIERCE COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTH HALF OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION; THENCE SOUTH 89° 39' 46" EAST ALONG THE NORTH LINE THEREOF, A DISTANCE OF 412.15 FEET, MORE OR LESS, TO THE EAST LINE OF THE WEST 412 FEET OF THE NORTHEAST QUARTER OF SAID SECTION, AND THE "TRUE POINT OF BEGINNING"; THENCE CONTINUING SOUTH 89° 39' 46" EAST, ALONG SAID NORTH LINE A DISTANCE OF 349.30 FEET, MORE OR LESS, TO AN INTERSECTION WITH THE WEST LINE OF THE PLAT OF UNIVERSITY HILLS NO. 2 AS RECORDED IN BOOK 51 OF PLATS AT PAGES 42 & 43, IN PIERCE COUNTY, WASHINGTON; THENCE SOUTH 02° 03' 52" WEST ALONG SAID WEST PLAT LINE, A DISTANCE OF 6.56 FEET; THENCE CONTINUING ALONG SAID WEST PLAT LINE, SOUTH 01° 31' 38" WEST A DISTANCE OF 438.71 FEET; THENCE NORTH 89° 36' 53" WEST A DISTANCE OF 351.81 FEET, MORE OR LESS, TO AN INTERSECTION WITH SAID EAST LINE OF THE WEST 412 FEET OF THE NORTHEAST QUARTER OF SAID SECTION; THENCE NORTH 01° 51' 34" EAST ALONG SAID EAST LINE, A DISTANCE OF 445.04 FEET TO THE "TRUE POINT OF BEGINNING".

TOGETHER WITH AND SUBJECT TO COVENANTS, EASEMENTS AND RESTRICTIONS OF RECORD.

Exhibit B

Grantee's Benefited Property is legally described as follows:

Lot 2 of Binding Site Plan recorded under Auditor's recording no. 200702015003.

Exhibit C

The Easement is legally described as follows:

THE SOUTH 15 FEET OF THE FOLLOWING DESCRIBED PORTION OF REAL PROPERTY:

THAT PORTION OF THE SOUTH HALF OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER AND OF THE NORTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 20 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, PIERCE COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTH HALF OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION; THENCE SOUTH 89° 39' 46" EAST ALONG THE NORTH LINE THEREOF, A DISTANCE OF 412.15 FEET, MORE OR LESS, TO THE EAST LINE OF THE WEST 412 FEET OF THE NORTHEAST QUARTER OF SAID SECTION, AND THE "TRUE POINT OF BEGINNING": THENCE CONTINUING SOUTH 89° 39' 46" EAST. ALONG SAID NORTH LINE A DISTANCE OF 349.30 FEET, MORE OR LESS, TO AN INTERSECTION WITH THE WEST LINE OF THE PLAT OF UNIVERSITY HILLS NO. 2 AS RECORDED IN BOOK 51 OF PLATS AT PAGES 42 & 43, IN PIERCE COUNTY, WASHINGTON; THENCE SOUTH 02° 03' 52" WEST ALONG SAID WEST PLAT LINE, A DISTANCE OF 6.56 FEET; THENCE CONTINUING ALONG SAID WEST PLAT LINE, SOUTH 01° 31' 38" WEST A DISTANCE OF 438.71 FEET; THENCE NORTH 89° 36' 53" WEST A DISTANCE OF 351.81 FEET, MORE OR LESS, TO AN INTERSECTION WITH SAID EAST LINE OF THE WEST 412 FEET OF THE NORTHEAST QUARTER OF SAID SECTION; THENCE NORTH 01° 51' 34" EAST ALONG SAID EAST LINE, A DISTANCE OF 445.04 FEET TO THE "TRUE POINT OF BEGINNING".

TOGETHER WITH AND SUBJECT TO COVENANTS, EASEMENTS AND RESTRICTIONS OF RECORD.

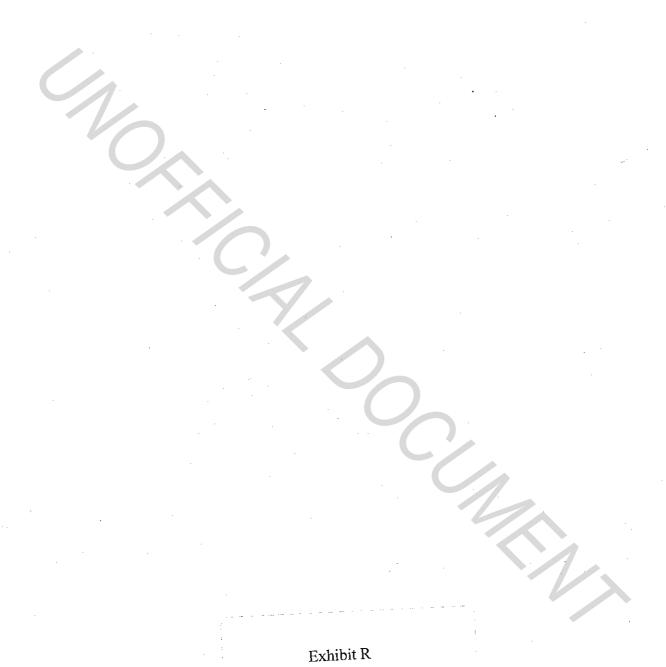




Exhibit S

LEASE

Between

UPTOWN CENTER DEVELOPMENT LLC, a New York limited liability company AS LANDLORD

and

CITY OF UNIVERSITY PLACE, a Washington municipal corporation AS TENANT

UNIVERSITY BUILDING

(First Floor Space)

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LEASE AGREEMENT FOR [Street Address], University Place, WA 98464

ported facilities (Chartestay 1 and 1,112 50 to 1
THIS LEASE AGREEMENT (the "Lease"), dated for reference purposes as of the
day of, 2007, is made by and between UPTOWN CENTER DEVELOPMENT
LLC, a New York limited liability company ("Landlord") and CITY OF UNIVERSITY PLACE,
a Washington municipal corporation ("Tenant" or "City")(Landlord and Tenant are hereinafter
sometimes referred to collectively as the "Parties").
AGREEMENT
1. <u>Basic Lease Terms</u> . All capitalized terms not otherwise defined in this Lease

shall have the same meaning as set forth in Section 2 hereof.

This Section contains the basic Lease terms of this Lease between the Landlord and Tenant:

TENANT'S NAME AND ADDRESS: City of University Place

3715 Bridgeport Way

University Place, Washington 98464

Attn: City Manager

(253) 460-2546 Fax:

With a copy to: City of University Place

3715 Bridgeport Way

University Place, Washington 98464

Attn: City Attorney

(253) 460-2546 Fax:

LANDLORD'S NAME AND ADDRESS: Uptown Center Development LLC

272 West 86th Street, 2nd Floor New York, New York 10024

Attn: Aaron Lichtman 646-292-3551 Fax:

Gordon Thomas Honeywell With a copy to:

> c/o Jemima J. McCullum 1201 Pacific Avenue, Ste. 2100

Tacoma, WA 98401 Fax: 253-620-6565

BUILDING ADDRESS: Drexler Avenue

City of University Place, Washington 98464

AREA OF LEASED PREMISES Approximately 9,603 gross square feet, consisting

of that portion of the first floor outlined in red on

the floor plan attached hereto as Exhibit B

INITIAL TERM:

Five (5) years from the Rent Commencement Date

OPTION TO EXTEND

one option to extend, for a term of five (5) years

PERMITTED USE:

General educational and office purposes including, without limitation, conference and computer facilities and any other legally permitted use consistent with the character of Class A office buildings in the Pierce County office market.

ANNUAL BASE RENT:

\$25 per gross square feet per year, payable in twelve (12) monthly installments of \$17,823 each

ADDITIONAL RENT:

Tenant's Pro Rata Share of Operating Expenses

TENANT'S PRO RATA SHARE

22.5% (9,603 square feet of leased space within

42,605 gross square feet)

SECURITY DEPOSIT:

None

TENANT IMPROVEMENT

Up to \$24 per gross square feet

ALLOWANCE:

PARKING:

25 parking stalls (included in Rent).

- 2. <u>Definitions</u>. As used in this Lease, the following capitalized terms shall have the following meaning:
- 2.1 "Additional Rent" means Tenant's Pro Rata Share of the Operating Expenses and any other monetary sum to be paid by Tenant to Landlord or to third parties under the provisions of this Lease (other than Base Monthly Rent).
 - 2.2 "Architect" means Andre Soluri.
- 2.3 "Base Monthly Rent" means the amount of base monthly rent to be paid by Tenant each Year during the Term of this Lease, and the Option Period, if Tenant exercises the option. The Annual Base Monthly Rent payable during the first five (5) years of the Term is \$25 per gross square foot or Two Hundred Thirteen Thousand Eight Hundred Seventy-Five Dollars (\$213,875), payable in twelve (12) equal monthly installments of Seventeen Thousand Eight Hundred Twenty-Three Dollars (\$17,823) each.
- 2.4 "Building" means a four story Class A office building containing approximately 42,605 gross square feet and on-site parking for 110 cars to be constructed on the Property. The Building is more particularly described in the Preliminary Plans and Outline Specifications.

- 2.5 "Building Standard Tenant Improvements" means the improvements to the interior of the Premises beyond the Building Shell and Core, which are to be constructed by Landlord up to the extent covered by the Tenant Improvement Allowance. "Building Standard Tenant Improvements" shall be agreed to by the parties as expeditiously as possible following the date of the Development Agreement, and, once agreed to by the Parties, a complete description of the Building Standard Tenant Improvements agreed to by the parties shall be attached to this Lease as Exhibit "E". Tenant shall have the right to make additional improvements to the interior of the Premises (in excess of the Building Standard Tenant Improvements), provided that any such additional improvements will be done at the sole cost of Tenant, and with the prior written consent of Landlord, which will not to be unreasonably withheld, as provided in Section 9 of this Lease (the "Additional Tenant Improvements"). In the event that Tenant desires to make Additional Tenant Improvements to the interior of the Premises, the parties shall execute a work letter which will set forth the general terms and conditions under which such Additional Tenant Improvements will be constructed, and such work letter, when created, will be attached to this Lease as an exhibit.
- 2.6 "<u>Calendar Year</u>" means a calendar year commencing January 1 and ending December 31.
- 2.7 "Capital Expenditures" is defined as (a) the acquisition of a prior non-existing asset or the repair or replacement of a pre-existing asset, (b) not characterized as an operating cost or expense under generally accepted accounting principles, (c) which maintains the value of the Building over its useful life, is permanently affixed to the Building and (d) does not include personal property, removable trade fixtures or repairs to existing assets.
- 2.8 "Common Areas" include any area in or around the Building designated by Landlord as being for the general use of tenants of the Building and their agents, employees and invitees and shall include parking areas, driveways, landscaped areas, service areas, walks, public stairs, corridors, hallways, lobbies, public restrooms or other shared areas, as the same may be expanded, removed, relocated or otherwise modified by the Landlord.
- 2.9 "<u>Construction Contracts</u>" means (i) the General Construction Contract and (ii) all other contracts for construction services entered into between Landlord and any Contractor, including the General Contractor, for construction of the Building, including Building Standard Tenant Improvements, or any other portion of the Project not covered by the General Construction Contract.
- 2.10 "Construction Documents" means the Construction Drawings and Detailed Specifications approved by Tenant and Landlord for construction of the Project, including technical drawings, schedules, diagrams, plans and specifications setting forth in detail the requirements for construction of the Building and Building Standard Tenant Improvement build-out for the Premises, and providing information customarily required for the use of the building trades and the general construction contract for construction of the Building.
- 2.11 "Construction Drawings" means the final construction drawings for the Project and the Building Standard Tenant Improvements.

- 2.12 "<u>Contract Documents</u>" means the Construction Documents, the Construction Contracts and the other documents identified as Contract Documents in the General Construction Contract.
- 2.13 "Contractors" means the General Contractor and any other construction contractors with whom Landlord enters into contracts with for construction of the Project and the Building Standard Tenant Improvements.
- 2.14 "Design Review Documents" means the following design principles and guidelines in effect at the time the building permit is issued for the Project: (a) the City comprehensive plan, (b) the Town Center Plan which sets forth certain core goals and design guidelines for redevelopment of the Town Center Property, (c) the City's zoning code, including the Town Center Overlay Zone, (d) the design standards and guidelines for the Town Center Overlay zone, and (e) the City's Planned Action Ordinance and environmental impact statements with respect to future land uses and mitigation measures identified therein, copies of which have been provided to Landlord and Architect, and are on file with the City.
- 2.15 "<u>Detailed Specifications</u>" means all written detailed requirements for materials, equipment, construction systems, standards and workmanship for the construction of the Project and the Building Standard Tenant Improvements.
- 2.16 "<u>Development Agreement</u>" means that certain Disposition and Development Agreement dated as of ______, 2007 by and between Tenant, as owner of the Town Center Property, and Landlord as Developer.
- 2.17 "<u>Drawings</u>" as used herein "Drawings" include all graphic and pictorial documents depicting the design, location and dimensions of the elements of the Building and Building Standard Tenant Improvements and include plans, elevations, sections, details, schedules and diagrams for the Building.
- 2.18 "Effective Date" means the date upon which this Lease has been fully executed, acknowledged and delivered by Tenant and Landlord.
- 2.19 "Environmental Laws" mean any federal, state or local law, rule or regulation pertaining to health, industrial hygiene or environmental conditions of the Premises, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Section 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq., and the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), 42 U.S.C. Section 6901, et seq.
- 2.20 "General Construction Contract" means the agreement between the Landlord and the General Contractor for the construction of the Project and the Building Standard Tenant Improvements.
- 2.21 "General Contractor" means a general contractor duly licensed in the State of Washington.

- 2.22 "<u>Hazardous Substances</u>" means any matter including petroleum products and byproducts, asbestos and any other material which is now or hereafter designated as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, <u>et seq.</u>, or that is now or hereafter regulated by applicable Environmental Laws.
- 2.23 "Landlord" means Uptown Center Development LLC, a New York limited liability company, and its permitted successors and assigns.
- 2.24 "Law" or "Laws" means any constitution, statute, ordinance, regulation, rule, resolution, judicial decision, administrative order or other requirement of any federal, state, county, municipal or other governmental agency or authority having jurisdiction over the parties or the Premises, or both, in effect either at the time of execution of this Lease or at any time during the Term, including without limitation, any regulation or order of a quasi official entity or body (e.g., board of fire examiners or public utilities); all rules, laws and regulations arising under Title III of the Americans with Disabilities Act and the regulations issued thereunder by the United States Department of Justice.
- 2.25 "Lease Year" or "Year" means each succeeding year of the Term, commencing with the Rent Commencement Date and ending with the date which is one (1) day less than one (1) year later.
- 2.26 "Park Property" means the existing City park located immediately to the south of the Property.
- 2.27 "Person" means and refers to any individual, partnership, limited liability company, corporation, governmental entity, trust, estate or other legal entity.
- 2.28 "Preliminary Plans and Outline Specifications" are the initial Drawings and other documents for the base shell and core of the Building, interior circulation plan, Common Areas, on-site parking and other ancillary improvements.
- 2.29 "<u>Premises</u>" means a total of approximately 9,603 gross square feet in the Building consisting of a portion of the first floor of the Building outlined in red on the floor plan attached hereto as Exhibit B.
 - 2.30 "Project" means the total design and construction of the Building Shell and Core.
- 2.31 "<u>Project Requirements</u>" means the Preliminary Plans and Outline Specifications and other requirements for the Project specifically agreed to by Tenant and Landlord including the Building Standard Tenant Improvements.
- 2.32 "Property" means the parcel of land more particularly described in Exhibit A attached hereto and by this reference incorporated herein.
- 2.33 "Rent" means the sum of Base Monthly Rent and Additional Rent, each as defined elsewhere in this Lease.

2.34 <u>Intentionally Omitted.</u>

- 2.35 "Rent Commencement Date" means the date of Substantial Completion of the Project and the Building Standard Tenant Improvements (excluding the Additional Tenant Improvements, as determined by the Architect's issuance of a "Certification of Substantial Completion" on AIA Document G704.
- 2.36 "Requirements of Law" means the Design Review Documents and all Laws and other requirements relating to land and building construction (including those specifically applicable to the contemplated use of the Property and Premises as an office building) including, without limitation, planning, zoning, subdivision, environmental, air quality, flood hazard, fire safety accessibility, and other governmental approvals, permits, licenses and/or certificates as may be necessary from time to time to comply with all the foregoing and other applicable statutes, rules, orders, regulations, laws, ordinances, and covenants, conditions and restrictions, which now apply to and/or affect the design, construction, existence, intended use, operation and/or occupancy of the Premises or any part thereof.
- 2.37 "Shell and Core" means the structure, envelope, circulation, public spaces, physical plant support spaces, parking spaces, and site improvements that constitute the facilities to house utility functions.
- 2.38 "Site Plan" means the site plan on the Property and adjacent easement areas and attached hereto as Exhibit C.
- 2.39 "Substantially Complete" means the date when the Architect has issued a "Certificate of Substantial Completion" on AIA Document G704 for the Project and the Building Standard Tenant Improvements (excluding any Additional Tenant Improvements).
- 2.40 "Taxes" mean all real property taxes and assessments (including assessments for special improvements), license and permit fees, charges for public utilities, excise taxes, levies, sales, use and occupancy taxes, any tax or charge assessed against the Rent or fair market value of the Premises and any taxes levied or assessed in addition to or in lieu of, in whole or in part, such taxes, assessments or other charges and all other governmental impositions and charges of every kind and nature, general and special, which may be imposed, levied upon or assessed against or which arise with respect to or constitute a lien upon the Building, the Premises or any part thereof.
 - 2.41 "Tenant" means the City of University Place, its successors and assigns.
- 2.42 "Tenant's Construction Representative" means or his designee.
- 2.43 "Tenant's Pro Rata Share," as of the date of this Lease is set forth in Section 1 of this Lease subject to adjustment as provided in Sections 3 and 6.2 of this Lease.
- 2.44 "<u>Term</u>" or "<u>Initial Lease Term</u>" means the period beginning on the Rent Commencement Date and ending on the last day of the sixtieth (60th) month thereafter, unless

sooner terminated pursuant to the provisions of Section 4 of this Lease or unless the Term is extended pursuant to Section 5 of the Lease.

- 2.45 "<u>Utilities</u>" means all utilities and services furnished to the Common Areas and the Premises, including, without limitation, gas, electricity, water, sewer, garbage collection, and telephone service.
- 3. <u>Premises</u>. Landlord leases to Tenant and Tenant leases from Landlord the Premises for the Term. The Premises are located in the Building and are shown on the floor plans attached hereto as Exhibit B. Landlord also grants Tenant a non-exclusive license to use, in common with Landlord and the other tenants of the Building, if any, and their respective officers, directors, employees, agents and invitees, the Common Areas of the Building as the same may exist from time to time.

The precise area of the Premises shall be agreed upon by Landlord and Tenant upon Substantial Completion of the Project. Once the precise area of the Premises is so determined, the area of the Premises, Base Monthly Rent and Tenant's Pro Rata Share shall be appropriately adjusted and confirmed in writing by Landlord and Tenant and the area of the Premises shall not be further adjusted except to reflect additions to or other modifications of the Premises.

4. Term.

The Initial Term shall commence on the Rent Commencement Date and shall terminate on the last day of the sixtieth (60th) month thereafter ("Expiration Date"), unless sooner terminated pursuant to this Lease, subject, however, to the rights of Tenant to extend the Initial Term in accordance with the provisions of Section 5 of this Lease. Landlord and Tenant shall confirm the Commencement and Expiration Dates by executing within fifteen (15) days after the Commencement Date, a written Confirmation of Commencement Date in the form attached hereto as Exhibit G, which Confirmation of Commencement and Expiration Dates shall become a part of this Lease and be binding upon Landlord and Tenant to establish the actual Commencement and Expiration Dates of the Initial Term. Notwithstanding that the Initial Term of this Lease shall not commence until the Rent Commencement Date, all of the terms and provisions of this Lease, except Tenant's right to occupy the Premises and obligation to pay Rent, shall be effective from and after the date of this Lease.

5. Option to Extend.

- 5.1 Tenant has an option ("Option") to extend the Term of this Lease on the same terms and conditions (except for Base Monthly Rent) for one (1) five-year period ("Option Period"). Provided Tenant is not in default under this Lease beyond any cure periods, Tenant may extend the Initial Term by giving Landlord written notice of the exercise of the Option (the "Option Notice") at least ninety (90) days before the expiration of the then Term of this Lease. Tenant shall also give Landlord at least ninety (90) days' notice if Tenant has elected not to extend the Initial Term of this Lease.
- 5.2 Base Monthly Rent during the Option Period shall be four percent (4%) over the Annual Base Rent during the Initial Term payable in twelve equal monthly installments.

- 5.3 In addition to Base Monthly Rent, Tenant shall continue to pay Tenant's Pro Rata Share of Operating Expenses associated with the Premises during the Option Period.
- 6. <u>Rent.</u> Base Monthly Rent and Additional Rent shall commence upon the Rent Commencement Date.
- 6.1 <u>Base Monthly Rent</u>. Commencing on the Rent Commencement Date, Tenant shall pay to Landlord without deduction, offset, prior notice or demand, in advance on the first day of each month during the Term, Base Monthly Rent in the amount of \$17,823.00.
- 6.2 <u>Additional Rent</u>. In addition to Base Monthly Rent, commencing on the Rent Commencement Date, Tenant agrees to pay Landlord Tenant's Pro Rata Share of Operating Expenses as Additional Rent in advance on the first day of each month. Tenant's estimated Pro Rata Share of Operating Expenses as of the Rent Commencement Date is 22.5%. Tenant's Pro Rata Share shall be in the same proportion to the total Operating Expenses as the agreed gross square footage of the Premises is to the gross square footage of the Building as set forth in Section 1, subject to adjustment for separately metered utilities, exclusive use areas or services and any other special circumstances which may affect Tenant's pro rata allocation.
- 6.3 Operating Expenses. Operating Expenses means only the following operating costs actually incurred by Landlord in the management and operation of the Common Areas and the Premises, subject to the exclusions of items listed in Section 6.3.1:
- (a) All Taxes or other costs, charges or fees imposed by any governmental authority in connection with the Building; provided, however, that with respect to any general or special assessments which may be levied against the Building or the Premises, and which may be paid in installments, all such Taxes shall be paid in installments, and only the amount of the annual installment and interest due on any special assessment shall be included within the computation of Taxes;
- (b) Premiums and commercially reasonable deductibles incurred by Landlord for insurance coverage maintained by Landlord that is comparable to insurance carried by landlords of comparable buildings in the Pierce County office market related to insurance coverage that is no less than that required to be carried by Landlord under this Lease;
- (c) Utilities, including trash, debris removal, security devices and services, and any other services to be provided by Landlord under this Lease;
- (d) Property management fees attributable to the operation of the Building in an amount up to four percent (4%) of Annual Base Monthly Rent;
- (e) All reasonable and necessary costs and expenses of operating, maintaining and repairing the Building, all Building systems and their equipment and components and the Common Areas of the Building including lighting, heating, air conditioning, window cleaning, drainage, painting, replacement of wall and floor coverings, ceiling tiles and fixtures, sidewalks, driveways, re-paving and re-striping parking facilities, landscaping, fire sprinkler and/or alarm system, security, signs, glass, restrooms, roof surface and membrane (but not structure), awnings, canopies, service costs for elevators within the Building to the extent such costs are not covered

by warranty, and all other Common Areas of the Building (excepting all costs associated with acquisition or repair of Capital Expenditures), and all costs associated with the repair or replacement of all Building foundations, floor slabs, columns, exterior and load bearing walls, parking areas, windows, window frames, gutters and downspouts and structural components of the roof;

- (f) All reasonable and necessary costs and fees for repairing, replacing and maintaining the fixtures, improvements, mechanical, electrical and plumbing equipment and systems for the Building, including service contracts for all such items presently existing or subsequently installed in the Common Areas of the Building;
- (g) Wages, salaries and benefits of personnel directly engaged in the maintenance or repair of the Premises or the Building (such as a building engineer) so long as such wages, salaries and benefits are a result of services performed in connection with the repair or maintenance of the Premises or the Building (provided, however, Landlord shall be required to obtain such services at commercially reasonable rates);
- (h) All costs of services furnished by Landlord (provided, however, Landlord shall be required to obtain such services at commercially reasonable rates), including security, gardening, landscaping and related costs and expenses, licenses, permits and inspection fees, the costs of supplies, materials, equipment and tools used in connection with the maintenance, operation or repair of the Premises.
 - (i) Any other costs and expenses not specifically excluded in Section 6.3.1.

Landlord shall all times use its best efforts to operate the Building in an economically reasonable manner and control such costs, fees and expenses to reasonable commercial standards prevailing in the marketplace for comparable buildings. Landlord shall exert its good faith and diligent efforts to enforce any and all applicable warranties in connection with its operation and maintenance of the Building, provided however, any such costs expended by Landlord in connection with such activities shall be deemed an Operating Expense and payable by Tenant hereunder according to Tenant's Pro Rata Share.

- 6.3.1 <u>Exclusions from Operating Expenses</u>. Operating Expenses do not include the following:
- (a) Construction costs for the initial construction, remodel, expansion or other modification of the Building or any expansion thereof or costs of correcting any construction defect (except for the remodeling, expansion or other modification of any Common Areas, which shall be an Operating Expense);
- (b) Financing costs including interest and principal amortization of debts;
- (c) Repair or replacement of all Building foundations, floor slabs, columns, exterior and load bearing walls, exterior windows (other than broken glass to windows in the Premises) and structural components of the roof, but only during the Initial Term; during the Option Period, such expenses shall become Operating Expenses);

- (d) Costs arising from Landlord's political or charitable contributions;
- (e) Legal fees, leasing commissions, advertising expenses and other costs in connection with the leasing of space in the Building;
 - (f) Tenant improvement work for any tenant, including Tenant;
 - (g) Intentionally Omitted;
- (h) Cost or depreciation of Capital Expenditures or other capital improvements to the Building except those made to Common Areas or made primarily to reduce operating expenses or comply with applicable Laws or insurance requirements;
- (i) Fines, interest or penalties incurred as a result of Landlord's violation of any governmental rule or regulation;
- (j) Charges for electricity, water or other utilities and applicable taxes for which Landlord is entitled to reimbursement from any other tenant, and the costs of any HVAC, janitorial or other services provided to tenants on an extra cost basis after regular business hours;
- (k) Cost of any work or services performed for any facility other than the Building;
- (l) Costs of acquiring sculptures, paintings and other removable art objects;
- (m) Any and all closing fees, excise taxes and costs arising solely from a sale, transfer or other conveyance of the Premises or the Building;
- (n) Any income, franchise, corporate, estate, gift or transfer tax to be paid by Landlord;
- (o) Costs attributable to enforcing leases against tenants in the Building, such as attorneys' fees, court costs, judgments and similar expenses; and
 - (p) Landlord shall not recover any item of cost more than once.
- 6.3.2 Payment of Operating Expenses. Landlord shall reasonably estimate the Operating Expenses for each Lease Year wholly or partially included within the Term of the Lease and shall send notice of the estimate to Tenant within thirty (30) days after the Term begins for the first Lease Year and thereafter at least sixty (60) days before commencement of each subsequent calendar year. If Tenant requests, Landlord will give Tenant reasonably detailed documentation supporting Landlord's estimate. Tenant shall pay, as Additional Rent, 1/12 of Tenant's Pro Rata Share of the applicable estimate each month to Landlord together with Base Monthly Rent. Tenant shall continue to make estimated payments of Tenant's Pro Rata Share of the Operating Expenses based upon the preceding year's payment until notified by Landlord of a change in the amount.

- 6.3.3 Reconciliation of Operating Expenses. On or before April 30th of each Calendar Year Landlord shall give Tenant a written statement certified by Landlord's chief financial officer or Landlord's property manager in sufficient detail for verification by Tenant, including copies of all real and personal property tax statements for the Building, the amount of actual Operating Expenses for the Building for the prior calendar year and Tenant's Pro Rata Share thereof. In the event the total amount of Operating Expenses paid by Tenant during the prior calendar year are less than the Tenant's Pro Rata Share of such Operating Expenses, then Tenant shall pay the difference in a lump sum within thirty (30) days after receipt of Landlord's reconciliation statement. In the event the total amount of Operating Expenses paid by Tenant during the prior year exceeds Tenant's Pro Rata Share of such Operating Expenses, the excess shall be credited by Landlord to the Additional Rent next due and payable; provided, however, that if such excess sum is more than three (3) months of the then estimated Operating Expenses, Landlord shall refund such excess to Tenant within thirty (30) days after Tenant's receipt of Landlord's reconciliation statement. In the Year that this Lease terminates, the final calculation of Operating Expenses shall be done by Landlord within ninety (90) days after the termination date.
- 6.3.4 <u>Verification of Operating Expenses</u>. Tenant shall have the right, during reasonable business hours and upon ten (10) days' prior written notice to Landlord, to inspect and audit Landlord's books and records with respect to this Lease to verify actual Operating Expenses. Landlord's books and records shall be kept in accordance with generally accepted accounting principles. If any such audit reveals a discrepancy between Landlord's statement of the actual Operating Expenses for a calendar year and the amount determined by such audit, then Landlord shall reimburse Tenant the excess amount paid by Tenant (or Tenant shall pay Landlord the deficiency), if any; and, if such discrepancy reveals an overcharge of more than three percent (3%), Landlord shall promptly reimburse Tenant for the cost of such audit.
- of the Building, or any portion thereof, will be conducted for real property tax purposes, Landlord shall so notify Tenant and permit Tenant to be present during such appraisal if Tenant so elects. Tenant shall have the right in Landlord's name and stead, and at Tenant's sole expense, to contest the validity or amount of any real property taxes. Landlord shall cooperate with Tenant and provide reasonable assistance with respect to any such contest, including, without limitation, such information and supporting documents as may be reasonably requested by Tenant. Notwithstanding any provision of this Lease to the contrary, Tenant shall not be required, nor shall Landlord have the right to pay, discharge or remove any such real property tax so long as no Event of Default has occurred under this Lease and Tenant is contesting the existence, amount, applicability or validity thereof by appropriate proceedings conducted in good faith with due diligence. In the event Landlord shall obtain a tax refund as a result of any such tax appeal or other proceedings Tenant shall be entitled to, and Landlord shall promptly pay to Tenant, its Pro Rata Share of all such tax refunds.
- 6.4 <u>Prorations</u>. Rent shall be prorated on the basis of a 365 day year to account for any fractional portion of a calendar year included in the Term of this Lease at its commencement or expiration.
 - 6.5 No Prepaid Rent. Tenant has not prepaid any Rent to Landlord for the Premises.

- 6.6 <u>Holdover Rent</u>. In the event Tenant remains in the Premises for any reason after the effective date of the termination of this Lease, the Base Monthly Rent shall be 150% of the prior year's Base Monthly Rent during the holdover period unless otherwise agreed in writing.
- 6.7 <u>No Security and Damage Deposit</u>. There is no security deposit or damage deposit required under this Lease.

7. Use of the Premises.

- 7.1 <u>Use</u>. Tenant may use and occupy the Premises for the purposes set forth in Section 1 and related uses and for no other purpose without the prior written consent of Landlord which shall not be unreasonably withheld.
- 7.2 <u>Condition of Premises</u>. Tenant shall not permit damage to the Premises, nor shall Tenant do anything which may constitute a nuisance. Tenant shall keep the Premises clean and free from rubbish and shall store all trash and garbage within the Premises or within areas designated by Landlord for such purposes.
- 7.3 Compliance With Law. Tenant, at its expense, shall promptly comply with all present and future laws and requirements of authorities applicable to the Premises except for those items that are the responsibility of Landlord hereunder. If any governmental license or permit shall be required for the proper and lawful conduct of Tenant's business activity carried on from the Premises, Tenant at its expense shall procure and thereafter maintain such license or permit. Tenant shall comply with all federal, state and local laws and regulations regarding Hazardous Substances, including tracking, reporting and documenting generation, storage or disposal. Copies of such control documentation shall be provided to Landlord upon request. To the extent permitted by law, Tenant shall indemnify, defend and hold Landlord harmless from and against any and all debts, demands, obligations, liens, judgments, claims, liabilities, losses, damages, cleanup costs and expenses, including reasonable attorneys' fees, arising in connection with the presence, transportation, storage, disposal or handling of Hazardous Substances generated or released by Tenant or any of its agents or employees at any time during Tenant's occupancy of the Premises.
- 7.4 <u>Exterior Fixtures</u>. Tenant shall not install exterior signs, lighting fixtures, shades or awnings or do any exterior decoration or painting, or make any structural alterations to the Building or the Premises.
- 7.5 <u>Conforming Signs</u>. Landlord shall install and maintain signs for Tenant's Premises which conform to the standard signage plan adopted for the Building.
- 7.6 <u>Building Rules</u>. Tenant shall observe such reasonable rules related to the Building as may be adopted from time to time by Landlord and delivered to Tenant provided such rules do not conflict with the terms of this Lease.

8. Utilities and Services.

8.1 <u>Building Utilities and Services</u>. Landlord shall provide the following utilities and other services to the Premises: electricity, HVAC, potable water (hot and cold) for lavatory and

drinking purposes, elevators, sprinkler, fire alarm, security system, sewer, gas, trash removal, recycling and telecommunication conduit. All Utility services shall be available 24 hours a day, seven (7) days a week.

- 8.2 <u>Utilities</u>. Tenant shall pay when due and directly to the appropriate utility company all bills for separately metered utilities in the Premises. All other utilities shall be included in Operating Expenses.
- 8.3 <u>Janitorial Services</u>. Tenant shall provide for its own janitorial service for the Premises.
- 8.4 <u>Telephone and Data Transmission</u>. Tenant shall have the right to install telephone and data communications systems in the Premises. Tenant shall pay for such services directly to the appropriate telephone company or other service provider.
- 8.5 <u>Parking</u>. Tenant is entitled to the use of twenty-five (25) parking stalls in the Project, the cost of which is included as part of the Rent. Additional parking is available to the public including employees and visitors of other tenants on a first-come first-serve basis. Tenant agrees to control the use of parking stalls by its visitors to areas designated or requested by Landlord.
 - 9. Tenant Improvement Allowance and Additional Tenant Improvements.
- 9.1 Tenant Improvement Allowance. Landlord agrees to credit Tenant with a tenant improvement allowance of up to \$24 per square foot, which will be used by Landlord's Contractor to build the Building Standard Tenant Improvements (the "Tenant Improvement Allowance"). Tenant and Landlord will agree on what work the Building Standard Tenant Improvements will include within the Tenant Improvement Allowance as expeditiously as possible following the date of execution of the Development Agreement, and, once agreed to by the Parties, a complete description of the Building Standard Tenant Improvements agreed to by the parties shall be attached to this Lease as Exhibit "E".
- 9.2 Additional Tenant Improvements. Tenant shall have the right to make Additional Tenant Improvements to the interior of the Premises (in excess of the Building Standard Tenant Improvements), provided that any such Additional Tenant Improvements will be done at the sole cost of Tenant, and with the prior written consent of Landlord, which will not to be unreasonably withheld. Landlord shall require, however, that any Additional Tenant Improvements will be appropriate for the general use of any tenant and not specific to Tenant's use of the Premises, and of the kind that will generally enhance the value of the Premises and/or Building. In the event that Tenant desires to make Additional Tenant Improvements to the interior of the Premises, the parties shall execute a work letter which will set forth the general terms and conditions under which such Additional Tenant Improvements will be constructed, and such work letter, when created, will be attached to this Lease as an exhibit.
- 9.3 <u>Termination of Lease</u>. Tenant shall have the right to terminate this Lease if Substantial Completion of the Project and the Building Standard Tenant Improvements has not occurred on or before October 31, 2008.

10. Maintenance and Repair.

- Except for damage caused by any negligent or 10.1 Landlord's Obligations. intentional act of Tenant, or Tenant's agents, employees or invitees, Landlord, at Landlord's cost and expense, shall repair or make replacement of all Building foundations, floor slabs, columns, exterior and load bearing walls, exterior windows (other than broken glass to windows in the Premises) and structural components of the roof to the extent necessary to keep it in good order, condition and repair, all in accordance with standards maintained for comparable Class A office buildings in Pierce County, and in compliance with the applicable provisions of Title III of the Americans with Disabilities Act and the regulations issued thereunder, but only during the Initial Term. During the Option Period, such expenses shall become Operating Expenses and Tenant shall pay for the cost of the same according to Tenant's Pro Rata Share, Except as set forth in Sections 6.3 and 10.1, Landlord's costs in the maintenance and repair of the Building and Common Areas are treated as Operating Expenses. Landlord shall endeavor to respond to urgent repairs immediately upon notice of the emergency and within three (3) days following receipt of notice for non-urgent repairs.
- 10.2 <u>Tenant's Obligations</u>. Subject to Sections 6.3 and 10.1 above and except for damage caused by any negligence or intentional act of Landlord, or Landlord's agents, employees or invitees, Tenant shall keep the Premises in good order, condition and repair at Tenant's expense. Landlord shall perform all maintenance and repair to the Premises at Tenant's request and shall invoice Tenant accordingly; provided, however, that maintenance and repair of building systems and equipment such as the elevators, the HVAC system, plumbing, mechanical, electrical and lighting facilities and equipment which serve the entire Building are an Operating Expense and only those portions of the building systems and equipment located entirely within the Premises shall be charged to Tenant as part of the cost to maintain the Premises in good order and condition. Upon expiration or earlier termination of this Lease, Tenant shall surrender the Premises in the same condition as received, ordinary wear and tear and damage by fire, earthquake, act of God or the elements alone excepted.
- 10.3 <u>Trade Fixtures</u>. Upon expiration or earlier termination of this Lease, Tenant shall pay for repairs to the Premises caused by or in connection with the removal of any articles of personal property, business or trade fixtures, equipment, machinery, cabinetwork, furniture, moveable partitions, together with all additions and accessories thereto, including, without limitation, repairing the floor and patching and painting the walls where required to Landlord's reasonable satisfaction at Tenant's sole cost and expense.

11. <u>Modifications</u>, Alterations and Additions.

11.1 <u>Modifications</u>, <u>Alterations and Additions</u>. From and after the Rent Commencement Date, Tenant may, at Tenant's sole cost and expense, make modifications, alterations and additions to the Premises provided that such modifications, alterations and additions increase the value of the Premises and/or Building and such modifications, alterations and additions shall be expeditiously completed in a good and workmanlike manner and in compliance with all applicable Laws and the requirements of all insurance policies required to be maintained under this Lease, and any such modifications, alterations or additions shall require the prior written consent of Landlord. Landlord shall, upon reasonable notice, have access to all

plans and specifications relating to alterations and modifications made by Tenant to the Premises.

- 11.2 Ownership of Tenant Improvements. All tenant improvements which may be installed in the Premises and which in any manner are attached to the floors, walls or ceilings of the Premises, shall remain with the Premises upon termination of this Lease, unless the parties have otherwise agreed in writing at the time Landlord grants permission for installation. Any trade fixtures and/or equipment installed upon or attached to the Premises by Tenant shall remain the property of Tenant, and Landlord agrees that Tenant shall have the right at any time (and from time to time) during the Term of this Lease to remove any and all such trade fixtures and/or equipment, and repair any damage caused thereby.
- 11.3 <u>Liens.</u> From and after the Rent Commencement Date, Tenant shall pay all costs for modifications, alterations and additions done by it or caused to be done by it on the Premises as permitted by this Lease (other than construction of the Project and Building Standard Tenant Improvements) and Tenant shall keep the Premises and Building free from all construction and other liens on account of work done for Tenant or persons claiming by, through or under Tenant. Tenant shall indemnify, defend and hold Landlord harmless from any lien claim, judgment or litigation arising out of any work performed or materials furnished by or at the direction of Tenant. Should any claim of lien be filed against the Building or the Premises or any action affecting the title to the Building or the Premises be commenced, the responsible party shall cause such lien to be released of record by payment or posting of a proper bond within thirty (30) days following the filing of such lien.

12. Insurance.

- Property Insurance. Commencing upon the construction of the Building and thereafter during the Term of this Lease, Landlord shall obtain and maintain on the Premises (including the Building and all fixtures, equipment and machinery installed by Landlord as part of the Building or the Premises) insurance policies of the type now known as "all risk" or "special cause of loss" property insurance including flood and boiler and machinery insurance, in an amount equal to not less than 90% of the then full replacement cost of the Building (exclusive of the cost of excavations, foundations and footings) and without deduction for physical depreciation and eighteen (18) months loss of rents coverage, together with such other insurance coverage as is customarily carried on comparable office buildings in Pierce County or as Landlord may reasonably determine, with insurance companies which are authorized to do business in the State of Washington. Such property insurance shall be in builder's risk form during initial construction of the Building and during any restoration accomplished in connection with damage or destruction to the Premises or in connection with any Condemnation. Landlord is responsible for payment of any deductibles under said insurance policies and any costs of restoration resulting from any uninsured or underinsured losses. The insurance policies shall be issued in the name of Landlord, and Tenant as their interests may appear, and shall provide that any proceeds be applied to restoration of the Premises.
- 12.2 <u>Commercial General Liability Insurance</u>. Commencing on the Effective Date and thereafter during the Term of this Lease, Landlord shall, at its sole cost and expense obtain and keep in force throughout the Term commercial general liability insurance (full form personal

injury and broad form property damage) with respect to the Building and the Premises, insuring against claims for personal injury (including, without limitation, bodily injury or death) and property damage liability with a combined single limit of not less than \$5,000,000 per occurrence, automobile liability insurance covering all owned, non-owned and hired vehicles (with limits of not less than \$1,000,000 per occurrence), and workers' compensation insurance (as required by law). The amount of such insurance coverage shall not be less than commercially reasonable insurance carried by owners of properties of similar nature and occupancies as the Building, and shall be in form and with deductibles satisfactory to Tenant. Tenant shall be an additional insured and Landlord's policy shall be primary and non-contributory to any coverage maintained by Tenant. Any deductibles or self-insured retentions must be declared to and approved by Tenant. The deductible and/or self-insured retention of the policies shall not limit or apply to Tenant and shall be the sole responsibility of Landlord. The limits of such insurance shall not, however, limit the liability of Landlord hereunder.

- 12.3 <u>Tenant Insurance</u>. From and after the Rent Commencement Date, Tenant shall maintain at its own cost insurance or self-insurance coverage for commercial general liability, and property damage coverage, automobile liability and workers' compensation insurance (as required by law). Landlord shall have no obligation to insure any of Tenant's personal property. Certificates of coverage shall be delivered to Landlord upon request and thereafter at renewal, non-renewal, or material modification of insurance or self-insurance programs.
- Insurance Policies. All insurance required under this Lease shall: (i) be issued by insurance companies authorized to do business in the State of Washington with a rating reasonably satisfactory to Tenant; (ii) be issued as a primary policy not contributing with and not in excess of coverage that Tenant may carry; and (iii) contain an endorsement requiring thirty (30) days' prior written notice from the insurance company to Landlord, Tenant and any lender which a mortgage lien on the Building before cancellation or change in the coverage, scope, or amount of any policy (ten (10) days for non-payment of premiums). Tenant shall be named as an additional insured on Landlord's liability policies. Each policy or a certificate of the policy shall be deposited with the other party on or before the Effective Date, and as reasonably available upon replacement or renewal of each policy. Policy limits, coverages and deductibles shall be reviewed annually and may be adjusted if prudent, considering levels of inflation, risk of loss, premiums, expenses and other relevant factors; provided, however that the amount of property damage insurance that Landlord shall maintain with respect to the Building shall never be less than the full replacement cost of the Building.
- 13. <u>Indemnification and Waivers</u>. The parties agree to mutually waive all right of recovery against the other for any loss or damage covered by their respective first party commercial insurance policies for all perils insured thereunder and in the event of any commercially insured loss, neither party's insurance carrier shall have a subrogation claim against the other party; provided, however, that this waiver of subrogation shall not apply if the effect is to void such insurance coverage.
- 14. <u>Assignment and Subletting</u>. Except as set forth in the remainder of this Section 14, Tenant shall not assign or sublease its interest in this Lease or in the Premises, without the prior written consent of Landlord. Landlord shall not unreasonably withhold, delay or condition such

request and may not deny such request if the proposed assignee or subtenant intends to use the Premises for a use permitted under Section 7 hereof and has a demonstrated financial capacity and/or resources to meet the continuing obligation of the Tenant hereunder. Tenant shall have no right to make any assignment or sublease of its rights under this Lease if Tenant is then in default. . Any such assignment or sublease as provided for in this Section shall be in writing and shall require such assignee or subtenant to comply fully with the terms of this Lease, including, without limitation, the provisions of Section 7 regarding use of the Premises. Tenant shall provide Landlord with written notice of any such assignment or sublease and a copy of any such lease assignment or sublease documentation. To the extent any such sublease or permitted assignment entitles Tenant to compensation for the sublease or use of the Premises (excluding any compensation for special services, equipment or other benefits provided by Tenant) in excess of the rental provided hereunder, Landlord shall be entitled to receive from Tenant an amount equal to fifty percent (50%) of such excess compensation, as and when paid to Tenant. Notwithstanding the foregoing, Tenant shall have the right to sublease the Premises or any portion thereof to the Washington State University Pierce County Extension Program ("WSU Sublease"); provided, however, Tenant shall provide Landlord with a copy of the WSU Sublease promptly following execution thereof. The WSU Sublease shall automatically terminate upon expiration or earlier termination of this Lease. No assignment or subletting by Tenant shall be deemed to release Tenant from primary liability under this Lease unless expressly agreed by Landlord in writing.

15. <u>Destruction</u>.

- Insured Damage. If during the Term, the Premises, the Building or the parking areas is partially or totally destroyed by any casualty that is covered by the insurance described in Section 12, rendering the Premises partially or totally inaccessible or unusable, Landlord shall restore the Premises, the Building and the parking areas to substantially the same condition as they were in immediately before such destruction, if (i) the insurance proceeds available to Landlord equals or exceeds the cost of such restoration, (ii) such restoration can be completed within a period which is not longer than twelve (12) months from the date of such destruction, and (iii) such restoration is permitted under then existing laws to be done in such a manner as to return the Premises to substantially the same condition as they were in immediately before such Landlord will advise Tenant with respect to the preceding conditions and, accordingly, whether such restoration of the Premises can proceed, on or before that date which is sixty (60) days after the date of destruction. If the foregoing conditions cannot be met, such destruction shall be treated as "Uninsured Damage" in accordance with the provisions of Section 15.2. Destruction which is required to be restored by Landlord in accordance with the terms of this Section 15.1 shall not result in the termination of this Lease; provided, however, that Rent shall be abated proportionately based on the extent to which Tenant's use of the Premises is impaired during the period of repair, reconstruction or restoration.
- 15.2 <u>Uninsured Damage</u>. If during the Term the Premises, the Building or the parking areas is partially or totally destroyed by any casualty and the conditions set forth in Section 15.1 captioned "Insured Damage" cannot be met, Landlord shall provide written notice to Tenant within sixty (60) days after the date of destruction. Such notice shall describe the extent of the destruction and which of the condition(s) cannot be met and Tenant shall thereupon have the right to terminate its obligations under this Lease. If the Lease is terminated, the duty to pay

Rent shall terminate upon the date of termination. Tenant shall be entitled to collect and retain the proceeds of all insurance to the extent covering Tenant's personal property, including Tenant's trade fixtures and equipment.

- 15.3 <u>Abatement of Rent</u>. If the Premises shall be rendered partially or wholly untenantable as a result of damage or destruction of the Premises, the Building or the parking areas, then Rent shall be abated proportionately until the damage or destruction is repaired or restored in full.
- 15.4 <u>Delay in Completing Repairs</u>. Notwithstanding anything to the contrary contained in this Section 15, if repair or restoration of the Premises following any damage or destruction cannot be completed within twelve (12) months, Tenant shall have the right to terminate this Lease upon thirty (30) days prior written notice and Tenant shall thereafter be released from its obligations under this Lease.

16. Condemnation.

- during the Term there is a taking or damaging of all or any portion of the Premises, the Building or the parking areas by the exercise of any governmental power, whether by legal proceedings or otherwise, by a governmental agency with jurisdiction or a transfer by Landlord either under threat of condemnation or while legal proceedings for condemnation are pending (a "Condemnation") such that there can be no reasonable use of the Premises by Tenant, as reasonably determined by Tenant, this Lease and any duty to pay Rent shall automatically terminate on the date the condemnor has the right to possession of the property being condemned. The award payable by the condemning authority with respect to a taking of the Property, the Building or the Premises so taken shall be payable solely to the Landlord. Tenant shall have the right to claim and recover from the condemnor compensation for the loss of any of Tenant's personal property, moving expenses and any other damages provable and suffered by Tenant in connection with the Condemnation.
- 16.2 <u>Partial Condemnation</u>. If only a part of the Premises, the Building or the parking areas shall be taken in connection with a Condemnation and the remainder of the Premises not so taken can be made tenantable in the reasonable judgment of Tenant for the purposes for which Tenant has been using the Premises, then this Lease shall continue in full force and effect as to the remainder of the Premises, and all of the terms herein provided shall continue in effect except that the Rent shall be reduced in an equitable manner and Landlord shall make all necessary repairs and alterations to the Premises required by such taking. The entire award payable to Landlord for the partial taking shall be applied solely to the cost of such repair or restoration. Landlord shall restore the Premises, the Building or the parking areas or such portion thereof in accordance with the provisions of paragraph 15.1 above and Rent shall be abated as provided in Section 15.3 above, and following such repair, reconstruction or restoration, Base Monthly Rent (and Tenant's Pro Rata Share) shall be permanently reduced on the basis of the percentage of the Premises taken as a result of such Condemnation.

17. Default and Remedies.

- 17.1 <u>Default By Tenant</u>. The occurrence of any one of the following events shall constitute a material breach and default by Tenant under this Lease:
- 17.1.1 Tenant shall have failed to pay an installment of Rent or other payment due, where such failure shall continue for a period of ten (10) days after written notice from Landlord.
- 17.1.2 Tenant shall have failed to perform any other provision of this Lease if the failure to perform is not cured within thirty (30) days after written notice of such default has been given by Landlord to Tenant. If the default cannot reasonably be cured within thirty (30) days, Tenant shall not be in default under this Lease if Tenant shall within the thirty (30) day period commence such cure and thereafter in good faith diligently and continuously prosecutes such cure to completion.
- 17.2 <u>Remedies</u>. In the event of default of this Lease by Tenant, Landlord shall have the following rights and remedies:
 - 17.2.1 To sue for Rent or any amounts due hereunder.
- 17.2.2 To remedy any nonmonetary default of Tenant and to enter upon the Premises to do any work or other things therein, and in such event all reasonable expenses of Landlord in remedying such default shall be payable by Tenant to Landlord on demand.
- 17.2.3 To terminate this Lease by thirty (30) days' written notice thereof to Tenant.
- 17.2.4 If Landlord elects not to terminate this Lease due to Tenant's default, Landlord may maintain Tenant's right to possession and continue this Lease in effect whether or not Tenant has abandoned the Premises.
- Re-Entry. In the event of any default by Tenant, Landlord shall also have the right, without terminating this Lease, to reenter the Premises and to remove all persons and property from the Premises and take whatever actions may be necessary or advisable to relet, protect or preserve the Premises. Any property so removed may be stored in a public warehouse or other suitable place or otherwise disposed of in Landlord's discretion at the expense and for the account of Tenant. Landlord shall not be responsible for any damages or losses suffered by Tenant as a result of such reentry, removal, storage or other disposition. Tenant covenants and agrees to make good to Landlord any deficiency arising from a reentry and reletting of the Premises at a lesser rental than herein agreed to through the Term of this Lease, plus reasonable costs of renovating the Premises for new tenants and reletting (including brokerage fees or commissions arising therefrom) provided Landlord has taken all reasonable measures to ensure that a fair market rental rate was obtained for reletting. Landlord shall provide notice to Tenant of any amount by which rentals from such reletting are less than the Rent and the due dates of such Rent. The deficiency amount for each such Rental payment shall be paid by Tenant on or before the due date for such Rental payment. Prior to payment of renovation and reletting costs for which Tenant is responsible under this Section 17, Landlord will submit an invoice for the

amount thereof to Tenant. Tenant shall pay such amount within thirty (30) days after receipt of written invoice.

- 17.4 <u>Interest</u>. Unless otherwise stated in this Lease, any Rent, Additional Rent or other sums due from Tenant or advanced by Landlord shall bear interest at twelve percent (12%), calculated at the time of such nonpayment by Tenant or advance by Landlord, provided that the applicable grace period has expired. Such interest shall be treated as Additional Rent due and owing immediately and continuing to accrue until paid or collected.
- 17.5 <u>Default By Landlord</u>. If Landlord shall fail to perform any act required by Landlord under this Lease, and such failure to perform continues for thirty (30) days after written notice from Tenant to Landlord, Landlord shall be in default under this Lease. If the default cannot reasonably be cured within thirty (30) days, Landlord shall not be in default under this Lease if Landlord shall within the thirty (30) day period commence such cure and thereafter in good faith diligently and continuously prosecutes such cure to completion.

18. Quiet Enjoyment.

- 18.1 <u>Title and Possession</u>. Landlord represents and warrants that Landlord has legal title to the Premises and has the right to enter into this Lease. Upon paying the Rent and keeping the covenants and terms of this Lease on its part to be kept and performed, Tenant shall have peaceful and uninterrupted possession of the Premises during the Term of this Lease, and any extensions thereof, subject to the terms of the Lease.
- 18.2 <u>Landlord's Right to Inspect</u>. Landlord may at reasonable times during Tenant's business hours, and after so advising Tenant, enter the Premises for the purpose of examining and of making repairs, but shall not interfere with Tenant's business. Landlord shall provide 24 hours' notice of inspection except in the case of an emergency such as a water or gas leak. Tenant shall provide the Landlord or its property manager with a key to the Premises.

19. Subordination, Non-Disturbance and Attornment.

- 19.1 Non-Disturbance. This Lease is subordinate to any permitted mortgages or deeds of trust executed by Landlord and now or hereafter affecting the Premises, provided however that the subordination of this Lease shall be expressly conditioned upon a non-disturbance agreement being delivered to Tenant from such current or future mortgagee in which the mortgagee agrees: (a) not to disturb Tenant's possession and other rights of Tenant under this Lease so long as Tenant continues to perform its obligations hereunder; and (b) in the event of acquisition of title, or coming into possession, by the mortgagee or beneficiary, through foreclosure proceedings, deed in lieu of foreclosure or otherwise, to accept Tenant as tenant of the Premises under the terms and conditions of this Lease and to perform all of Landlord's obligations under the terms of this Lease accruing after such acquisition of title or coming into possession.
- 19.2 <u>Attornment</u>. In the event any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any permitted mortgage or deed of trust made by Landlord covering the Premises, Tenant shall attorn to the purchaser and recognize the purchaser as Landlord under this Lease; provided that the purchaser shall be obligated to acquire and

accept the Premises subject to this Lease and to perform all of Landlord's obligations under the terms of this Lease accruing after such acquisition of title or coming into possession.

- 19.3 Tenant's Estoppel Certificate. Tenant, within fifteen (15) days from receipt of Landlord's written request, shall execute, acknowledge and deliver to Landlord a written statement ("Tenant's Certificate") certifying to the extent applicable: (a) that this Sublease is in full force and effect, without modification (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications); (b) that there are no uncured defaults in Landlord's performance and that Tenant has no right of offset, counterclaim or deduction against Rent; and (c) the dates to which the Rent has been paid.
- 20. <u>Notices</u>. Any notice or document required or permitted to be delivered hereunder from one party to the other shall be in writing and shall be deemed given when personally delivered, delivered by facsimile with confirmation of receipt or delivered by private courier service or three (3) days after being deposited in the United State mail, in registered or certified form, return receipt requested, to the other party's address or facsimile number as set forth in Section 1 or such other address or facsimile number as shall have been last designated by notice in writing from one party to the other. The address to which any notice, demand or other writing may be given, made or sent to either party may be changed by written notice given by such party as above provided.

21. <u>Miscellaneous Provisions</u>.

- 21.1 <u>Severability</u>. If any provision of this Lease shall be held to be invalid, illegal or unenforceable, the remaining provisions shall in no way be affected or impaired thereby.
- 21.2 <u>Impartial Construction</u>. The language in all parts of this Lease shall be in all respects construed as a whole according to its fair meaning, and shall not be construed strictly for or against either party by reason of the authorship of any provision hereof.
- 21.3 <u>Entire Agreement</u>. The provisions of this Lease along with any exhibits and attachments hereto constitute the entire agreement between Landlord and Tenant regarding the sublease of the Premises. This Lease supercedes any prior or contemporaneous oral or other agreement between Landlord and Tenant regarding the subject matter of this Lease. Any amendment or modification of this Lease must be in writing and signed by both parties.
- 21.4 <u>Authority to Execute</u>. Each individual executing this Lease on behalf of Landlord or Tenant respectively, represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of such entity, and that this Lease shall be binding upon said entity in accordance with its terms.
- 21.5 <u>Successors and Assigns</u>. The parties hereto agree that all provisions hereof are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each separate section hereof. Subject to any provisions in this Lease restricting assignment or subletting by the parties and the provisions of Section 14 hereof, this Lease shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns, and successors of the respective parties. This Lease shall not become binding upon the parties until it has been executed and acknowledged by both Landlord and Tenant.

- 21.6 <u>Time of Essence</u>. Time is of the essence in the payment and performance of each parties' obligations under this Lease.
- 21.7 <u>Captions</u>. The captions of the sections of this Lease are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this Lease. Exhibits attached hereto, and addenda and schedules initialed by the parties are deemed by attachment to constitute part of this Lease and are incorporated herein. Whenever herein the singular number is used, the same shall include the plural, and the neuter gender shall include the feminine and masculine genders.
- 21.8 <u>Waivers</u>. No waiver of any right under this Lease shall be effective unless contained in a writing signed by a duly authorized officer or representative of the party sought to be charged with the waiver and no waiver of any right arising from any breach or failure to perform shall be deemed to be a waiver of any future right or any other right arising under this Lease.

21.9 Intentionally Omitted.

- 21.10 No Brokerage Commission. Landlord and Tenant have negotiated this Lease directly and neither party has been represented by a real estate agent in connection with this transaction. Landlord and Tenant hereby represent and warrant to each other that neither party has knowledge of any leasing commission or other fee claimed or payable as a result of the lease of the Premises by Landlord to Tenant. The parties each agree to indemnify, defend and hold the other harmless from claims for leasing commissions or other fees asserted by any third party, including reasonable attorneys' fees and costs incurred by the other in defending against any such claims.
- 21.11 Attorneys' Fees. The prevailing party in any litigation, mediation, arbitration or other proceeding brought to enforce or interpret or otherwise arising out of this Lease shall be awarded attorneys fees and costs incurred in connection therewith.
- 21.12 <u>Nondiscrimination</u>. Landlord certifies it will not discriminate in employment on the basis of race, color, religion, sex, national origin, veteran status or physical or mental disability in regard to any position for which the employee is qualified, in compliance with (a) Presidential Executive Order 11246, as amended, including the Equal Opportunity Clause contained therein; (b) Section 503 of the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans Readjustment Act of 1974, as amended, and the Affirmative Action Clauses contained therein; and (c) the Americans with Disabilities Act of 1990, as amended. Landlord agrees it will not maintain facilities which are segregated on the basis of race, color, religion or national origin in compliance with Presidential Executive Order 11246, as amended, and will comply with the Americans with Disabilities Act of 1990, as amended, regarding its programs, services, activities and employment practices.
- 21.13 <u>Counterparts</u>. This Lease may be executed in counterparts and each counterpart shall constitute an original document and all such counterparts shall constitute but one and the same instrument.

- 21.14 <u>Memorandum of Lease</u>. Neither Landlord nor Tenant shall record this Lease without the consent of the other; provided, however, that Tenant shall have the right to record a Memorandum of this Lease in the form attached hereto as Exhibit G and by this reference incorporated herein.
- 21.15 Governing Law. This Lease shall be governed by the laws of the State of Washington. In the event any action is brought to enforce any of the provisions of this Lease, the parties agree to be subject to exclusive in personam jurisdiction in the Pierce County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively at Tacoma, Washington.
- 21.16 OFAC. Landlord and Tenant each represent and warrant to the other that they are not currently listed and at all times during the terms of this Lease they will not be listed in Executive Order 13224 Blocking Property and Prohibiting Transactions with persons who Commit, Threaten to Commit or Support Terrorism, as amended ("Executive Order 13224"), and neither Landlord nor Tenant has any present, actual knowledge that any other persons or entities holding any legal or beneficial interest whatsoever in Landlord or Tenant, respectively, are included in, owned by, controlled by, knowingly acting for or on behalf of, knowingly providing assistance, support, sponsorship or services of any kind to, or otherwise knowingly associated with any of the persons or entities referred to or described in Executive Order 13224, or banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control.

LANDLORD

UPTOWN CENTER DEVELOPMENT LLC, A New York limited liability company

	A New York limited liability company
	By:
	Name: Aaron Lichtman
	Title: Manager
Approved as to form:	TENANT
:	CITY OF UNIVERSITY PLACE,
	A Washington municipal corporation
	By:
City Attorney	Name:
·	Its:

TENANT ACKNOWLEDGEMENT

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who ated r of said

EXHIBIT A

Legal Description

Exhibit A

Lot 2, University Place Towncenter Binding Site Plan, Recorded February 1, 2007 under Recording Number 200702015003, Records of Pierce County Washington, Situated in the City of University Place, County of Pierce, State of Washington.

EXHIBIT B

Floor Plan of Premises

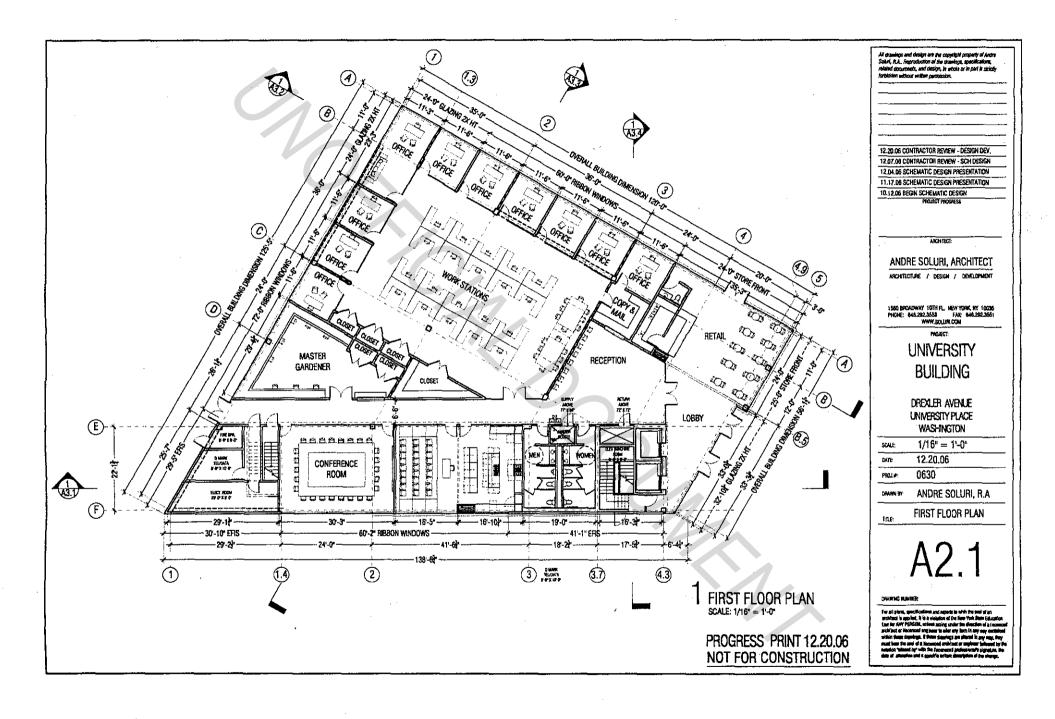


EXHIBIT C

Site Plan of Property

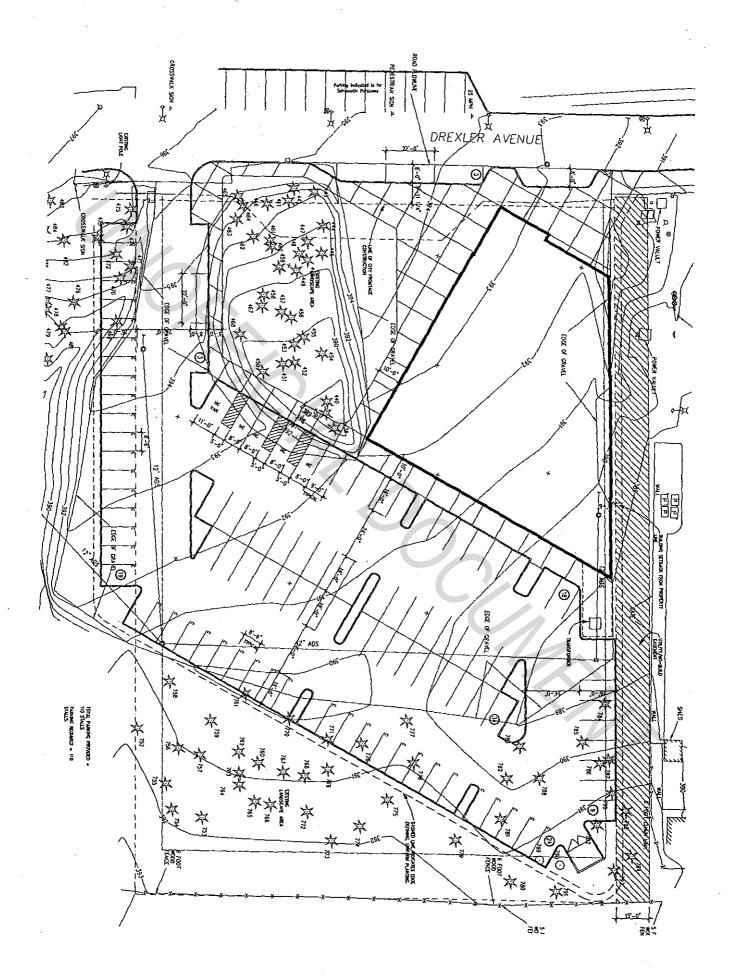


EXHIBIT D

Preliminary Plans and Outline Specifications

[attach and/or describe current approved design development plans and specifications prepared by Andre Soluri, Architect]

EXHIBIT E

Building Standard Tenant Improvements

[to be agreed upon by Landlord and Tenant as expeditiously as possible following execution of the Development Agreement - description and itemization of plans to be attached]

EXHIBIT F

Target Dates
(Design and Construction)

Matter	Date	
Preliminary Plans and Outline Specifications	Completed	
Construction Drawings	, 2007	
Building Permit	, 2007	
Guaranteed Maximum Price Contract for Project and Building Standard Tenant Improvements with the General Contractor	, 2007	
Commencement of Construction of Building	, 2007	
Substantial Completion of Building Shell and Code and Building Standard Tenant Improvements	August 1, 2008[check date]	

EXHIBIT G

Lease Confirmation

DEVELOPMI	ase Confirmation is made, 200, by UPTO NT LLC, a New York limited liability company ("Landlord") a PLACE, a Washington municipal corporation ("Tenant") who agree	and CITY OF
described in the	Landlord and Tenant entered into a lease dated, d to Tenant and Tenant leased from Landlord the premises (the Lease and located at Drexler Avenue, City of Undl capitalized terms not otherwise defined herein are as defined in the	iversity Place,
2. following mat	Pursuant to the Lease, Landlord and Tenant agreed to and do here ers as of the Commencement Date of the Term:	by confirm the
Lease;	is the Commencement Date of the	ne Term of the
Lease, subject	o one (1 option to extend for five (5) years;	ne Term of the
provided in the	c. The initial Monthly Rent under the Lease, subject to a Lease, is \$17,823.	adjustments as
3.	Tenant confirms that:	
	a. It has accepted possession of the Premises as provided in the	e Lease;
have been furr	b. The improvements required to be furnished by Landlord ushed (subject to any latent defects, corrective work or punch-list its	
	The provisions of this Lease Confirmation shall inure to the bene- require, the parties and their respective successors and assigns, assignment and subleasing contained in the Lease.	
	Initials	
	Landlord:	
	Tenant:	

EXHIBIT H

Memorandum of Lease

RECORDING R	EQUESTE	DBY	AND
WHEN RECORI	DED RETU	JRN T	O:

City of University Place 3715 Bridgeport Way University Place, Washington 98464 Attention: City Attorney

MEMORANDUM OF LEASE

GRANTOR:	Uptown Center Development, LLC
GRANTEE:	City of University Place
Legal Description: Abbreviated for	orm:
	al on page Exhibit A of document
Assessor's Tax Parce	ID No(s):

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (the day of, 2007 by and between CUPTOWN CENTER DEVELOPMENT LLC ("I	ITY OF UNIVERSITY PLACE ("Tenant") and
hereto and by this reference incorporated herein terms and conditions set forth in that certain Le between Landlord and Tenant (the "Lease").	real property described in Exhibit A attached (the "Premises") to Tenant at a rent and on the ase Agreement dated by and The Lease is for a term of five (5) years Tenant has one (1) option to extend the term of
2. <u>Definition of Terms</u> . All capital have the same meaning as set forth in the Lease.	dized terms not otherwise defined herein shall
recordation only and does not set forth all of the	is Memorandum is prepared for purposes of e terms and conditions set forth in the Lease. In terms and conditions of the Lease and this
DATED this day of	, 2007.
	LANDLORD
	LANDLORD UPTOWN CENTER DEVELOPMENT LLC, A New York limited liability company
	UPTOWN CENTER DEVELOPMENT LLC,
Approved as to form:	UPTOWN CENTER DEVELOPMENT LLC, A New York limited liability company By: Name: Aaron Lichtman
Approved as to form:	UPTOWN CENTER DEVELOPMENT LLC, A New York limited liability company By: Name: Aaron Lichtman Title: Manager
Approved as to form:	UPTOWN CENTER DEVELOPMENT LLC, A New York limited liability company By: Name: Aaron Lichtman Title: Manager TENANT CITY OF UNIVERSITY PLACE,

TENANT ACKNOWLEDGEMENT

STATE OF WASHINGTON)				
COUNTY OF PIERCE) ss.				
appeared before me and said person ackr that he was authorized to execut	is the person who nowledged that he signed this instrument, on oath stated the instrument and acknowledged it as the UNIVERSITY PLACE, a Washington municipal entioned in the instrument.			
Dated:				
[Seal or Stamp]	Notary Public			
	[Printed Name] My appointment expires			
LANDLORD ACKNOWLEDGEMENT				
STATE OF WASHINGTON)				
COUNTY OF PIERCE) ss.				
appeared before me and said person acknowled that he was authorized to execute the	factory evidence that Aaron Lichtman is the person who nowledged that he signed this instrument, on oath stated instrument and acknowledged it as the Manager of LLC to be the free and voluntary act and deed of said d in the instrument.			
Dated:				
[Seal or Stamp]	Notary Public [Printed Name]			
	My appointment expires			

EXHIBIT A

Land

LEASE

Between

UPTOWN CENTER DEVELOPMENT LLC, a New York limited liability company AS LANDLORD

and

CITY OF UNIVERSITY PLACE, a Washington municipal corporation AS TENANT

UNIVERSITY BUILDING

(Second and Third Floor Space)

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Exhibits

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- Exhibit C Site Plan for Property
- Exhibit D Preliminary Plans and Outline Specifications (for Building Shell and Core Improvements)
- Exhibit E Building Standard Tenant Improvements
- Exhibit F Target Dates
- Exhibit G Confirmation of Commencement and Expiration Date
- Exhibit H Memorandum of Lease

Exhibit B – Floor Plans

LEASE AGREEMENT FOR [Street Address], University Place, WA 98464

THIS LEASE AGREEMENT (the "Lease"), dated for reference purposes as of the day of, 2007, is made by and between UPTOWN CENTER DEVELOPMENT LLC, a New York limited liability company ("Landlord") and CITY OF UNIVERSITY PLACE, a Washington municipal corporation ("Tenant" or "City")(Landlord and Tenant are hereinafter sometimes referred to collectively as the "Parties").				
AGREEMENT				
1. <u>Basic Lease Terms</u> . All cap shall have the same meaning as set forth in S	pitalized terms not otherwise defined in this Lease ection 2 hereof.			
This Section contains the basic Lea	ase terms of this Lease between the Landlord and			
TENANT'S NAME AND ADDRESS:	City of University Place 3715 Bridgeport Way University Place, Washington 98464 Attn: City Manager Fax: (253) 460-2546			
With a copy to:	City of University Place 3715 Bridgeport Way University Place, Washington 98464 Attn: City Attorney Fax: (253) 460-2546			
LANDLORD'S NAME AND ADDRESS:	Uptown Center Development LLC 272 West 86 th Street, 2 nd Floor New York, New York 10024 Attn: Aaron Lichtman Fax:			
With a copy to:	Gordon Thomas Honeywell c/o Jemima J. McCullum 1201 Pacific Avenue, Ste. 2100 Tacoma, WA 98401 Fax:			
BUILDING ADDRESS:	Drexler Avenue City of University Place, Washington 98464			
AREA OF LEASED PREMISES	Approximately 22,286 of gross square feet,			

INITIAL TERM:

Five (5) years from the Rent Commencement Date

OPTIONS TO EXTEND

Two options to extend, for a term of five (5) years

each

PERMITTED USE:

General government and office purposes including, without limitation, City council chambers, conference and computer facilities and any other legally permitted use consistent with the character of Class A office buildings in the Pierce County office market.

ANNUAL BASE RENT:

\$28 per gross square foot, payable in twelve (12)

monthly installments of \$52,000 each

ADDITIONAL RENT:

Tenant's Pro Rata Share of Operating Expenses

TENANT'S PRO RATA SHARE

52% (22,286 gross square feet within 42,605 gross

square feet)

SECURITY DEPOSIT:

None

TENANT IMPROVEMENT

ALLOWANCE:

Up to \$24 per gross square foot

PARKING:

All parking stalls on the Project except those 25 parking stalls assigned to the tenant on the First Floor, available on a first-come first-serve basis (included in Rent).

- 2. <u>Definitions</u>. As used in this Lease, the following capitalized terms shall have the following meaning:
- 2.1 "<u>Additional Rent</u>" means Tenant's Pro Rata Share of the Operating Expenses and any other monetary sum to be paid by Tenant to Landlord or to third parties under the provisions of this Lease (other than Base Monthly Rent).
 - 2.2 "Architect" means Andre Soluri.
- 2.3 "Base Monthly Rent" means the amount of base monthly rent to be paid by Tenant each Year during the Term of this Lease, and the Option Period, if Tenant exercises the option. The Annual Base Monthly Rent payable during the first five (5) years of the Term is \$28 per gross square foot or Six Hundred Twenty-Four Thousand Eight Dollars (\$624,008), payable in twelve (12) equal monthly installments of Fifty-Two Thousand Dollars (\$52,000) each.

- 2.4 "<u>Building</u>" means a four story Class A office building containing approximately 42,605 gross square feet and on-site parking for 110 cars to be constructed on the Property. The Building is more particularly described in the Preliminary Plans and Outline Specifications.
- "Building Standard Tenant Improvements" means the improvements to the interior of the Premises beyond the Building Shell and Core, which are to be constructed by Landlord up to the extent covered by the Tenant Improvement Allowance. "Building Standard Tenant Improvements" shall be agreed to by the parties as expeditiously as possible following the date of the Development Agreement, and, once agreed to by the Parties, a complete description of the Building Standard Tenant Improvements agreed to by the parties shall be attached to this Lease as Exhibit "E". Tenant shall have the right to make additional improvements to the interior of the Premises (in excess of the Building Standard Tenant Improvements) provided that any such additional tenant improvements will be done at the sole cost of Tenant, and with the prior written consent of Landlord, which will not to be unreasonably withheld, as provided in Section 9 of this Lease (the "Additional Tenant Improvements"). In the event that Tenant desires to make Additional Tenant Improvements to the interior of the Premises, the parties shall execute a work letter which will set forth the general terms and conditions under which such Additional Tenant Improvements will be constructed, and such work letter, when created, will be attached to this Lease as an exhibit.
- 2.6 "<u>Calendar Year</u>" means a calendar year commencing January 1 and ending December 31.
- 2.7 "<u>Capital Expenditures</u>" is defined as (a) the acquisition of a prior non-existing asset or the repair or replacement of a pre-existing asset, (b) not characterized as an operating cost or expense under generally accepted accounting principles, (c) which maintains the value of the Building over its useful life, is permanently affixed to the Building and (d) does not include personal property, removable trade fixtures or repairs to existing assets.
- 2.8 "Common Areas" include any area in or around the Building designated by Landlord as being for the general use of tenants of the Building and their agents, employees and invitees and shall include parking areas, driveways, landscaped areas, service areas, walks, public stairs, corridors, hallways, lobbies, public restrooms or other shared areas, as the same may be expanded, removed, relocated or otherwise modified by the Landlord.
- 2.9 "<u>Construction Contracts</u>" means (i) the General Construction Contract and (ii) all other contracts for construction services entered into between Landlord and any Contractor, including the General Contractor, for construction of the Building, including Building Standard Tenant Improvements, or any other portion of the Project not covered by the General Construction Contract.
- 2.10 "Construction Documents" means the Construction Drawings and Detailed Specifications approved by Tenant and Landlord for construction of the Project, including technical drawings, schedules, diagrams, plans and specifications setting forth in detail the requirements for construction of the Building and Building Standard Tenant Improvement buildout for the Premises, and providing information customarily required for the use of the building trades and the general construction contract for construction of the Building.

- 2.11 "Construction Drawings" means the final construction drawings for the Project and the Building Standard Tenant Improvements.
- 2.12 "Contract Documents" means the Construction Documents, the Construction Contracts and the other documents identified as Contract Documents in the General Construction Contract.
- 2.13 "Contractors" means the General Contractor and any other construction contractors with whom Landlord enters into contracts with for construction of the Project and the Building Standard Tenant Improvements.
- 2.14 "<u>Design Review Documents</u>" means the following design principles and guidelines in effect at the time the building permit is issued for the Project: (a) the City comprehensive plan, (b) the Town Center Plan which sets forth certain core goals and design guidelines for redevelopment of the Town Center Property, (c) the City's zoning code, including the Town Center Overlay Zone, (d) the design standards and guidelines for the Town Center Overlay zone, and (e) the City's Planned Action Ordinance and environmental impact statements with respect to future land uses and mitigation measures identified therein, copies of which have been provided to Landlord and Architect, and are on file with the City.
- 2.15 "<u>Detailed Specifications</u>" means all written detailed requirements for materials, equipment, construction systems, standards and workmanship for the construction of the Project and the Building Standard Tenant Improvements.
- 2.16 "<u>Development Agreement</u>" means that certain Disposition and Development Agreement dated as of ______, 2007 by and between Tenant, as owner of the Town Center Property, and Landlord as Developer.
- 2.17 "<u>Drawings</u>" as used herein "Drawings" include all graphic and pictorial documents depicting the design, location and dimensions of the elements of the Building and Building Standard Tenant Improvements and include plans, elevations, sections, details, schedules and diagrams for the Building.
- 2.18 "Effective Date" means the date upon which this Lease has been fully executed, acknowledged and delivered by Tenant and Landlord.
- 2.19 "Environmental Laws" mean any federal, state or local law, rule or regulation pertaining to health, industrial hygiene or environmental conditions of the Premises, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Section 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq., and the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), 42 U.S.C. Section 6901, et seq.
- 2.20 "General Construction Contract" means the agreement between the Landlord and the General Contractor for the construction of the Project and the Building Standard Tenant Improvements.

- 2.21 "General Contractor" means a general contractor duly licensed in the State of Washington.
- 2.22 "<u>Hazardous Substances</u>" means any matter including petroleum products and byproducts, asbestos and any other material which is now or hereafter designated as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, <u>et seq</u>., or that is now or hereafter regulated by applicable Environmental Laws.
- 2.23 "Landlord" means Uptown Center Development LLC, a New York limited liability company, and its permitted successors and assigns.
- 2.24 "Law" or "Laws" means any constitution, statute, ordinance, regulation, rule, resolution, judicial decision, administrative order or other requirement of any federal, state, county, municipal or other governmental agency or authority having jurisdiction over the parties or the Premises, or both, in effect either at the time of execution of this Lease or at any time during the Term, including without limitation, any regulation or order of a quasi official entity or body (e.g., board of fire examiners or public utilities); all rules, laws and regulations arising under Title III of the Americans with Disabilities Act and the regulations issued thereunder by the United States Department of Justice.
- 2.25 "Lease Year" or "Year" means each succeeding year of the Term, commencing with the Rent Commencement Date and ending with the date which is one (1) day less than one (1) year later.
 - 2.26 <u>Intentionally Omitted</u>.
 - 2.27 Intentionally Omitted.
- 2.28 "Park Property" means the existing City park located immediately to the south of the Property.
- 2.29 "Person" means and refers to any individual, partnership, limited liability company, corporation, governmental entity, trust, estate or other legal entity.
- 2.30 "Preliminary Plans and Outline Specifications" are the initial Drawings and other documents for the base shell and core of the Building, interior circulation plan, Common Areas, on-site parking and other ancillary improvements.
- 2.31 "Premises" means a total of approximately 22,286 gross square feet in the Building consisting of the entire second and third floors of the Building.
 - 2.32 "<u>Project</u>" means the total design and construction of the Building Shell and Core.
- 2.33 "<u>Project Requirements</u>" means the Preliminary Plans and Outline Specifications and other requirements for the Project specifically agreed to by Tenant and Landlord including the Building Standard Tenant Improvements.

- 2.34 "Property" means the parcel of land more particularly described in Exhibit A attached hereto and by this reference incorporated herein.
- 2.35 "Rent" means the sum of Base Monthly Rent and Additional Rent, each as defined elsewhere in this Lease.

2.36 <u>Intentionally Omitted.</u>

designee.

- 2.37 "Rent Commencement Date" means the date that Substantial Completion of the Project and the Building Standard Tenant Improvements (excluding Additional Tenant Improvements) has occurred, as determined by the Architect's issuance of a Certificate of Substantial Completion on AIA Document G704;
- 2.38 "Requirements of Law" means the Design Review Documents and all Laws and other requirements relating to land and building construction (including those specifically applicable to the contemplated use of the Property and Premises as an office building) including, without limitation, planning, zoning, subdivision, environmental, air quality, flood hazard, fire safety accessibility, and other governmental approvals, permits, licenses and/or certificates as may be necessary from time to time to comply with all the foregoing and other applicable statutes, rules, orders, regulations, laws, ordinances, and covenants, conditions and restrictions, which now apply to and/or affect the design, construction, existence, intended use, operation and/or occupancy of the Premises or any part thereof.
- 2.39 "Shell and Core" means the structure, envelope, circulation, public spaces physical plant support spaces, parking spaces, and site improvements that constitute the facilities to house utility functions.
- 2.40 "Site Plan" means the site plan on the Property and adjacent easement areas and attached hereto as Exhibit C.
- 2.41 "<u>Substantially Complete</u>" means the date when the Architect has issued a "Certificate of Substantial Completion" on AIA Document G704 for the Project and the Building Standard Tenant Improvements (excluding any Additional Tenant Improvements).
- 2.42 "Taxes" mean all real property taxes and assessments (including assessments for special improvements), license and permit fees, charges for public utilities, excise taxes, levies, sales, use and occupancy taxes, any tax or charge assessed against the Rent or fair market value of the Premises and any taxes levied or assessed in addition to or in lieu of, in whole or in part, such taxes, assessments or other charges and all other governmental impositions and charges of every kind and nature, general and special, which may be imposed, levied upon or assessed against or which arise with respect to or constitute a lien upon the Building, the Premises or any part thereof.

2.43	"Tenant" means the City of University Place, its succe	ssors and assigns.
2.44	"Tenant's Construction Representative" means	or

his

- 2.45 "Tenant's Pro Rata Share," as of the date of this Lease is set forth in Section 1 of this Lease subject to adjustment as provided in Sections 3 and 6.2 of this Lease.
- 2.46 "<u>Term</u>" means the period beginning on the Rent Commencement Date and ending on the last day of the sixtieth (60th) month thereafter, unless sooner terminated pursuant to the provisions of Section 4 of this Lease or unless the Term is extended pursuant to Section 5 of the Lease.
- 2.47 "Town Center Property" means the property subject to the Development Agreement.
- 2.48 "<u>Utilities</u>" means all utilities and services furnished to the Common Areas and the Premises, including, without limitation, gas, electricity, water, sewer, garbage collection, and telephone service.
- 3. <u>Premises</u>. Landlord leases to Tenant and Tenant leases from Landlord the Premises for the Term. The Premises are located in the Building and are shown on the floor plans attached hereto as Exhibit B. Landlord also grants Tenant a non-exclusive license to use, in common with Landlord and the other tenants of the Building, if any, and their respective officers, directors, employees, agents and invitees, the Common Areas of the Building as the same may exist from time to time.

The precise area of the Premises shall be agreed upon by Landlord and Tenant upon Substantial Completion of the Project. Once the precise area of the Premises is so determined, the area of the Premises, Base Monthly Rent and Tenant's Pro Rata Share shall be appropriately adjusted and confirmed in writing by Landlord and Tenant and the area of the Premises shall not be further adjusted except to reflect additions to or other modifications of the Premises.

4. Term.

The Initial Term shall commence on the Rent Commencement Date and shall terminate on the last day of the sixtieth (60th) month thereafter ("Expiration Date"), unless sooner terminated pursuant to this Lease, subject, however, to the rights of Tenant to extend the Initial Term in accordance with the provisions of Section 5 of this Lease. Landlord and Tenant shall confirm the Commencement and Expiration Dates by executing within fifteen (15) days after the Commencement Date, a written Confirmation of Commencement Date in the form attached hereto as Exhibit G, which Confirmation of Commencement and Expiration Dates shall become a part of this Lease and be binding upon Landlord and Tenant to establish the actual Commencement and Expiration Dates of the Initial Term. Notwithstanding that the Initial Term of this Lease shall not commence until the Rent Commencement Date, all of the terms and provisions of this Lease, except Tenant's right to occupy the Premises and obligation to pay Rent, shall be effective from and after the date of this Lease.

5. Option to Extend.

5.1 Tenant has an option ("Option") to extend the Term of this Lease on the same terms and conditions (except for Base Monthly Rent) for two (2) five-year periods (each an "Option Period"). Provided Tenant is not in default under this Lease beyond any cure periods,

Tenant may extend the then Term by giving Landlord written notice of the exercise of the Option (the "Option Notice") at least ninety (90) days before the expiration of the then Term of this Lease. Tenant shall also give Landlord at least ninety (90) days' notice if Tenant has elected not to extend the then Term of this Lease.

- 5.2 Base Monthly Rent during the first Option Period shall be four percent (4%) over the Annual Base Rent during the Initial Term payable in twelve equal monthly installments, and Base Monthly Rent during the second Option Period shall be four percent (4%) over the Annual Base Rent during the first Option Period also payable in twelve equal monthly installments.
- 5.3 In addition to Base Monthly Rent, Tenant shall continue to pay Tenant's Pro Rata Share of Operating Expenses associated with the Premises during any period of the Lease including but not limited to during the Option Period.
- 6. Rent. Base Monthly Rent and Additional Rent shall commence upon the Rent Commencement Date.
- 6.1 <u>Base Monthly Rent</u>. Commencing on the Rent Commencement Date, Tenant shall pay to Landlord without deduction, offset, prior notice or demand, in advance on the first day of each month during the Term Base Monthly Rent in the amount of \$52,000.
- 6.2 Additional Rent. In addition to Base Monthly Rent, commencing on the Rent Commencement Date, Tenant agrees to pay Landlord Tenant's Pro Rata Share of Operating Expenses as Additional Rent in advance on the first day of each month. Tenant's estimated Pro Rata Share of Operating Expenses as of the Rent Commencement Date is 52%. Tenant's Pro Rata Share shall be in the same proportion to the total Operating Expenses as the agreed gross square footage of the Premises is to the gross square footage of the Building as set forth in Section 1, subject to adjustment for separately metered utilities, exclusive use areas or services and any other special circumstances which may affect Tenant's pro rata allocation.
- 6.3 Operating Expenses. Operating Expenses means only the following operating costs actually incurred by Landlord in the management and operation of the Common Areas and the Premises, subject to the exclusions of items listed in Section 6.3.1:
- (a) All Taxes or other costs, charges or fees imposed by any governmental authority in connection with the Building; provided, however, that with respect to any general or special assessments which may be levied against the Building or the Premises, and which may be paid in installments, all such Taxes shall be paid in installments, and only the amount of the annual installment and interest due on any special assessment shall be included within the computation of Taxes;
- (b) Premiums and commercially reasonable deductibles incurred by Landlord for insurance coverage maintained by Landlord that is comparable to insurance carried by landlords of comparable buildings in the Pierce County office market related to insurance coverage that is no less than that required to be carried by Landlord under this Lease;
- (c) Utilities, including trash, debris removal, security devices and services, and any other services to be provided by Landlord under this Lease;

- (d) Property management fees attributable to the operation of the Building in an amount up to four percent (4%) of Annual Base Monthly Rent;
- (e) All reasonable and necessary costs and expenses of operating, maintaining and repairing the Building, all Building systems and their equipment and components and the Common Areas of the Building including lighting, heating, air conditioning, window cleaning, drainage, painting, replacement of wall and floor coverings, ceiling tiles and fixtures, sidewalks, driveways, re-paving and re-striping parking facilities, landscaping, fire sprinkler and/or alarm system, security, signs, glass, restrooms, roof surface and membrane (but not structure), awnings, canopies, service costs for elevators within the Building to the extent such costs are not covered by warranty, and all other Common Areas of the Building (excepting all costs associated with acquisition or repair of Capital Expenditures), and all costs associated with the repair or replacement of all Building foundations, floor slabs, columns, exterior and load bearing walls, parking areas, windows, window frames, gutters and downspouts and structural components of the roof:
- (f) All reasonable and necessary costs and fees for repairing, replacing and maintaining the fixtures, improvements, mechanical, electrical and plumbing equipment and systems for the Building, including service contracts for all such items presently existing or subsequently installed in the Common Areas of the Building;
- (g) Wages, salaries and benefits of personnel directly engaged in the maintenance or repair of the Premises or the Building (such as a building engineer) so long as such wages, salaries and benefits are a result of services performed in connection with the repair or maintenance of the Premises or the Building (provided, however, Landlord shall be required to obtain such services at commercially reasonable rates);
- (h) All costs of services furnished by Landlord (provided, however, Landlord shall be required to obtain such services at commercially reasonable rates), including security, gardening, landscaping and related costs and expenses, licenses, permits and inspection fees, the costs of supplies, materials, equipment and tools used in connection with the maintenance, operation or repair of the Premises.
 - (i) Any other costs and expenses not specifically excluded in Section 6.3.1.

Landlord shall all times use its best efforts to operate the Building in an economically reasonable manner and control such costs, fees and expenses to reasonable commercial standards prevailing in the marketplace for comparable buildings. Landlord shall exert its good faith and diligent efforts to enforce any and all applicable warranties in connection with its operation and maintenance of the Building, provided however, any such costs expended by Landlord in connection with such activities shall be deemed an Operating Expense and payable by Tenant hereunder according to Tenant's Pro Rata Share.

- 6.3.1 <u>Exclusions from Operating Expenses</u>. Operating Expenses do not include the following:
- (a) Construction costs for the initial construction, remodel, expansion or other modification of the Building or any expansion thereof or costs of correcting any

construction defect (except for the remodeling, expansion or other modification of any Common Areas, which shall be an Operating Expense);

- (b) Financing costs including interest and principal amortization of debts;
- (c) Repair or replacement of all Building foundations, floor slabs, columns, exterior and load bearing walls, exterior windows (other than broken glass to windows in the Premises) and structural components of the roof, but only during the Initial Term; during the Option Period, such expenses shall become Operating Expenses;
 - (d) Costs arising from Landlord's political or charitable contributions;
- (e) Legal fees, leasing commissions, advertising expenses and other costs in connection with the leasing of space in the Building;
 - (f) Tenant improvement work for any tenant, including Tenant;
 - (g) Intentionally Omitted;
- (h) Cost or depreciation of Capital Expenditures or other capital improvements to the Building except those made to Common Areas or made primarily to reduce operating expenses or comply with applicable Laws or insurance requirements;
- (i) Fines, interest or penalties incurred as a result of Landlord's violation of any governmental rule or regulation;
- (j) Charges for electricity, water or other utilities and applicable taxes for which Landlord is entitled to reimbursement from any other tenant, and the costs of any HVAC, janitorial or other services provided to tenants on an extra cost basis after regular business hours;
- (k) Cost of any work or services performed for any facility other than the Building;
- (l) Costs of acquiring sculptures, paintings and other removable art objects;
- (m) Any and all closing fees, excise taxes and costs arising solely from a sale, transfer or other conveyance of the Premises or the Building;
- (n) Any income, franchise, corporate, estate, gift or transfer tax to be paid by Landlord;
- (o) Costs attributable to enforcing leases against tenants in the Building, such as attorneys' fees, court costs, judgments and similar expenses; and
 - (p) Landlord shall not recover any item of cost more than once.

- 6.3.2 Payment of Operating Expenses. Landlord shall reasonably estimate the Operating Expenses for each Lease Year wholly or partially included within the Term of the Lease and shall send notice of the estimate to Tenant within thirty (30) days after the Term begins for the first Lease Year and thereafter at least sixty (60) days before commencement of each subsequent calendar year. If Tenant requests, Landlord will give Tenant reasonably detailed documentation supporting Landlord's estimate. Tenant shall pay, as Additional Rent, 1/12 of Tenant's Pro Rata Share of the applicable estimate each month to Landlord together with Base Monthly Rent. Tenant shall continue to make estimated payments of Tenant's Pro Rata Share of the Operating Expenses based upon the preceding year's payment until notified by Landlord of a change in the amount.
- Reconciliation of Operating Expenses. On or before April 30th of each Calendar Year Landlord shall give Tenant a written statement certified by Landlord's chief financial officer or Landlord's property manager in sufficient detail for verification by Tenant, including copies of all real and personal property tax statements for the Building, the amount of actual Operating Expenses for the Building for the prior calendar year and Tenant's Pro Rata Share thereof. In the event the total amount of Operating Expenses paid by Tenant during the prior calendar year are less than the Tenant's Pro Rata Share of such Operating Expenses, then Tenant shall pay the difference in a lump sum within thirty (30) days after receipt of Landlord's reconciliation statement. In the event the total amount of Operating Expenses paid by Tenant during the prior year exceeds Tenant's Pro Rata Share of such Operating Expenses, the excess shall be credited by Landlord to the Additional Rent next due and payable; provided, however, that if such excess sum is more than three (3) months of the then estimated Operating Expenses, Landlord shall refund such excess to Tenant within thirty (30) days after Tenant's receipt of Landlord's reconciliation statement. In the Year that this Lease terminates, the final calculation of Operating Expenses shall be done by Landlord within ninety (90) days after the termination date.
- 6.3.4 <u>Verification of Operating Expenses</u>. Tenant shall have the right, during reasonable business hours and upon ten (10) days' prior written notice to Landlord, to inspect and audit Landlord's books and records with respect to this Lease to verify actual Operating Expenses. Landlord's books and records shall be kept in accordance with generally accepted accounting principles. If any such audit reveals a discrepancy between Landlord's statement of the actual Operating Expenses for a calendar year and the amount determined by such audit, then Landlord shall reimburse Tenant the excess amount paid by Tenant (or Tenant shall pay Landlord the deficiency), if any; and, if such discrepancy reveals an overcharge of more than three percent (3%), Landlord shall promptly reimburse Tenant for the cost of such audit.
- 6.3.5 Right to Contest Taxes. If Landlord receives prior notice that an appraisal of the Building, or any portion thereof, will be conducted for real property tax purposes, Landlord shall so notify Tenant and permit Tenant to be present during such appraisal if Tenant so elects. Tenant shall have the right in Landlord's name and stead, and at Tenant's sole expense, to contest the validity or amount of any real property taxes. Landlord shall cooperate with Tenant and provide reasonable assistance with respect to any such contest, including, without limitation, such information and supporting documents as may be reasonably requested by Tenant. Notwithstanding any provision of this Lease to the contrary, Tenant shall not be required, nor shall Landlord have the right to pay, discharge or remove any such real property tax

so long as no Event of Default has occurred under this Lease and Tenant is contesting the existence, amount, applicability or validity thereof by appropriate proceedings conducted in good faith with due diligence. In the event Landlord shall obtain a tax refund as a result of any such tax appeal or other proceedings Tenant shall be entitled to, and Landlord shall promptly pay to Tenant, its Pro Rata Share of all such tax refunds.

- 6.4 <u>Prorations</u>. Rent shall be prorated on the basis of a 365 day year to account for any fractional portion of a calendar year included in the Term of this Lease at its commencement or expiration.
 - 6.5 No Prepaid Rent. Tenant has not prepaid any Rent to Landlord for the Premises.
- 6.6 <u>Holdover Rent</u>. In the event Tenant remains in the Premises for any reason after the effective date of the termination of this Lease, the Base Monthly Rent shall be 150% of the prior year's Base Monthly Rent during the holdover period unless otherwise agreed in writing.
- 6.7 <u>No Security and Damage Deposit</u>. There is no security deposit or damage deposit required under this Lease.

7. Use of the Premises.

- 7.1 <u>Use</u>. Tenant may use and occupy the Premises for the purposes set forth in Section 1 and related uses and for no other purpose without the prior written consent of Landlord which shall not be unreasonably withheld.
- 7.2 <u>Condition of Premises</u>. Tenant shall not permit damage to the Premises, nor shall Tenant do anything which may constitute a nuisance. Tenant shall keep the Premises clean and free from rubbish and shall store all trash and garbage within the Premises or within areas designated by Landlord for such purposes.
- 7.3 Compliance With Law. Tenant, at its expense, shall promptly comply with all present and future laws and requirements of authorities applicable to the Premises except for those items that are the responsibility of Landlord hereunder. If any governmental license or permit shall be required for the proper and lawful conduct of Tenant's business activity carried on from the Premises, Tenant at its expense shall procure and thereafter maintain such license or permit. Tenant shall comply with all federal, state and local laws and regulations regarding Hazardous Substances, including tracking, reporting and documenting generation, storage or disposal. Copies of such control documentation shall be provided to Landlord upon request. To the extent permitted by law, Tenant shall indemnify, defend and hold Landlord harmless from and against any and all debts, demands, obligations, liens, judgments, claims, liabilities, losses, damages, cleanup costs and expenses, including reasonable attorneys' fees, arising in connection with the presence, transportation, storage, disposal or handling of Hazardous Substances generated or released by Tenant or any of its agents or employees at any time during Tenant's occupancy of the Premises.
- 7.4 <u>Exterior Fixtures</u>. Tenant shall not install exterior signs, lighting fixtures, shades or awnings or do any exterior decoration or painting, or make any structural alterations to the Building or the Premises.

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- 7.5 <u>Conforming Signs</u>. Landlord shall install and maintain signs for Tenant's Premises which conform to the standard signage plan adopted for the Building.
- 7.6 <u>Building Rules</u>. Tenant shall observe such reasonable rules related to the Building as may be adopted from time to time by Landlord and delivered to Tenant provided such rules do not conflict with the terms of this Lease.

8. Utilities and Services.

- 8.1 <u>Building Utilities and Services</u>. Landlord shall provide the following utilities and other services to the Premises: electricity, HVAC, potable water (hot and cold) for lavatory and drinking purposes, elevators, sprinkler, fire alarm, security system, sewer, gas, trash removal, recycling and telecommunication conduit. All Utility services shall be available 24 hours a day, seven (7) days a week.
- 8.2 <u>Utilities</u>. Tenant shall pay when due and directly to the appropriate utility company all bills for separately metered utilities in the Premises. All other utilities shall be included in Operating Expenses.
- 8.3 <u>Janitorial Services</u>. Tenant shall provide for its own janitorial service for the Premises.
- 8.4 <u>Telephone and Data Transmission</u>. Tenant shall have the right to install telephone and data communications systems in the Premises. Tenant shall pay for such services directly to the appropriate telephone company or other service provider.
- 8.5 <u>Parking</u>. Tenant is entitled to the use of all of the parking stalls in the Project, the cost of which is included as part of the Rent on a first-come first-serve basis except twenty-five (25) parking stalls assigned to the tenant on the first floor of the Building. Tenant agrees to control the use of parking stalls by its visitors to areas designated or requested by Landlord.
 - 9. Tenant Improvement Allowance and Additional Tenant Improvements.
- 9.1 Tenant Improvement Allowance. Landlord agrees to credit Tenant with a tenant improvement allowance of up to \$24 per square foot, which will be used by Landlord's Contractor to build the Building Standard Tenant Improvements (the "Tenant Improvement Allowance"). Tenant and Landlord will agree on what work the Building Standard Tenant Improvements will include within the Tenant Improvement Allowance as expeditiously as possible following the date of execution of the Development Agreement, and, once agreed to by the Parties, a complete description of the Building Standard Tenant Improvements agreed to by the parties shall be attached to this Lease as Exhibit "E".
- 9.2 Additional Tenant Improvements. Tenant shall have the right to make Additional Tenant Improvements to the interior of the Premises (in excess of the Building Standard Tenant Improvements), provided that any such Additional Tenant Improvements will be done at the sole cost of Tenant, and with the prior written consent of Landlord, which will not to be unreasonably withheld. Landlord shall require, however, that any Additional Tenant Improvements will be appropriate for the general use of any tenant and not specific to Tenant's use of the Premises, and

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of the kind that will generally enhance the value of the Premises and/or Building. In the event that Tenant desires to make Additional Tenant Improvements to the interior of the Premises, the parties shall execute a work letter which will set forth the general terms and conditions under which such Additional Tenant Improvements will be constructed, and such work letter, when created, will be attached to this Lease as an exhibit.

- 9.3 <u>Relocation of Premises; Termination of Lease</u>. Landlord shall have the right to relocate Tenant to mutually agreeable and comparable space in the Town Center Property (the "New Premises") within thirty (30) days of the satisfaction of each of the following terms and conditions;
 - (a) Tenant is not in default under this Lease;
- (b) Landlord has achieved Substantial Completion of the shell and core of the building in which the New Premises is located;
- (c) Tenant has achieved Substantial Completion of the tenant improvements it has elected to install in New Premises (if any), provided that Tenant shall have no more than four (4) months to complete its tenant improvements to the New Premises following the Substantial Completion of the shell and core of the building in which the New Premises is located;
- (d) Tenant's moving costs from the Premises to the City Hall space shall be the sole responsibility of Tenant; and,
- (e) Indirect costs incurred by Tenant as a result of the relocation, such as costs incurred in changing addresses on stationary, business cards and any advertising of Tenant's new location shall be borne solely by Tenant.

Landlord shall give Tenant at least 90 days prior written notice of Landlord's Substantial Completion of the New Premises and its intent to relocate Tenant to the New Premises.

9.4 <u>Termination of Lease</u>. Tenant shall have the right to terminate this Lease if Substantial Completion of the Project has not occurred on or before October 31, 2008.

10. Maintenance and Repair.

10.1 Landlord's Obligations. Except for damage caused by any negligent or intentional act of Tenant, or Tenant's agents, employees or invitees, Landlord, at Landlord's cost and expense, shall repair or make replacement of all Building foundations, floor slabs, columns, exterior and load bearing walls, exterior windows (other than broken glass to windows in the Premises) and structural components of the roof to the extent necessary to keep it in good order, condition and repair, all in accordance with standards maintained for comparable Class A office buildings in Pierce County, and in compliance with the applicable provisions of Title III of the Americans with Disabilities Act and the regulations issued thereunder. but only during the Initial Term. During the Option Period, such expenses shall become Operating Expenses and Tenant shall pay for the cost of the same according to Tenant's Pro Rata Share. Landlord's obligations hereunder include the maintenance and repair of all Building foundations, floor slabs, columns, parking areas, exterior and load bearing walls, windows, window frames, gutters and

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downspouts, and structural components of the roof. Except as set forth in this Section 10.1, Landlord's costs in the maintenance and repair of the Building and Common Areas are treated as Operating Expenses. Landlord shall endeavor to respond to urgent repairs immediately upon notice of the emergency and within three (3) days following receipt of notice for non-urgent repairs.

- 10.2 <u>Tenant's Obligations</u>. Subject to Section 10.1 above and except for damage caused by any negligence or intentional act of Landlord, or Landlord's agents, employees or invitees, Tenant shall keep the Premises in good order, condition and repair at Tenant's expense. Landlord shall perform all maintenance and repair to the Premises at Tenant's request and shall invoice Tenant accordingly; provided, however, that maintenance and repair of building systems and equipment such as the elevators, the HVAC system, plumbing, mechanical, electrical and lighting facilities and equipment which serve the entire Building are an Operating Expense and only those portions of the building systems and equipment located entirely within the Premises shall be charged to Tenant as part of the cost to maintain the Premises in good order and condition. Upon expiration or earlier termination of this Lease, Tenant shall surrender the Premises in the same condition as received, ordinary wear and tear and damage by fire, earthquake, act of God or the elements alone excepted.
- 10.3 <u>Trade Fixtures</u>. Upon expiration or earlier termination of this Lease, Tenant shall pay for repairs to the Premises caused by or in connection with the removal of any articles of personal property, business or trade fixtures, equipment, machinery, cabinetwork, furniture, moveable partitions, together with all additions and accessories thereto, including, without limitation, repairing the floor and patching and painting the walls where required to Landlord's reasonable satisfaction at Tenant's sole cost and expense.

11. Modifications, Alterations and Additions.

- 11.1 <u>Modifications</u>, <u>Alterations and Additions</u>. From and after the Rent Commencement Date, Tenant may, at Tenant's sole cost and expense, make modifications, alterations and additions to the Premises provided that such modifications, alterations and additions do not decrease the value of the Premises and/or Building and such modifications, alterations and additions shall be expeditiously completed in a good and workmanlike manner and in compliance with all applicable Laws and the requirements of all insurance policies required to be maintained under this Lease, and any such modifications, alterations or additions shall require the prior written consent of Landlord. Landlord shall, upon reasonable notice, have access to all plans and specifications relating to alterations and modifications made by Tenant to the Premises.
- 11.2 Ownership of Tenant Improvements. All tenant improvements which may be installed in the Premises and which in any manner are attached to the floors, walls or ceilings of the Premises, shall remain with the Premises upon termination of this Lease, unless the parties have otherwise agreed in writing at the time Landlord grants permission for installation. Any trade fixtures and/or equipment installed upon or attached to the Premises by Tenant shall remain the property of Tenant, and Landlord agrees that Tenant shall have the right at any time (and from time to time) during the Term of this Lease to remove any and all such trade fixtures and/or equipment, and repair any damage caused thereby.

11.3 <u>Liens</u>. From and after the Rent Commencement Date, Tenant shall pay all costs for modifications, alterations and additions done by it or caused to be done by it on the Premises as permitted by this Lease (other than construction of the Project) and Tenant shall keep the Premises and Building free from all construction and other liens on account of work done for Tenant or persons claiming by, through or under Tenant. Tenant shall indemnify, defend and hold Landlord harmless from any lien claim, judgment or litigation arising out of any work performed or materials furnished by or at the direction of Tenant. Should any claim of lien be filed against the Building or the Premises or any action affecting the title to the Building or the Premises be commenced, the responsible party shall cause such lien to be released of record by payment or posting of a proper bond within thirty (30) days following the filing of such lien.

12. Insurance.

- Property Insurance. Commencing upon the construction of the Building and thereafter during the Term of this Lease, Landlord shall obtain and maintain on the Premises (including the Building and all fixtures, equipment and machinery installed by Landlord as part of the Building or the Premises) insurance policies of the type now known as "all risk" or "special cause of loss" property insurance including flood and boiler and machinery insurance, in an amount equal to not less than 90% of the then full replacement cost of the Building (exclusive of the cost of excavations, foundations and footings) and without deduction for physical depreciation and eighteen (18) months loss of rents coverage, together with such other insurance coverage as is customarily carried on comparable office buildings in Pierce County or as Landlord may reasonably determine, with insurance companies which are authorized to do business in the State of Washington. Such property insurance shall be in builder's risk form during initial construction of the Building and during any restoration accomplished in connection with damage or destruction to the Premises or in connection with any Condemnation. Landlord is responsible for payment of any deductibles under said insurance policies and any costs of restoration resulting from any uninsured or underinsured losses. The insurance policies shall be issued in the name of Landlord, and Tenant as their interests may appear, and shall provide that any proceeds be applied to restoration of the Premises.
- Commercial General Liability Insurance. Commencing on the Effective Date and thereafter during the Term of this Lease, Landlord shall, at its sole cost and expense obtain and keep in force throughout the Term commercial general liability insurance (full form personal injury and broad form property damage) with respect to the Building and the Premises, insuring against claims for personal injury (including, without limitation, bodily injury or death) and property damage liability with a combined single limit of not less than \$5,000,000 per occurrence, automobile liability insurance covering all owned, non-owned and hired vehicles (with limits of not less than \$1,000,000 per occurrence), and workers' compensation insurance (as required by law). The amount of such insurance coverage shall not be less than commercially reasonable insurance carried by owners of properties of similar nature and occupancies as the Building, and shall be in form and with deductibles satisfactory to Tenant. Tenant shall be an additional insured and Landlord's policy shall be primary and non-contributory to any coverage maintained by Tenant. Any deductibles or self-insured retentions must be declared to and approved by Tenant. The deductible and/or self-insured retention of the policies shall not limit or apply to Tenant and shall be the sole responsibility of

Landlord. The limits of such insurance shall not, however, limit the liability of Landlord hereunder.

- 12.3 <u>Tenant Insurance</u>. From and after the Rent Commencement Date, Tenant shall maintain at its own cost insurance or self-insurance coverage for commercial general liability, and property damage coverage, automobile liability and workers' compensation insurance (as required by law). Landlord shall have no obligation to insure any of Tenant's personal property. Certificates of coverage shall be delivered to Landlord upon request and thereafter at renewal, non-renewal, or material modification of insurance or self-insurance programs.
- 12.4 <u>Insurance Policies</u>. All insurance required under this Lease shall: (i) be issued by insurance companies authorized to do business in the State of Washington with a rating reasonably satisfactory to Tenant; (ii) be issued as a primary policy not contributing with and not in excess of coverage that Tenant may carry; and (iii) contain an endorsement requiring thirty (30) days' prior written notice from the insurance company to Landlord, Tenant and any lender which a mortgage lien on the Building before cancellation or change in the coverage, scope, or amount of any policy (ten (10) days for non-payment of premiums). Tenant shall be named as an additional insured on Landlord's liability policies. Each policy or a certificate of the policy shall be deposited with the other party on or before the Effective Date, and as reasonably available upon replacement or renewal of each policy. Policy limits, coverages and deductibles shall be reviewed annually and may be adjusted if prudent, considering levels of inflation, risk of loss, premiums, expenses and other relevant factors; provided, however that the amount of property damage insurance that Landlord shall maintain with respect to the Building shall never be less than the full replacement cost of the Building.
- 13. <u>Indemnification and Waivers</u>. The parties agree to mutually waive all right of recovery against the other for any loss or damage covered by their respective first party commercial insurance policies for all perils insured thereunder and in the event of any commercially insured loss, neither party's insurance carrier shall have a subrogation claim against the other party; provided, however, that this waiver of subrogation shall not apply if the effect is to void such insurance coverage.
- 14. Assignment and Subletting. Except as set forth in the remainder of this Section 14, Tenant shall not assign or sublease its interest in this Lease or in the Premises, without the prior written consent of Landlord. Landlord shall not unreasonably withhold, delay or condition such request and may not deny such request if the proposed assignee or subtenant intends to use the Premises for a use permitted under Section 7 hereof and has a demonstrated financial capacity and/or resources to meet the continuing obligation of the Tenant hereunder. Tenant shall have no right to make any assignment or sublease of its rights under this Lease if Tenant is then in default. Any such assignment or sublease as provided for in this Section shall be in writing and shall require such assignee or subtenant to comply fully with the terms of this Lease, including, without limitation, the provisions of Section 7 regarding use of the Premises. Tenant shall provide Landlord with written notice of any such assignment or sublease and a copy of any such lease assignment or sublease documentation. To the extent any such sublease or permitted assignment entitles Tenant to compensation for the sublease or use of the Premises (excluding any compensation for special services, equipment or other benefits provided by Tenant) in excess of the rental provided hereunder, Landlord shall be entitled to receive from Tenant an amount

equal to fifty percent (50%) of such excess compensation, as and when paid to Tenant. No assignment or subletting by Tenant shall be deemed to release Tenant from primary liability under this Lease unless expressly agreed by Landlord in writing.

15. <u>Destruction</u>.

- Insured Damage. If during the Term, the Premises, the Building or the parking areas is partially or totally destroyed by any casualty that is covered by the insurance described in Section 12, rendering the Premises partially or totally inaccessible or unusable, Landlord shall restore the Premises, the Building and the parking areas to substantially the same condition as they were in immediately before such destruction, if (i) the insurance proceeds available to Landlord equals or exceeds the cost of such restoration, (ii) such restoration can be completed within a period which is not longer than twelve (12) months from the date of such destruction, and (iii) such restoration is permitted under then existing laws to be done in such a manner as to return the Premises to substantially the same condition as they were in immediately before such Landlord will advise Tenant with respect to the preceding conditions and, accordingly, whether such restoration of the Premises can proceed, on or before that date which is sixty (60) days after the date of destruction. If the foregoing conditions cannot be met, such destruction shall be treated as "Uninsured Damage" in accordance with the provisions of Section 15.2. Destruction which is required to be restored by Landlord in accordance with the terms of this Section 15.1 shall not result in the termination of this Lease; provided, however, that Rent shall be abated proportionately based on the extent to which Tenant's use of the Premises is impaired during the period of repair, reconstruction or restoration.
- 15.2 <u>Uninsured Damage</u>. If during the Term the Premises, the Building or the parking areas is partially or totally destroyed by any casualty and the conditions set forth in Section 15.1 captioned "Insured Damage" cannot be met, Landlord shall provide written notice to Tenant within sixty (60) days after the date of destruction. Such notice shall describe the extent of the destruction and which of the condition(s) cannot be met and Tenant shall thereupon have the right to terminate its obligations under this Lease. If the Lease is terminated, the duty to pay Rent shall terminate upon the date of termination. Tenant shall be entitled to collect and retain the proceeds of all insurance to the extent covering Tenant's personal property, including Tenant's trade fixtures and equipment.
- 15.3 <u>Abatement of Rent</u>. If the Premises shall be rendered partially or wholly untenantable as a result of damage or destruction of the Premises, the Building or the parking areas, then Rent shall be abated proportionately until the damage or destruction is repaired or restored in full.
- 15.4 <u>Delay in Completing Repairs</u>. Notwithstanding anything to the contrary contained in this Section 15, if repair or restoration of the Premises following any damage or destruction cannot be completed within twelve (12) months, Tenant shall have the right to terminate this Lease upon thirty (30) days prior written notice and Tenant shall thereafter be released from its obligations under this Lease.

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16. Condemnation.

- 16.1 Condemnation of Substantially all of the Premises, Building or parking areas. If during the Term there is a taking or damaging of all or any portion of the Premises, the Building or the parking areas by the exercise of any governmental power, whether by legal proceedings or otherwise, by a governmental agency with jurisdiction or a transfer by Landlord either under threat of condemnation or while legal proceedings for condemnation are pending (a "Condemnation") such that there can be no reasonable use of the Premises by Tenant, as reasonably determined by Tenant, this Lease and any duty to pay Rent shall automatically terminate on the date the condemnor has the right to possession of the property being condemned. The award payable by the condemning authority with respect to a taking of the Property, the Building or the Premises so taken shall be payable solely to the Landlord. Tenant shall have the right to claim and recover from the condemnor compensation for the loss of any of Tenant's personal property, moving expenses and any other damages provable and suffered by Tenant in connection with the Condemnation.
- 16.2 <u>Partial Condemnation</u>. If only a part of the Premises, the Building or the parking areas shall be taken in connection with a Condemnation and the remainder of the Premises not so taken can be made tenantable in the reasonable judgment of Tenant for the purposes for which Tenant has been using the Premises, then this Lease shall continue in full force and effect as to the remainder of the Premises, and all of the terms herein provided shall continue in effect except that the Rent shall be reduced in an equitable manner and Landlord shall make all necessary repairs and alterations to the Premises required by such taking. The entire award payable to Landlord for the partial taking shall be applied solely to the cost of such repair or restoration. Landlord shall restore the Premises, the Building or the parking areas or such portion thereof in accordance with the provisions of paragraph 15.1 above and Rent shall be abated as provided in Section 15.3 above, and following such repair, reconstruction or restoration, Base Monthly Rent (and Tenant's Pro Rata Share) shall be permanently reduced on the basis of the percentage of the Premises taken as a result of such Condemnation.

17. Default and Remedies.

- 17.1 <u>Default By Tenant</u>. The occurrence of any one of the following events shall constitute a material breach and default by Tenant under this Lease:
- 17.1.1 Tenant shall have failed to pay an installment of Rent or other payment due, where such failure shall continue for a period of ten (10) days after written notice from Landlord.
- 17.1.2 Tenant shall have failed to perform any other provision of this Lease if the failure to perform is not cured within thirty (30) days after written notice of such default has been given by Landlord to Tenant. If the default cannot reasonably be cured within thirty (30) days, Tenant shall not be in default under this Lease if Tenant shall within the thirty (30) day period commence such cure and thereafter in good faith diligently and continuously prosecutes such cure to completion.

- 17.2 <u>Remedies</u>. In the event of default of this Lease by Tenant, Landlord shall have the following rights and remedies:
 - 17.2.1 To sue for Rent or any amounts due hereunder.
- 17.2.2 To remedy any nonmonetary default of Tenant and to enter upon the Premises to do any work or other things therein, and in such event all reasonable expenses of Landlord in remedying such default shall be payable by Tenant to Landlord on demand.
- 17.2.3 To terminate this Lease by thirty (30) days' written notice thereof to Tenant.
- 17.2.4 If Landlord elects not to terminate this Lease due to Tenant's default, Landlord may maintain Tenant's right to possession and continue this Lease in effect whether or not Tenant has abandoned the Premises.
- Re-Entry. In the event of any default by Tenant, Landlord shall also have the right, without terminating this Lease, to reenter the Premises and to remove all persons and property from the Premises and take whatever actions may be necessary or advisable to relet, protect or preserve the Premises. Any property so removed may be stored in a public warehouse or other suitable place or otherwise disposed of in Landlord's discretion at the expense and for the account of Tenant. Landlord shall not be responsible for any damages or losses suffered by Tenant as a result of such reentry, removal, storage or other disposition. Tenant covenants and agrees to make good to Landlord any deficiency arising from a reentry and reletting of the Premises at a lesser rental than herein agreed to through the Term of this Lease, plus reasonable costs of renovating the Premises for new tenants and reletting (including brokerage fees or commissions arising therefrom) provided Landlord has taken all reasonable measures to ensure that a fair market rental rate was obtained for reletting. Landlord shall provide notice to Tenant of any amount by which rentals from such reletting are less than the Rent and the due dates of such Rent. The deficiency amount for each such Rental payment shall be paid by Tenant on or before the due date for such Rental payment. Prior to payment of renovation and reletting costs for which Tenant is responsible under this Section 17, Landlord will submit an invoice for the amount thereof to Tenant. Tenant shall pay such amount within thirty (30) days after receipt of written invoice.
- 17.4 <u>Interest</u>. Unless otherwise stated in this Lease, any Rent, Additional Rent or other sums due from Tenant or advanced by Landlord shall bear interest at twelve percent (12%), calculated at the time of such nonpayment by Tenant or advance by Landlord, provided that the applicable grace period has expired. Such interest shall be treated as Additional Rent due and owing immediately and continuing to accrue until paid or collected.
- 17.5 <u>Default By Landlord</u>. If Landlord shall fail to perform any act required by Landlord under this Lease, and such failure to perform continues for thirty (30) days after written notice from Tenant to Landlord, Landlord shall be in default under this Lease. If the default cannot reasonably be cured within thirty (30) days, Landlord shall not be in default under this Lease if Landlord shall within the thirty (30) day period commence such cure and thereafter in good faith diligently and continuously prosecutes such cure to completion.

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18. Quiet Enjoyment.

- 18.1 <u>Title and Possession</u>. Landlord represents and warrants that Landlord has legal title to the Premises and has the right to enter into this Lease. Upon paying the Rent and keeping the covenants and terms of this Lease on its part to be kept and performed, Tenant shall have peaceful and uninterrupted possession of the Premises during the Term of this Lease, and any extensions thereof, subject to the terms of the Lease.
- 18.2 <u>Landlord's Right to Inspect</u>. Landlord may at reasonable times during Tenant's business hours, and after so advising Tenant, enter the Premises for the purpose of examining and of making repairs, but shall not interfere with Tenant's business. Landlord shall provide 24 hours' notice of inspection except in the case of an emergency such as a water or gas leak. Tenant shall provide the Landlord or its property manager with a key to the Premises.

19. Subordination, Non-Disturbance and Attornment.

- 19.1 Non-Disturbance. This Lease is subordinate to any permitted mortgages or deeds of trust executed by Landlord and now or hereafter affecting the Premises, provided however that the subordination of this Lease shall be expressly conditioned upon a non-disturbance agreement being delivered to Tenant from such current or future mortgagee in which the mortgagee agrees: (a) not to disturb Tenant's possession and other rights of Tenant under this Lease so long as Tenant continues to perform its obligations hereunder; and (b) in the event of acquisition of title, or coming into possession, by the mortgagee or beneficiary, through foreclosure proceedings, deed in lieu of foreclosure or otherwise, to accept Tenant as tenant of the Premises under the terms and conditions of this Lease and to perform all of Landlord's obligations under the terms of this Lease accruing after such acquisition of title or coming into possession.
- 19.2 Attornment. In the event any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any permitted mortgage or deed of trust made by Landlord covering the Premises, Tenant shall attorn to the purchaser and recognize the purchaser as Landlord under this Lease; provided that the purchaser shall be obligated to acquire and accept the Premises subject to this Lease and to perform all of Landlord's obligations under the terms of this Lease accruing after such acquisition of title or coming into possession.
- 19.3 Tenant's Estoppel Certificate. Tenant, within fifteen (15) days from receipt of Landlord's written request, shall execute, acknowledge and deliver to Landlord a written statement ("Tenant's Certificate") certifying to the extent applicable: (a) that this Sublease is in full force and effect, without modification (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications); (b) that there are no uncured defaults in Landlord's performance and that Tenant has no right of offset, counterclaim or deduction against Rent; and (c) the dates to which the Rent has been paid.
- 20. <u>Notices</u>. Any notice or document required or permitted to be delivered hereunder from one party to the other shall be in writing and shall be deemed given when personally delivered, delivered by facsimile with confirmation of receipt or delivered by private courier service or three (3) days after being deposited in the United State mail, in registered or certified form,

return receipt requested, to the other party's address or facsimile number as set forth in Section 1 or such other address or facsimile number as shall have been last designated by notice in writing from one party to the other. The address to which any notice, demand or other writing may be given, made or sent to either party may be changed by written notice given by such party as above provided.

21. Miscellaneous Provisions.

- 21.1 <u>Severability</u>. If any provision of this Lease shall be held to be invalid, illegal or unenforceable, the remaining provisions shall in no way be affected or impaired thereby.
- 21.2 <u>Impartial Construction</u>. The language in all parts of this Lease shall be in all respects construed as a whole according to its fair meaning, and shall not be construed strictly for or against either party by reason of the authorship of any provision hereof.
- 21.3 <u>Entire Agreement</u>. The provisions of this Lease along with any exhibits and attachments hereto constitute the entire agreement between Landlord and Tenant regarding the sublease of the Premises. This Lease supercedes any prior or contemporaneous oral or other agreement between Landlord and Tenant regarding the subject matter of this Lease. Any amendment or modification of this Lease must be in writing and signed by both parties.
- 21.4 <u>Authority to Execute</u>. Each individual executing this Lease on behalf of Landlord or Tenant respectively, represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of such entity, and that this Lease shall be binding upon said entity in accordance with its terms.
- 21.5 <u>Successors and Assigns</u>. The parties hereto agree that all provisions hereof are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each separate section hereof. Subject to any provisions in this Lease restricting assignment or subletting by the parties and the provisions of Section 14 hereof, this Lease shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns, and successors of the respective parties. This Lease shall not become binding upon the parties until it has been executed and acknowledged by both Landlord and Tenant.
- 21.6 <u>Time of Essence</u>. Time is of the essence in the payment and performance of each parties' obligations under this Lease.
- 21.7 <u>Captions</u>. The captions of the sections of this Lease are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this Lease. Exhibits attached hereto, and addenda and schedules initialed by the parties are deemed by attachment to constitute part of this Lease and are incorporated herein. Whenever herein the singular number is used, the same shall include the plural, and the neuter gender shall include the feminine and masculine genders.
- 21.8 <u>Waivers</u>. No waiver of any right under this Lease shall be effective unless contained in a writing signed by a duly authorized officer or representative of the party sought to be charged with the waiver and no waiver of any right arising from any breach or failure to

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perform shall be deemed to be a waiver of any future right or any other right arising under this Lease.

21.9 Intentionally Omitted.

- 21.10 No Brokerage Commission. Landlord and Tenant have negotiated this Lease directly and neither party has been represented by a real estate agent in connection with this transaction. Landlord and Tenant hereby represent and warrant to each other that neither party has knowledge of any leasing commission or other fee claimed or payable as a result of the lease of the Premises by Landlord to Tenant. The parties each agree to indemnify, defend and hold the other harmless from claims for leasing commissions or other fees asserted by any third party, including reasonable attorneys' fees and costs incurred by the other in defending against any such claims.
- 21.11 <u>Attorneys' Fees</u>. The prevailing party in any litigation, mediation, arbitration or other proceeding brought to enforce or interpret or otherwise arising out of this Lease shall be awarded its attorneys fees and costs incurred in connection therewith.
- 21.12 <u>Nondiscrimination</u>. Landlord certifies it will not discriminate in employment on the basis of race, color, religion, sex, national origin, veteran status or physical or mental disability in regard to any position for which the employee is qualified, in compliance with (a) Presidential Executive Order 11246, as amended, including the Equal Opportunity Clause contained therein; (b) Section 503 of the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans Readjustment Act of 1974, as amended, and the Affirmative Action Clauses contained therein; and (c) the Americans with Disabilities Act of 1990, as amended. Landlord agrees it will not maintain facilities which are segregated on the basis of race, color, religion or national origin in compliance with Presidential Executive Order 11246, as amended, and will comply with the Americans with Disabilities Act of 1990, as amended, regarding its programs, services, activities and employment practices.
- 21.13 <u>Counterparts</u>. This Lease may be executed in counterparts and each counterpart shall constitute an original document and all such counterparts shall constitute but one and the same instrument.
- 21.14 <u>Memorandum of Lease</u>. Neither Landlord nor Tenant shall record this Lease without the consent of the other; provided, however, that Tenant shall have the right to record a Memorandum of this Lease in the form attached hereto as Exhibit G and by this reference incorporated herein.
- 21.15 Governing Law. This Lease shall be governed by the laws of the State of Washington. In the event any action is brought to enforce any of the provisions of this Lease, the parties agree to be subject to exclusive in personam jurisdiction in the Pierce County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively at Tacoma, Washington.
- 21.16 OFAC. Landlord and Tenant each represent and warrant to the other that they are not currently listed and at all times during the terms of this Lease they will not be listed in Executive Order 13224 Blocking Property and Prohibiting Transactions with persons who

Commit, Threaten to Commit or Support Terrorism, as amended ("Executive Order 13224"), and neither Landlord nor Tenant has any present, actual knowledge that any other persons or entities holding any legal or beneficial interest whatsoever in Landlord or Tenant, respectively, are included in, owned by, controlled by, knowingly acting for or on behalf of, knowingly providing assistance, support, sponsorship or services of any kind to, or otherwise knowingly associated with any of the persons or entities referred to or described in Executive Order 13224, or banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control.

LANDLORD

	UPTOWN CENTER DEVELOPMENT LLC, A New York limited liability company
	By:
	Name: Aaron Lichtman
	Title: Manager
	Tax Identification No.:
Approved as to form:	TENANT
	CITY OF UNIVERSITY PLACE, A Washington municipal corporation
	By:
City Attorney	Name:
	Its:
	110.

TENANT ACKNOWLEDGEMENT

STATE OF WASHINGTON)				
COUNTY OF PIERCE) ss.				
I certify that I know or have satisfactory evidence appeared before me and said person acknowledged that he was authorized to execute the ir of CITY OF UNIVER corporation, for the uses and purposes mentioned in	that he signed this instrument, on oath stated astrument and acknowledged it as the SITY PLACE, a Washington municipal			
Dated:				
[Seal or Stamp]	Notary Public [Printed Name]			
	My appointment expires			
LANDLORD ACKNOWLEDGEMENT				
STATE OF WASHINGTON)				
COUNTY OF PIERCE)				
I certify that I know or have satisfactory evidence that Aaron Lichtman is the person who appeared before me and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Manager of UPTOWN CENTER DEVELOPMENT LLC to be the free and voluntary act and deed of said party for the uses and purposes mentioned in the instrument.				
Dated:				
[Seal or Stamp]	Notary Public [Printed Name]			
	My appointment expires			

EXHIBIT A

Legal Description

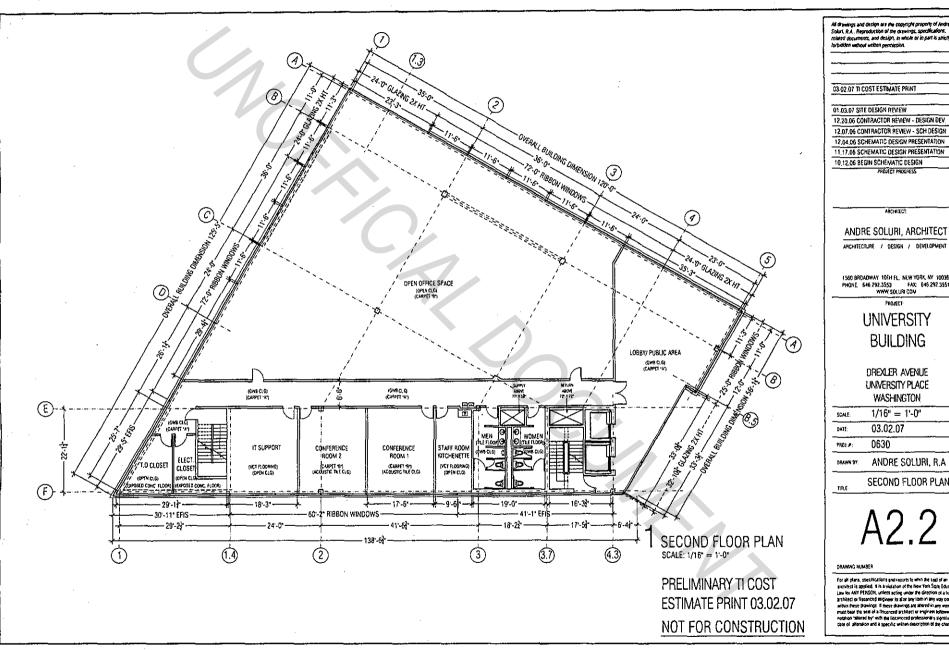
A-1

Exhibit A

Lot 2, University Place Towncenter Binding Site Plan, Recorded February 1, 2007 under Recording Number 200702015003, Records of Pierce County Washington, Situated in the City of University Place, County of Pierce, State of Washington.

EXHIBIT B

Floor Plan of Premises



All thaveings and design are the copyright property of Andra Soluri, R.A. Reproduction of the drawings, specifications, related documents, and design, in whole or in part is strictly forbidden without written permission.

03.02.07 TI COST ESTIMATE PRINT

01.03.07 SITE DESIGN REVIEW

12,20,06 CONTRACTOR REVIEW - DESIGN DEV

12.04.06 SCHEMATIC DESIGN PRESENTATION

11.17.06 SCHEMATIC DESIGN PRESENTATION

10,12,06 BEGIN SCHEMATIC DESIGN

PROJECT PROGRESS

ANDRE SOLURI, ARCHITECT

ARCHITECTURE / DESIGN / DEVELOPMENT

1560 BROADWAY 101H FL. NEW YORK, NY 10036 PHONE, 646.792,3553 FAX: 646.297,3551 WWY.SOLURI COM

UNIVERSITY **BUILDING**

DREXLER AVENUE UNIVERSITY PLACE WASHINGTON

1/16" = 1'-0" 03.02.07

0630

ANDRE SOLURI, R.A.

SECOND FLOOR PLAN

For all plans, specifications and scores to while the seal of an scriber is applied. It is a visual on of the New York Sign Education but be ANY PRESON, unless action, and we destroin on a locented stribled on listeneds about the six to the list year you consider which Press the William Sign Beart Advinged a all settled on any ex-ternation but the wild of interned stribled or implient statement by the program shares for with the listened section discounts is speciale. The goal of abreadon and it appends within description of the change.

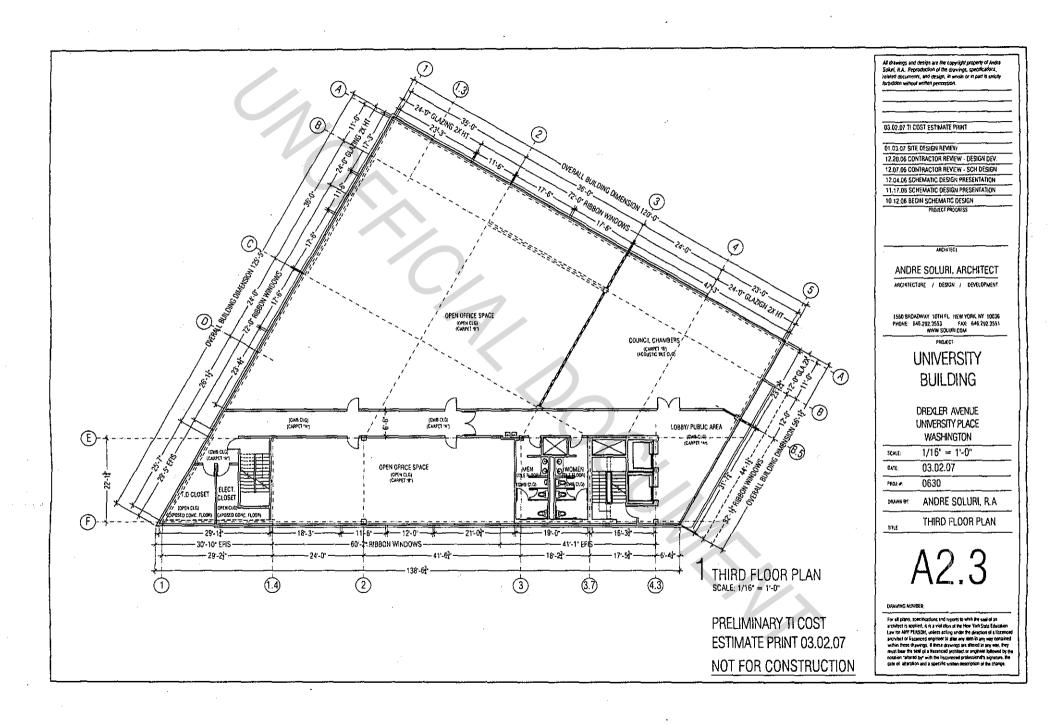


EXHIBIT C

Site Plan of Property

C-1

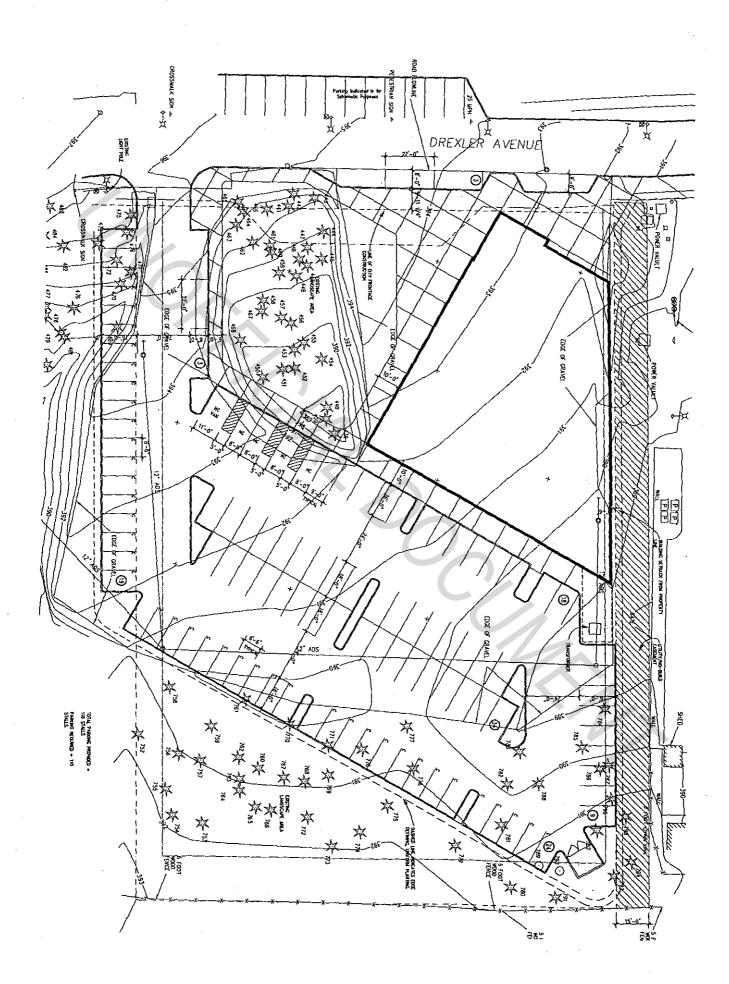


EXHIBIT D

Preliminary Plans and Outline Specifications

[attach and/or describe current approved design development plans and specifications prepared by Andre Soluri, Architect]

EXHIBIT E

Building Standard Tenant Improvements

[to be agreed upon by Landlord and Tenant as expeditiously as possible following execution of the Development Agreement description and itemization of plans to be attached]

EXHIBIT F

Target Dates
(Design and Construction)

Matter	Date	
Preliminary Plans and Outline Specifications	Completed	
Construction Drawings	, 2007	
Building Permit	, 2007	
Guaranteed Maximum Price Contract for Project and Building Standard Tenant Improvements with the General Contractor	, 2007	
Commencement of Construction of Building	, 2007	
Substantial Completion of Building Shell and Code and Building Standard Tenant Improvements	August 1, 2008[check date]	

EXHIBIT G

Lease Confirmation

DEVELOPME	ease Confirmation is made
Landlord lease described in the	Landlord and Tenant entered into a lease dated, 2007, in which ed to Tenant and Tenant leased from Landlord the premises (the "Premises") ne Lease and located at Drexler Avenue, City of University Place, All capitalized terms not otherwise defined herein are as defined in the Lease.
2. following mat	Pursuant to the Lease, Landlord and Tenant agreed to and do hereby confirm the ers as of the Commencement Date of the Term:
Lease;	a is the Commencement Date of the Term of the
Lease, subject	b
provided in the	c. The initial Monthly Rent under the Lease, subject to adjustments as a Lease, is \$52,000.
3.	Tenant confirms that:
	a. It has accepted possession of the Premises as provided in the Lease;
have been furn	b. The improvements required to be furnished by Landlord under the Lease ished (subject to any latent defects, corrective work or punch-list items);
	The provisions of this Lease Confirmation shall inure to the benefit, or bind, as require, the parties and their respective successors and assigns, subject to the assignment and subleasing contained in the Lease.
·.	Initials
	Landlord:
	Tenant:

EXHIBIT H

Memorandum of Lease

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

City of University Place 3715 Bridgeport Way University Place, Washington 98464 Attention: City Attorney

MEMORANDUM OF LEASE

GRANTOR:	Uptown Center Development, LLC	
GRANTEE:	City of University Place	
Legal Description: Abbreviate		
Additional	legal on page Exhibit A of document	
Assessor's Tax Pa	rcel ID No(s):	· · · · · · · · · · · · · · · · · · ·

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (the "Memorandum") is executed this day of, 2007 by and between CITY OF UNIVERSITY PLACE ("Tenant") and UPTOWN CENTER DEVELOPMENT LLC ("Landlord").				
1. <u>Lease</u> . Landlord has leased the hereto and by this reference incorporated herein terms and conditions set forth in that certain Le between Landlord and Tenant (the "Lease"). commencing on the Rent Commencement Date of the Lease for five (5) years each.	ase Agreement dated by and The Lease is for a term of five (5) years			
2. <u>Definition of Terms</u> . All capita have the same meaning as set forth in the Lease.	lized terms not otherwise defined herein shall			
3. <u>Purpose of Memorandum</u> . This Memorandum is prepared for purposes of recordation only and does not set forth all of the terms and conditions set forth in the Lease. In the event there is any conflict between the terms and conditions of the Lease and this Memorandum, the Lease shall control.				
DATED this day of, 2007.				
	LANDLORD			
	LANDLORD UPTOWN CENTER DEVELOPMENT LLC, A New York limited liability company			
	UPTOWN CENTER DEVELOPMENT LLC, A New York limited liability company			
	UPTOWN CENTER DEVELOPMENT LLC, A New York limited liability company By: Name: Aaron Lichtman			
	UPTOWN CENTER DEVELOPMENT LLC, A New York limited liability company By:			
Approved as to form:	UPTOWN CENTER DEVELOPMENT LLC, A New York limited liability company By: Name: Aaron Lichtman			
Approved as to form:	UPTOWN CENTER DEVELOPMENT LLC, A New York limited liability company By: Name: Aaron Lichtman Title: Manager			
Approved as to form:	UPTOWN CENTER DEVELOPMENT LLC, A New York limited liability company By: Name: Aaron Lichtman Title: Manager TENANT CITY OF UNIVERSITY PLACE, A Washington municipal corporation			
Approved as to form:	UPTOWN CENTER DEVELOPMENT LLC, A New York limited liability company By: Name: Aaron Lichtman Title: Manager TENANT CITY OF UNIVERSITY PLACE,			

TENANT ACKNOWLEDGEMENT

STATE OF WASHINGTON)				
) ss. COUNTY OF PIERCE)				
I certify that I know or have satisfactory evidence that is the person who appeared before me and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the of CITY OF UNIVERSITY PLACE, a Washington municipal corporation, for the uses and purposes mentioned in the instrument.				
Dated:				
[Seal or Stamp]	Notary Public			
	[Printed Name] My appointment expires			
LANDLORD ACKNOWLEDGEMENT				
STATE OF WASHINGTON)				
COUNTY OF PIERCE)				
I certify that I know or have satisfactory evidence that Aaron Lichtman is the person who appeared before me and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Manager of UPTOWN CENTER DEVELOPMENT LLC to be the free and voluntary act and deed of said party for the uses and purposes mentioned in the instrument.				
Dated:				
[Seal or Stamp]	Notary Public [Printed Name] My appointment expires			

EXHIBIT A

Land

H-4



Exhibit U

EXHIBIT U

Term Sheet for the City Hall Lease

At a minimum, the City Hall Lease shall contain the following terms, which have been mutually agreed upon by the parties to this Agreement. The City Hall Lease shall not contain terms that conflict with these minimum lease terms, except as may be expressly agreed upon in writing by both parties.

- <u>Term.</u> The lease term shall be thirty (30) years ("Term"), commencing upon the Rent Commencement Date.
- Base Monthly Rent. Tenant shall pay on the first day of each month, beginning with the Rent Commencement Date (and if the Rent Commencement Date falls on any day other than the first day of the month, then the amount paid shall be pro-rated to include those remaining days in the month), Base Monthly Rent, which, from the Rent Commencement Date through a date which is 48 months thereafter (the "Initial Lease Term"), will be equal to ten percent (10%) of all of Developer's hard and soft costs (which include a development fee not to exceed 4 percent (4%) of the Guaranteed Maximum Price Construction Contract) relating to the purchase, design, development and construction of the shell and core of the City Hall Space and the interior Tenant Improvements if Developer is hired to so complete the Tenant Improvements for City ("Developer's Costs").
- Escalated Rent During Initial Lease Term. During the Initial Lease Term, Base Monthly Rent shall not escalate unless Developer's cost of financing increases (i.e., the construction loan is an adjustable rate mortgage). In that case, the Base Monthly Rent will increase on pro rata basis according to the square footage of City Hall Space, and a pro rata share of Common Areas, and according to the percentage increase, if any, in Developer's financing costs for the City Hall Space (i.e., if the interest rate on the construction loan at the Rent Commencement Date of the City Hall Lease is 8%, and the next year, it is increased to 9%, then on the first day of the first full month following any such increase in Developer's financing costs, the Base Monthly Rent would increase by 1% over the amount in the prior month), provided, however, that Developer will give the City at least thirty (30) days prior written notice of any such escalation whenever practicable. The increase in Base Monthly Rent during the Initial Lease Term shall take effect on the first day of the first calendar month immediately following the effective date of the increase in Developer's financing costs. Developer notice to the City will include such documentation from Developer's lender as may reasonably support the notice of the increased financing costs.
- Escalated Rent During the 5th through the 10th Year. Beginning on the first day of the 49th month, and continuing on the first day of each successive 12 month period thereafter, through the last day of the 120th month (i.e., the beginning of the 5th through the end of the 10th calendar year), the Base Monthly Rent shall increase annually by that amount which is three percent (3%) over the Base Monthly Rent amount in the calendar year immediately prior, according to the formula described above.

- Escalated Rent During the 11th Year through the end of the Lease Term. Beginning on the first day of the 121st month, and continuing on the first day of each successive 12 month period thereafter, through the last day of the Term of the Lease (i.e., the 360th month), the Base Monthly Rent shall be 10% above the Base Monthly Rent in the immediately prior year, together with an escalation clause that would require the Base Monthly Rent to thereafter increase annually at the rate of 5% per annum.
- Tenant's Share of Common Expenses. In addition to Base Monthly Rent, Tenant shall pay, together with its payment of Base Monthly Rent when due, its allocated share of the Common Expenses (however that term is defined in the City Hall Lease, except that repair or replacement of structural components shall be included) according to the formula provided in the City Hall Lease ("Tenant's Share"), which, in any event, shall be structured on a triple net basis. Tenant's Share of the Common Expenses, together with all other amounts due under the Lease, shall be referred to as "Additional Rent." Base Monthly Rent together with Additional Rent shall be referred to as "Rent."
- Rent Commencement. The Rent Commencement date shall be August 31, 2010, or the date when the tenant improvements to the City Hall Space are complete, whichever is earlier, so long as City's obligation to pay rent on the 2nd and 3rd Floor Lease of Phase I University Building has been abated or the Lease terminated. In the event the City is obligated to pay rent on the 2nd and 3rd Floor of the Phase I University Building, rent shall not commence on the City Hall Space.
- <u>Developer's Work.</u> Developer will construct and deliver the City Hall Space in shell and core condition.
- <u>Tenant Improvements.</u> The City shall have the right to build out the interior of the City Hall Space to its specifications, using any contractor of its election, provided however, that any Construction Drawings are first approved by the Developer, such approval not to be unreasonably withheld, conditioned or delayed.
- <u>Commencement of Construction of the Tenant Improvements</u>. Should the City elect to utilize the general contractor selected by the Developer (the "Developer's Contractor") for the Developer's Work, the City's Tenant Improvements may commence at any time agreed to by the Developer's Contractor. Should the City elect to use another contractor, the City's Tenant Improvements may only be commenced after the Developer's contractor has completed the shell and core of the City Hall Space, and, if Developer is hired to construct the Library (as that term is defined in the Development Agreement) and/or the Enclosed Square, the Library and/or the Enclosed Square.
- <u>Purchase Option</u>. On the first day of the first month immediately following the end of the Initial Lease Term, and continuing thereafter through the last day of the 120th month of the Term of the Lease (the "Option Period") Developer grants the City the option to purchase the leased premises. The City must exercise this Option, if at all, by written notice. The notice must state a closing date no more than one hundred twenty (120) days after the date of the City's notice. The Option is conditioned upon the City not being in material default at either the time of its exercise of the option or the time of closing of the option. The purchase price for the

leased premises will be payable in cash, or certified funds, as directed by landlord, and shall be in the amount of Developer's Costs, without offset or deduction for the amount of Base Monthly Rent paid to Developer up to the date of closing of the option The option shall end automatically on the day before any proceedings in City condemnation of the premises. If the Option is not exercised within the Option Period, the Option shall automatically terminate at the end of the Option Period.

- <u>Assignment</u>. City shall not assign the City Hall Lease, or the Option in the City Hall Lease, without the Developer's prior written approval
- Subordination, Non-Disturbance and Attornment. Non-Disturbance. This Lease is subordinate to any permitted mortgages or deeds of trust executed by Landlord and now or hereafter affecting the Premises, provided however that the subordination of this Lease shall be expressly conditioned upon a non-disturbance agreement being delivered to Tenant from such current or future mortgagee in which the mortgagee agrees: (a) not to disturb Tenant's possession and other rights of Tenant under this Lease so long as Tenant continues to perform its obligations hereunder; and (b) in the event of acquisition of title, or coming into possession, by the mortgagee or beneficiary, through foreclosure proceedings, deed in lieu of foreclosure or otherwise, to accept Tenant as tenant of the Premises under the terms and conditions of this Lease and to perform all of Landlord's obligations under the terms of this Lease accruing after such acquisition of title or coming into possession.
- Execution: The City Hall Lease shall be executed within 120 days of the execution of the Development Agreement
- Form of Lease: The City Hall Lease shall be similar in form to the University Building Leases but may contain changes to both form and substance as may be necessary to effect the Parties' intent.





Exhibit Z

BARGAIN AND SALE DEED GRANTOR: CITY OF UNIVERSITY PLACE a Washington municipal corporation GRANTEE: UPTOWN CENTER DEVELOPMENT LLC, a New York limited liability company Legal Description: Abbreviated Form: Additional legal on Exhibit A to document Assessor's Tax Parcel ID#: THE GRANTOR, CITY OF UNIVERSITY PLACE, a Washington municipal corporation, for consideration of Ten Dollars (\$10.00) in hand paid, bargains, sells and conveys to UPTOWN CONSIDERATION (CONSIDERATION OF STATE OF WASHINGTON). GEVELOPMENT LLC, a New York limited liability company, the following described reasituated in the County of Pierce, State of Washington: See Exhibit A attached hereto and by the reference incorporated herein (the "Property"). Subject to and excepting those matters listed in Exhibit B attached hereto and incorporated herein efference (the "Permitted Exceptions"). Dated		
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STATE OF WASHINGTON)	
) ss:	
COUNTY OF PIERCE)	
stated that he/she was authorize	satisfactory evidence that is the said person acknowledged that he/she signed this instrument, on oath ed to execute the instrument and acknowledged it as the of University Place, a Washington municipal corporation to be the free
	uses and purposes mentioned in the instrument.
Dated:	·
Ī	Notary Public
	Print Name
Ī	My commission expires
(Use this space for notarial stamp/seal)	

EXHIBIT A

Certain real property located in the City of University Place, Pierce County, Washington and more particularly described as follows:

[Insert legal description from title report]

EXHIBIT B

Permitted Exceptions

1.	SPECIAL CHARGES
	YEAR: [YEAR OF CLOSING] TAX ACCOUNT PARCEL NUMBERS:
2.	COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, NOTES, DEDICATIONS AND SETBACKS, IF ANY, SET FORTH IN OR DELINEATED ON THE BINDING SITE PLAN RECORDED UNDER PIERCE COUNTY RECORDING NUMBER , AS AMENDED BY AMENDMENT TO BINDING SITE PLAN
	RECORDED UNDER PIERCE COUNTY RECORDING NUMBER.
3.	TERMS AND CONDITIONS SET FORTH IN DISPOSITION AND DEVELOPMENT AGREEMENT AS DISCLOSED BY: MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN CITY OF UNIVERSITY PLACE AND UPTOWN CENTER DEVELOPMENT LLC, A NEW
	YORK LIMITED LIABILITY COMPANY
	RECORDED: RECORDING NO:
-	AFFECTS: ADDITIONAL PROPERTY

[Additional exceptions to be determined as part of the title review period for each lot.]



Exhibit AA

Exhibit AA

Insurance Requirements

- (a) <u>Developer's Insurance</u>. Developer shall procure and maintain, or cause its General Contractor to procure and maintain, at a minimum, and for the duration of this Agreement, the following insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the performance of work hereunder by the Developer, its agents, representatives, general contractor and/or employees. The cost of such insurance shall be paid by the Developer or its general contractor. Coverage shall be at least as broad as:
- (i) <u>General Liability</u>: Insurance Services Office form number (CG00 001) covering Commercial General Liability, with a limit of not less than; \$5,000,000 combined single limit per occurrence, \$5,000,000 aggregate.
- (ii) <u>Automobile Liability</u>: Insurance Services Office form number (CA 00 01) covering Business Automobile Coverage, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9, with a limit of not less than; \$1,000,000 combined single limit per occurrence.
- (iii) <u>Workers' Compensation</u>: Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, statutory limits.
- (iv) <u>Employer's Liability or "Stop Gap"</u>: The protection provided by the Workers' Compensation Policy, Part 2 (Employer's Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the General Liability Policy in the amount of at least \$1,000,000.
- Builders Risk Insurance: During the period of construction, (v) Developer shall also provide or cause its general contractor to provide Insurance Services Office form number (CP 00 02 Ed. 10-90) Builders All Risk Coverage Form covering all work to be done on the Property for at least 90% replacement cost of all such improvements. Coverage shall be provided for (i) the perils of earth movement and flood; (ii) resultant damage from errors in design, plans, specifications, faulty workmanship, materials and construction; (iii) "extra expense"; (iv) all materials to be stored offsite and while in transit to the jobsite; (v) "cold testing" of all building systems; (vi) Developer's loss of use of the Property due to delays in Project completion caused by covered peril losses to the Project, including loss of income and rents and soft costs such as interest on financing, real estate taxes and insurance premiums; (vii) the increased cost of construction, debris removal and demolition due to the operation of building laws and code upgrades; and (viii) direct physical damage to the Project under construction and loss of use caused by an off premises power interruption. The policy shall include a waiver of subrogation provision, shall grant permission for partial occupancy of the facilities without having a detrimental affect on the coverage provided, and shall contain a separate debris removal limit of liability which is separate from, in addition to, and not part of the overall policy limit of liability. Developer shall have the required Builder's Risk Policy in place no later than commencement of construction on any portion of the Property. The Builder's

Risk Policy shall include Developer and its general contractor as insureds in an amount equal to their interest with a loss payable clause in favor of any institutional or other approved lender providing financing for a particular building. Developer shall keep the Builder's Risk Policy in place from Commencement of Construction to Final Completion of the applicable building.

- (b) <u>Deductibles and Self-Insured Retentions</u>. Any deductibles or self-insured retentions must be declared to the City.
- (c) Other Insurance Provisions. The insurance policies required by this Agreement are to contain or be endorsed to contain the following provisions where applicable:

(i) Liability Policies:

- (A) City, its officers, officials, employees and agents are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of Developer in connection with this Agreement.
- (B) Developer's insurance coverage shall be primary insurance as respects City, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by City, its officers, officials, employees and/or agents shall not contribute with Developer's insurance or benefit Developer in any way.
- (C) Developer's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
- (D) To the extent of the Developer's negligence, insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the City, its officers, officials, employees and/agents shall not contribute with the Developer's insurance or benefit the Developer in any way.
- (ii) <u>All Policies</u>. Coverage shall not be canceled until after thirty (30) days' (10 days' for non-payment) prior written notice has been given to City.

(iii) Acceptability of Insurers.

- (A) If, at anytime, any of the foregoing policies shall fail to meet the above minimum standards, Developer shall, upon notice to that effect from City, promptly obtain a new policy, and shall submit the same to City, with certificates and endorsements, for approval.
- (iv) <u>Verification of Coverage</u>. Developer shall furnish City with certificates of insurance and endorsements required by this Agreement. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer. The certificates are to be on standard insurance industry ACORD form 25-S with required endorsements attached and are to be received and approved by City prior to the commencement

-2-

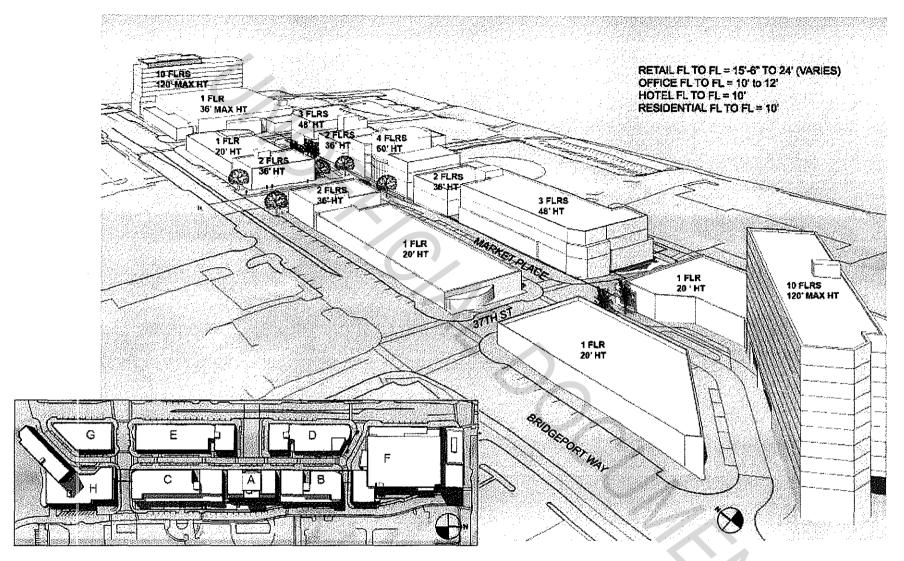
of activities associated with this Agreement. City reserves the right to require Developer to deliver complete certified copies of all required policies at any time.

(v) <u>For All Coverages</u>.

- (A) Each insurance policy shall be written on an "occurrence" form, excepting that insurance for professional liability, errors and omissions, when required, may be acceptable on a "claims made" form.
- (B) If coverage is approved (if approval is required above) and purchased on a "claims made" basis, Developer warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of completion of the work which is subject to said insurance.
- (C) By requiring such minimum insurance, City shall not be deemed to, or construed to, have assessed the risks that may be applicable to Developer associated with this Agreement. Developer shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits or broader coverage.
- (D) Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(ies). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Agreement.
- (E) Insurance required under this Agreement may be covered under a blanket policy of insurance so long as such blanket policy of insurance meets the minimum amounts of insurance required hereunder.

NOTE: If completed improvement is a condominium, additional insurance requirements acceptable to City shall be included in condominium declaration and approved by City and its risk management consultant. Additional insurance requirements may be applicable depending upon nature of improvements and/or use of property (i.e., Garage keeper liability, crime, insurance or umbrella liability coverage).





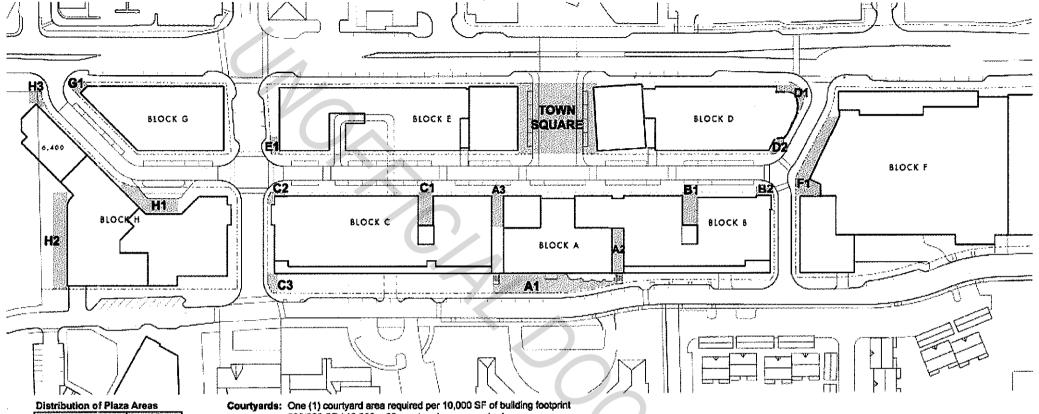
PROPOSED BUILDING MASSING & HEIGHTS

122° WEST

UNIVERSITY PLACE, WA Project #206180 February 20 2007 Revised 05/15/07 NEW YORK, NY ATLANTA, GA ALEXANDRIA, VA NEWPORT BEACH, CA 625 Korth Washington Strees Alexandria, VA 22314 703.519.6152







	Area SF
Town Square	14,50
A1	5,00
A2	1.00
A3	1,00
81	1,25 1,25
C1	1.25
F1	1.50
H1	1,50
A2 A3 B1 C1 F1 H1 H2 Total	3,00
Total	30.00

300,000 SF / 10,000 = 30 courtyard areas required

Up to 2 courtyard areas may be combined, therefore 15 courtyards required, as shown above

Each courtyard is a minimum of 250 SF.

(Note; some courtyards large enough to be defined as plazas).

Plazas:

1,000 SF for plaza area per 10,000 SF of building footprint required Therefore, 30,000 SF of plaza area required

See table for proposed distribution of plaza areas.

POTENTIAL COURTYARD AND PLAZA LOCATIONS

122° WEST

UNIVERSITY PLACE, WA Project #206180 February 15 2007 Revised 05/15/07





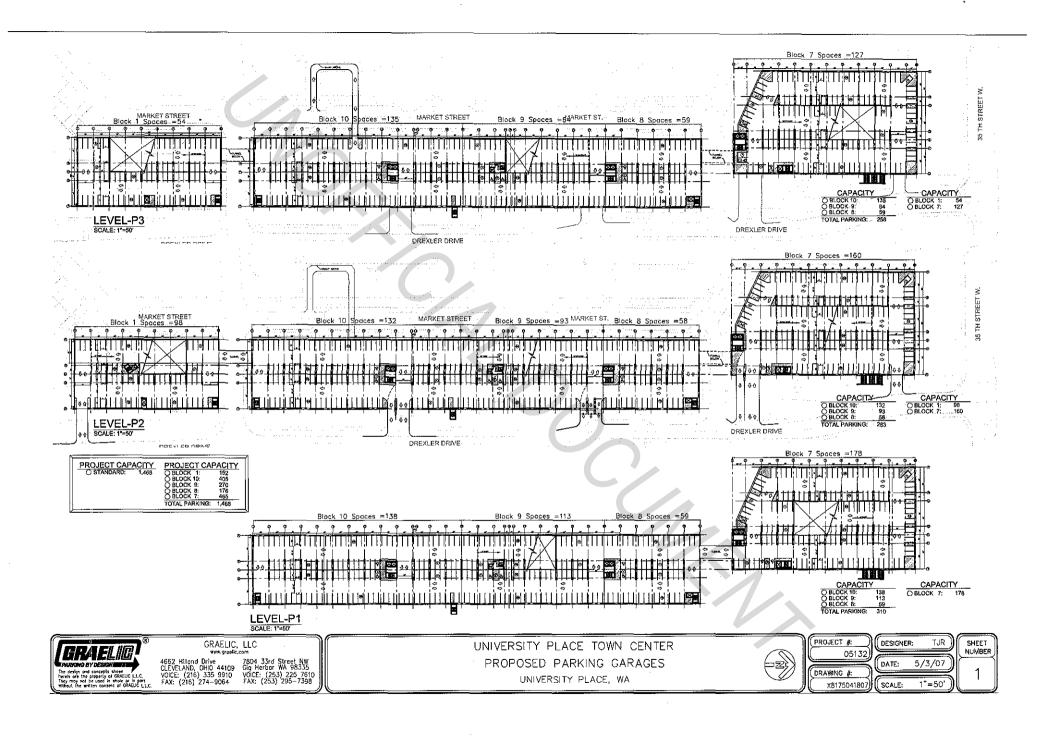
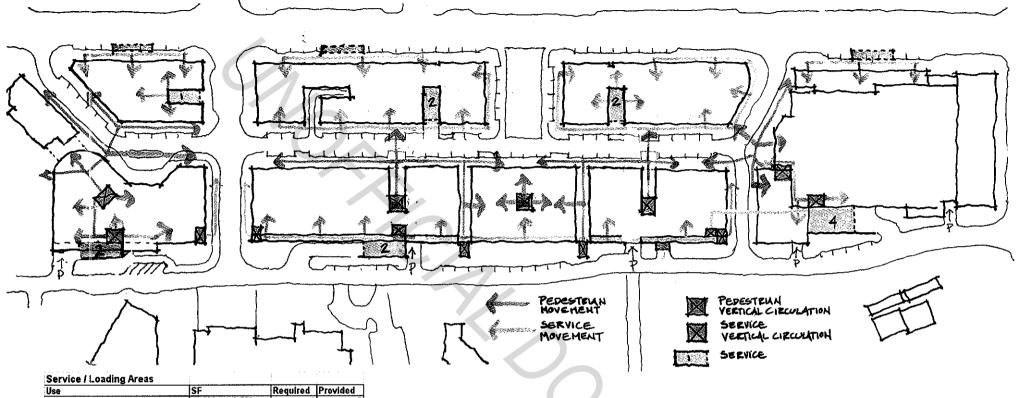




Exhibit EE



SF	Required	Provided
50,000 - 149,999	1	
above 200,000	4	
40,000 - 50,000	4	
100,000 - 150,000	N/A~2	
	11	1
	50,000 - 149,999 above 200,000 40,000 - 50,000	50,000 - 149,999 1 above 200,000 4 40,000 - 50,000 4

A portion of the loading areas to be used for trash collection/compactors

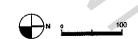
All loading areas are located in recessed, screened or underground areas as required

All loading areas to have attractive doors to further screen - as required

PEDESTRIAN AND SERVICE CIRCULATION

122° WEST

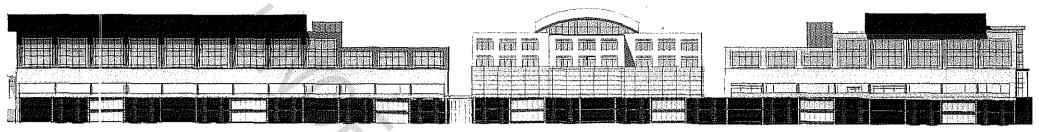
UNIVERSITY PLACE, WA Project #206180 February 15 2007 Revised 05/15/07



NEW YORK, NY ATLANTA, GA ALEXANDRIA, VA NEWPORT BEACH, CA 625 North Washington Street Alexandria, VA 22314 703.519.6152



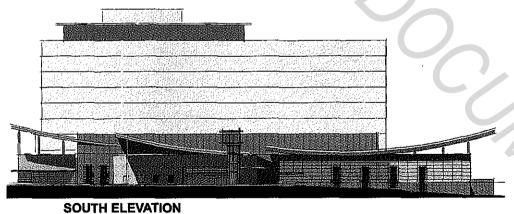




BLOCKS A-B-C EAST ELEVATION



BLOCKS A-B-C WEST ELEVATION



200 H ELEVATION

ELEVATIONS

UPtown Center Development LLC

COOPER CARRY

UNIVERSITY PLACE TOWN CENTER University Place, Washington

University Place, Washingtor Project # 206180.01 Presentation: April 2, 2007 New Residential

New Retail

New Civic

New Hotel

Parking

Existing Civic

Existing Residential

Existing Retail and Office





Hew York, My
Atlanta, Ga
Alexandria, Va
Memport Beach, Ca
Ets Hoth Washington Street
Americka, Va 27314

To 319.5152





BLOCKS D-E EAST ELEVATION



BLOCKS D-E WEST ELEVATION

COOPER CARRY

HOTEL- NORTH ELEVATION

ELEVATIONS

UPtown Center Development LLC

UNIVERSITY PLACE TOWN CENTER University Place, Washington

Project # 206180.01 Presentation: April 2, 2007

New Residential

New Retail

New Civic

New Hotel New Office

Parking

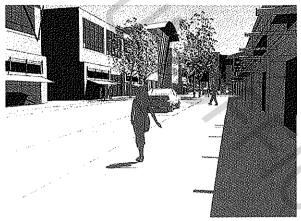
Existing Civic Existing Residential

Existing Retail and Office

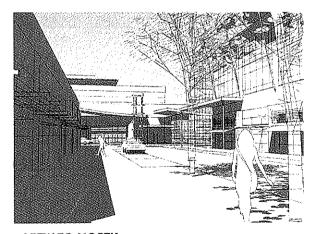




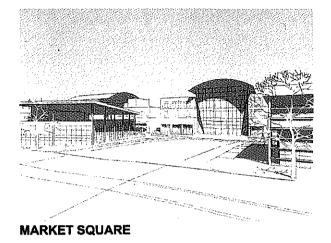


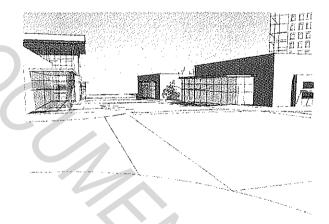






VIEW TO NORTH





37th STREET APPROACH

VIGNETTES

UPtown Center Development LLC UNIVERSITY PLACE TOWN CENTER University Place, Washington

University Place, Washington Project # 206180.01 Presentation: April 2, 2007 New Residential

New Retail

New Civic

New Hotel

Parking Parking

Existing Civic

Existing Residential

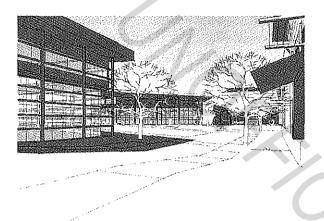
Existing Retail and Office



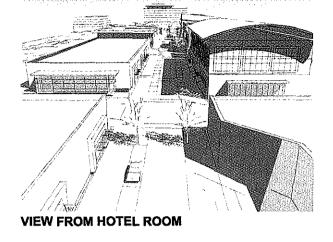


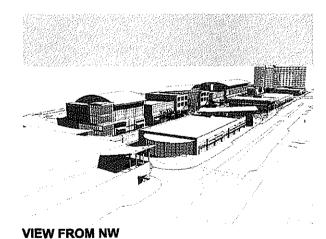
NEW YORK, NY ATLANTA, GA ALEXANDRIA, VA NEWPORT BEACH, CA 825 North Washington Street Alexandria, VA 22316 703.618.6162





MARKET SQUARE FROM SOUTH





MARKET PLACE APPROACH



UPtown Center Development LLC

UNIVERSITY PLACE TOWN CENTER University Place, Washington

Project # 206180.01 Presentation: April 2, 2007

New Civic

Parking

Existing Residential Existing Retail and Office

Existing Civic







Exhibit LL

PROMISSORY NOTE

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City of University Place,	Washington
	, 2007

FOR VALUE RECEIVED, the undersigned UPTOWN CENTER DEVELOPMENT, LLC, a New York limited liability company ("Maker) whose address is 272 West 86th Street, 2nd Floor, New York, New York 10024 promises to pay the CITY OF UNIVERSITY PLACE, a Washington municipal corporation, or order ("Holder") the principal sum of EIGHT HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$850,000), payable in two principal installments as hereinafter provided. All payments shall be made in lawful money of the United States and shall be paid at the offices of Holder at 3715 Bridgeport Way, University Place, Washington 98464 or at such other place as the Holder hereof may designate in writing from time to time.

This Note is intended to evidence the obligations of Maker to pay the earnest money deposit required under the terms of that certain Disposition and Development Agreement dated _______, 2007 by and between Holder and Maker (the "DDA"). Maker acknowledges that Maker's failure to make any principal payment as required under the terms of this Note shall constitute an event of default under the DDA as well as an event of default under this Note.

In the absence of acceleration hereof, by reason of default herein, the indebtedness evidenced hereby shall be paid as follows:

Maker shall pay Holder the sum of SIX HUNDRED THOUSAND DOLLARS (\$600,000) upon the closing of the sale of, and as an express condition precedent, to the closing of the sale of the first lot constituting the Town Center Property as defined in the DDA which Holder has agreed to sell Maker, but in any event on or before July 31, 2008.

Maker shall pay Holder the sum of TWO HUNDRED FIFTY HUNDRED THOUSAND DOLLARS (\$250,000) on or before July 31, 2008. The entire principal balance of this Note shall, if not sooner paid, be due and payable in full on July 31, 2008.

Default in the payment of any installment of principal which is not paid within five (5) days following written notice of such default shall, at the option of the Holder of this Note, without further notice or demand, render the whole amount of principal then unpaid immediately due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise the same at any other time. If the entire principal balance hereof shall become due and payable, whether at maturity, by acceleration or otherwise, the same thereafter bear interest at the rate of twelve percent (12%) per annum from the date due until paid in full. Time is of the essence in this Note with respect to all of Maker's obligations hereunder.

In the event that this Note is placed in the hands of an attorney for collection or if suit be brought to enforce this Note, the party prevailing in any such action or proceeding shall be entitled to recover its reasonable attorneys' fees and costs. Said costs and attorneys' fee shall include, without limitation, costs and attorneys' fees incurred in any proceeding under the Bankruptcy Code or state receivership statutes.

This Note is to be governed by and construed in accordance with the laws of the State of Washington and the parties agree that venue of any action hereon may be laid in Pierce County Washington.

IN WITNESS WHEREOF, Maker has caused this Promissory Note to be executed as of the day and year first above written.

UPTOWN CENTER DEVELOPMENT, LLC, A New York limited liability company

Ву	 	 	-
Name:		 	
Title:			