RESOLUTION NO. 857

A RESOLUTION OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, APPROVING A PHASE 3 PURCHASE AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF UNIVERSITY PLACE AND VERUS PARTNERS, LLC FOR DEVELOPMENT OF LOT 3 OF UNIVERSITY PLACE TOWN CENTER

WHEREAS, pursuant to Resolution 739 of the University Place City Council, and the Development Agreement approved therein, Town Center Lots 1, 2, 3, and 11 are under contract to Verus Partners, LLC, and as contemplated in the Development Agreement, Verus has completed and opened the University Place Whole Foods Market on Lot 7 as the northern anchor of Town Center, and is nearing completion of its construction on Lot 4. The Development Agreement allows Verus to continue to develop on any of the remaining contracted Lots in any sequence it chooses; and

WHEREAS, Verus' right to close on subsequent Lots occurred when Verus had both closed on Lot 7, and executed a lease with a major regional anchor use of approximately 38,000 square feet. (Whole Foods Market is 40,000 square feet.); and

WHEREAS, the Phase 3 Project will be developed on Lot 3 of the Town Center Property which is the lot west of the Latitude 47 Building, and south of Whole Foods, bounded by Bridgeport Way on the west and Market Place on the east, and is anticipated to be two commercial buildings totaling approximately 15,000 - 25,000 square feet, for multiple commercial tenants and with attention paid to consistency and harmony with the buildings already completed or under construction on Lots 4, 7, 8, 9, and 10; and

WHEREAS, for the Phase 3 Project the legislative policy consideration is whether Verus has met the requirement of the original Development Agreement to be allowed to proceed to Phase 3, and the City's administration has thoroughly reviewed the matter and determined that Verus, as a matter of fact and law, has met the requirements of the Development Agreement, and consequently are recommending the Phase 3 Project for approval; and

WHEREAS, the construction and operation of such commercial buildings by Verus is consistent with, and in furtherance and fulfillment of, the Town Center Plan, the original Development Agreement and Resolution 739 of the University Place City Council;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, AS FOLLOWS:

Section 1. Incorporation of Recitals. The recitals are hereby incorporated herein as if set forth in full.

Section 2. Approval of Form of Documents. The City Council hereby approves execution of the Phase 3 Agreement in substantially the form of the documents accompanying this Resolution.

Section 3. Completion of Transaction. The City Manager is authorized to take and execute any additional measures or documents that may be necessary to complete this transaction, which are consistent with the approved form of documents attached, and the terms of this Resolution.

Section 4. Effective Date. This Resolution shall be effective immediately upon adoption by the City Council.

ADOPTED BY THE CITY COUNCIL AT AN OPEN PUBLIC MEETING ON APRIL 2, 2018.

Kent Keel, Mayor

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ATTEST:

Emelita Genetia, City Clerk

APPROVED AS TO FORM:

Matthew S. Kaser, City Attorney

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PHASE 3 PURCHASE & DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF UNIVERSITY PLACE AND VERUS PARTNERS, LLC

THIS PHASE 3 PURCHASE & DEVELOPMENT AGREEMENT ("Phase 3 Agreement") is dated this _____ day of _____, 2018 (the "Effective Date"), between the City of University Place (the "City"), a Washington municipal corporation, acting in its proprietary capacity, and Verus Partners, LLC (the "Developer"), a Washington limited liability company and its assigns (hereinafter collectively referred to as "Parties") and is made pursuant to the following recitals and the terms and conditions herein.

RECITALS

A. In furtherance of the City's Town Center Plan, the City, over the course of several years, acquired for private redevelopment certain lots located within the Town Center Planned Action Area which are depicted on the Town Center Binding Site Plan and referred to as Lots 1, 2, 3, 4, 7, 8, 9, 10, 11 and 12, and Tracts A & B, and the public right of way in and about the foregoing (the "Town Center Property"). The City currently owns in its proprietary capacity the undeveloped Lots 1, 2, 3, 11, and Tracts A & B of the Town Center Property.

B. The City and Developer entered into a Purchase and Development Agreement dated November 15, 2013, (the "Development Agreement") under which the Developer acquired Lot 7 of the University Place Town Center Binding Site Plan (the "BSP") for development of a facility for an anchor retail tenant, as well as the right to acquire in phases, Lots 1, 2, 3, 4, and 11 of the BSP ("Phased Properties"), on terms established in the Development Agreement, which remains in full force and effect. The Developer has fully performed its first phase obligations and is now exercising its right to acquire and develop Lot 3 of the BSP as the Phase 3 of its development, pursuant to the terms of the Development Agreement.

C. Upon Developer's successful closing on Lot 3, Developer will have further extended Developer's Phasing Rights and the Phasing Rights Period as to the remaining Phased Properties for an additional six (6) months. To exercise the Phasing Rights as to a remaining Phased Property, Developer shall give notice to the City within six (6) months of receipt of the Certificate of Completion on Lot 3 of Developer's intent to acquire a Phased Property, as further described in Section 2.3 below.

E. The Developer desires to acquire Lot 3 of the Town Center Property (the "Lot 3 Property") identified as Lot 3 on the BSP for purposes of constructing structures of between 15,000 and 25,000 square feet core/shell buildings for commercial tenants and related exterior structures and site improvements (i.e., parking and landscaping) thereon (the "Phase 3 Project"). The construction and operation of such commercial facilities by

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the Developer would be consistent with, and in furtherance and fulfillment of, the Town Center Plan.

F. As described in this Phase 3 Agreement, consideration from the Developer to the City for acquisition of the Lot 3 Property includes cash and the obligation to construct certain improvements on the Lot 3 Property.

G. The cash price to be paid by the Developer for all future Lot acquisition was established in the Development Agreement, and establishment of that future acquisition Lot price was a material portion of the consideration for the Developer bringing Whole Foods Market as an anchor use to Town Center. Both Parties understand and agree that the opening of Whole Foods Market increased the value and viability of the Town Center, and the establishment of Developer's future acquisition Lot price was full consideration to the Developer for that increased value and viability.

H. By Resolution No. _____, adopted _____ 2018, the University Place City Council found and determined that the consideration to be provided by the Developer established in the Development Agreement was sufficient consideration for acquisition of the Lot 3 Property and approved the execution of this Phase 3 Agreement.

I. The Parties intend by this Agreement to set forth their mutual agreement and undertakings with regard to the Phase 3 Project.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual undertaking and promises contained herein, and the benefits to be realized by each party and in future consideration of the benefit to the general public by the creation and operation of the Phase 3 Project upon the Lot 3 Property, and as a direct benefit to the City and other valuable consideration, the adequacy of which is hereby acknowledged, the Parties agree as follows:

1. Recitals.

1.1 Incorporation of Recitals; Definitions. Each of the recitals set forth above is incorporated into this Phase 3 Agreement as though fully set forth herein. Capitalized terms not otherwise defined herein shall have the meaning set forth in Exhibit A attached hereto.

2. Acquisition of Lot 3.

2.1 Acquisition of Lot 3. In consideration of the mutual covenants set forth in this Phase 3 Agreement, the City agrees to convey to Developer, and Developer agrees to accept from the City on the terms and conditions set forth in this Phase 3 Agreement,

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the Lot 3 Property, subject to the terms and conditions set forth in this Phase 3 Agreement.

2.2 Consideration from Developer for Acquisition of the Lot 3 Property. The Developer will pay the City the sum of five hundred ninety-seven thousand, three hundred dollars ($597,300.00) for the Lot 3 Property (subject to a proportionate revision for any change in size of the Lot 3 area based upon $15 per square foot), which sum was previously established in the Development Agreement dated November 15, 2013, at the Closing of the purchase of the Lot 3 Property, and shall be bound by this Phase 3 Agreement to construct the Phase 3 Project. Developer shall get a credit at Closing in accordance with Section 2.3.1 of the Development Agreement.

2.3 Phased Properties Period and Pricing. The Phasing Rights shall extend for six (6) months commencing upon: (i) Developer's receipt of the Certificate of Completion for the Lot 3 Property; or (ii) an unsuccessful closing which occurs as a result of the exercise of Developer's rights under the applicable purchase and sale agreement (the "Phasing Rights Period"). Developer's subsequent successful closing on any of the Phased Properties will further extend the Phasing Rights and the Phasing Rights Period as to the remaining Phased Properties in accordance with this paragraph. The Developer will pay the City the sum of $15.00 per square foot for the purchase of Lots 1, 2, and 11.

2.4 Exercise of Rights(s). At any time during the Phasing Rights Period, so long as the Developer is not in default, the Developer may give notice to the City of its intent to exercise any or all of the rights on the Phased Properties. Upon delivery of such notice, the City and Developer will negotiate in good faith to reach agreement on purchase and development agreement(s) which shall be substantially in the form of this Agreement for the Phased Property or Phased Properties for which Developer has provided notice of its intent to acquire. Closing on a Phased Property shall be pursuant to the process and timeline set forth in the purchase and development agreement(s). If the Parties successfully negotiate additional purchase and development agreements for any Phased Property, such agreements remain subject to approval by resolution of the University Place City Council.

3. Developer's Review and Permitting Period.

3.1 Review Period. Developer shall have one hundred twenty (120) calendar days from the Effective Date to review the feasibility of the Lot 3 Property for development of the Phase 3 Project, including, without limitation, survey, property condition, environmental reports and zoning (the "Review Period"). If Developer, in its sole and absolute discretion, is dissatisfied with any of the items above at any time during the Review Period including any allowed extension(s), Developer shall be permitted to terminate this Phase 3 Agreement, in which event neither Party shall have any further obligation or liability to the other. Any and all funds or deposits shall be immediately returned to Developer. All activities performed by Developer during the Review Period shall be at Developer's sole expense.

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3.2 Title and Survey Review. Title Company shall provide the City Representative and Developer with a preliminary title commitment for the Lot 3 Property together with complete, legible copies of any exceptions identified in Schedule B thereof (the "Title Commitment) within twenty (20) days following the Effective Date of this Phase 3 Agreement. The City shall provide Developer with an ALTA Survey of Lot 3 certified to Developer within twenty (20) days following the Effective Date of this Phase 3 Agreement. Developer shall conduct its review of the Title Commitment and ALTA Survey in accordance with the following procedures:

3.2.1 Developer's Notice. Developer shall have sixty (60) business days after receipt of the Title Commitment and the ALTA Survey to notify the City Representative of its approval or disapproval of each exception in Schedule B of the Title Commitment or any exception or item on the ALTA Survey. Failure to deliver such notice by that date shall constitute Developer's approval of all exceptions in Schedule B or the ALTA Survey.

3.2.2 City's Notice. The City Representative shall have ten (10) business 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 the City Representative receives timely notice. The City Representative's failure to so notify Developer shall constitute the City Representative's election to not remove all such exceptions. The City Representative shall remove all exceptions and cure all ALTA Survey objections it elects to remove or cure on or before the Closing Date.

3.2.3 Developer's Election. If the City Representative does not elect to remove or cure all exceptions or items disapproved by Developer, Developer may elect to terminate this Phase 3 Agreement by written notice to the City Representative given within five (5) business days following the City Representative's notice, in which event this Phase 3 Agreement shall automatically terminate, and neither Party hereto shall have any further rights or obligations under this Phase 3 Agreement. If Developer does not elect to terminate this Phase 3 Agreement within the time frame set forth herein, disapproved exceptions that the City Representative has not elected to remove shall become Permitted Exceptions for the Lot 3 Property.

3.3 Permitting Periods. Developer has submitted its designs under the City's Administrative Design Review process (the "ADR") for the northern portion of Phase 3 Project to the City, a portion of which are attached hereto as Exhibit C and incorporated herein. The City's execution of this Phase 3 Agreement shall be the City's express approval of the Developer's designs for the building elevations, materials, and site plan as shown in Exhibit C pursuant to the ADR, acknowledging that applications for landscaping and amenity plans will be submitted at a later time. As to those remaining portions of the Phase 3 Project which are not depicted on Exhibit C, Developer shall have

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365 days (or such longer time as the parties may mutually agree) from the Closing Date to design the remainder of the Phase 3 Project and file a complete permit application for the remainder of the Phase 3 Project (the "Permitting Periods"). If, before closing, Developer in its sole and absolute discretion, is dissatisfied with any conditions, restrictions, limitations, mitigation measures or other matters affecting the feasibility of the Phase 3 Project in Developer's sole judgment, Developer shall be permitted to terminate the Phase 3 Agreement, in which event neither Party shall have any further obligation or liability to the other. Any and all funds or deposits shall be immediately returned to Developer. Except for an ALTA and Topographic survey for Lot 3 ("Lot 3 Survey") and Phase I environmental review costs to be borne by the City as set forth in Section 4.9, all activities performed by Developer during the Permitting Periods shall be at Developer's sole expense.

3.4 Developer's Access. Developer and its authorized contractors, consultants and agents shall have access to the Lot 3 Property at all reasonable times during the Design and Permitting Period. Upon request by the City, Developer shall provide the City with a list of the contractors, consultants and agents, including contact information for each party that Developer has engaged to perform any inspections. Before any soils sampling or other invasive testing, Developer shall submit a plan for such sampling for the City's approval, which will not be unreasonably withheld, conditioned or delayed. Developer shall restore the Lot 3 Property, including filling test holes, to eliminate any damage to the Lot 3 Property caused by Developer, its contractors, consultants or agents in the conduct of the inspections; provided, however, Developer shall have no obligation to remediate any prior-existing defects or other conditions in or on the Lot 3 Property, including, without limitation, remediation of any existing Hazardous Substances. If Developer discovers any defects or conditions in or on the Lot 3 Property that create a dangerous condition, including the discovery of any Hazardous Substances, Developer shall promptly notify the City of such defect or condition. Developer agrees to indemnify the City and to hold the City, the City's agents and employees harmless from and against any and all losses, costs, damages, claims or liabilities including, but not limited to, construction, mechanic's and materialmen's liens and attorneys' fees, to the extent caused by Developer's entry upon the Lot 3 Property, including the conduct of Developer or its contractors, consultants or agents; provided, however, such indemnity obligations shall not apply to any and all losses, costs, damages, claims or liabilities to the extent caused by (i) any existing environmental contamination in or on the Lot 3 Property that may be discovered or adversely impacted by Developer's conduct of its Inspections and such losses, costs, damages, claims or liabilities shall be the sole responsibility of the City, or (ii) the negligence or willful misconduct of the City.

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4. Closing of Acquisition of Lot 3.

4.1 Timing. Closing of the Lot 3 Property shall occur within thirty (30) days following the satisfaction of all conditions precedent as stated in Sections 4.6 and 4.7 below.

4.2 Title to Lot 3 Property. Upon Closing, the City Representative shall execute and deliver to Developer a statutory warranty deed ("Deed") conveying fee title to the Lot 3 Property free and clear of all defects and encumbrances and subject only to those exceptions that Developer approves pursuant to Section 3.2 above. The conveyance of any interest in the Lot 3 Property and appurtenant rights shall be subject to the provisions of this Phase 3 Agreement.

4.3 Title Insurance. On the Closing Date, the City Representative shall cause Title Company to issue to Developer a standard coverage Owner's Policy of Title Insurance ("Title Policy") insuring good and marketable fee simple title in Developer against any loss or damage by reason of defects in the City's title, other than the Permitted Exceptions. Developer may, at its sole cost and expense, request extended coverage or endorsements to the Title Policy, but the availability of extended coverage or such endorsements shall not be a condition precedent to Closing; provided, however, that the City Representative shall sign any owner's affidavit or similar document required by Title Company to enable Developer to obtain extended coverage.

4.4 "AS-IS" Conveyance. Upon electing to proceed with Closing of the acquisition of the Lot 3 Property, Developer represents that it has had an opportunity to and has conducted a thorough investigation of the Lot 3 Property and is in all respects knowledgeable and familiar with the present condition and state of repair of the Lot 3 Property. Developer acknowledges that it is concluding the acquisition of the Lot 3 Property based solely upon Developer's inspection and investigation of the Lot 3 Property and that, except as otherwise provided herein, the Lot 3 Property is being conveyed 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 that the City owns the Lot 3 Property. IN PARTICULAR, BUT WITHOUT LIMITATION, THE CITY MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE PHYSICAL CONDITION OR VALUE OF THE LOT 3 PROPERTY, SOILS CONDITIONS, OR OTHER PHYSICAL CHARACTERISTICS OF ALL OR ANY PORTION OF THE LOT 3 PROPERTY OR THE SUITABILITY OF ALL OR ANY PORTION OF THE LOT 3 PROPERTY FOR DEVELOPER'S INTENDED DEVELOPMENT. THE CITY MAKES NO REPRESENTATION WHATSOEVER REGARDING THE FINANCIAL FEASIBILITY OF ALL OR ANY PORTION OF THE PHASE 3 PROJECT. Upon recording of the Deed, Developer shall be deemed to have accepted the Lot 3 Property in its "AS-IS, WHERE-IS" condition and state of repair and does hereby waive and release and agrees to defend, indemnify and hold the 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 3 Property or any requirements of law applicable thereto.

4.5 Receipt of City Disclosure Statement. Prior to execution of this Phase 3 Agreement, the City Representative has provided Developer with a City Disclosure Statement in the form set forth in RCW 64.06.013. As provided by Washington law, the City Disclosure Statement is for disclosure only and shall not be considered a part of this Phase 3 Agreement, and does not constitute any representation or warranty by the City.

4.6 Conditions Precedent to City's Obligation to Convey the Lot 3 Property. The City's obligation to close the acquisition of the Lot 3 Property is subject to satisfaction of each of the following conditions which must be met to the reasonable satisfaction of the City Representative, and any or all of which may be waived by the City Representative in writing at its option:

4.6.1 Compliance by Developer. Developer shall have performed, observed and complied with all of the material covenants, agreements, obligations and conditions required by this Phase 3 Agreement to be performed, observed and complied with by it prior to or as of the Closing Date.

4.6.2 Correctness of Representations and Warranties. The representations and warranties of Developer set forth in this Phase 3 Agreement shall be true and correct on and as of the Closing Date.

4.6.3 No Bankruptcy. Neither Developer nor any of its managing members/partners/directors: (a) has applied for or consented to the appointment of a receiver, custodian or trustee for it or any of its property, (b) has become insolvent, (c) has failed generally or admitted in writing its inability to pay its debts as they become due, (d) has consolidated, liquidated or dissolved, (e) has 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 of or relating to debtors, or (f) has made an assignment for the benefit of its creditors or entered into an agreement of composition with its creditors, nor (g) has a petition been filed by or against Developer 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. The foregoing conditions are solely for the benefit of the City. If any of the foregoing conditions are not met to the reasonable satisfaction of the City Representative prior to the Closing Date, or been waived in writing by the City Representative on or before the Closing Date, the City Representative shall have the right, in his sole discretion, to terminate this Phase 3 Agreement at any time thereafter, upon written notice to Developer, whereupon this Phase 3 Agreement shall terminate, and except as otherwise

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expressly provided herein, neither Party hereto shall have any further rights, duties, liabilities or obligations to the other.

4.7 Conditions Precedent to Developer's Obligation to Acquire the Lot 3 Property. Developer's obligation to close the acquisition of the Lot 3 Property is subject to satisfaction of each of the following conditions which must be met to the reasonable satisfaction of Developer, and any or all of which may be waived by Developer in writing at its option:

4.7.1 Compliance by City. The City shall have performed, observed and complied with all of the covenants, agreements, obligations and conditions required by this Phase 3 Agreement to be performed, observed and complied with by it prior to the Closing Date.

4.7.2 Correctness of Representations and Warranties. The representations and warranties of the City set forth in this Phase 3 Agreement shall be true and correct on and as of the Closing Date.

4.7.2.1 City's Representations.

4.7.2.1.1 The City is a municipal corporation duly organized and validly existing under 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 the City necessary for the authorization, execution, delivery and performance of this Phase 3 Agreement has been duly taken. The City has full power and authority to enter into, execute and deliver this Phase 3 Agreement and to perform its obligations under this Phase 3 Agreement.

4.7.2.1.2 This Phase 3 Agreement, when executed and delivered by the City, and assuming it has been duly authorized, executed and delivered by Developer, will be the legal, valid and binding agreement of the City, enforceable in accordance with its terms.

4.7.2.1.3 No consent, approval, permission, authorization, order or license of any person or any Governmental Body (except as described in the Phase 3 Agreement, and building and other permits necessary for construction) is necessary in connection with the execution, delivery and performance of this Phase 3 Agreement by the City or any transaction contemplated hereby, except as may have already been obtained by the City prior to the date of this Phase 3 Agreement. There is no provision in the City's organizational documents which would be contravened by the execution and delivery of this Phase 3 Agreement or by the performance of any provision, condition, covenant or other term required to be performed by the City under this Phase 3 Agreement.

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4.7.2.1.4 There is no pending or threatened litigation, tax claim, action, dispute or other proceeding (including condemnation proceeding) of any nature whatsoever contemplated by or affecting the City or any officer, trustee or managerial member of the City which could have a material adverse effect on the legal existence or powers of the City or its financial conditions or operations or have a material adverse effect on the ability of the City to perform its obligations under this Phase 3 Agreement and the City is not in default with respect to any Requirements of Law that might result in any such effect.

4.7.2.1.5 To the best of the City's knowledge the Lot 3 Property is free of any contamination by hazardous and/or toxic materials ("Hazardous Substances") and that at the time of transfer of title there will be no conditions or circumstances related to the Lot 3 Property that could directly or indirectly impose or give rise to any costs or liability, contingent or otherwise, to Developer under any applicable Environmental Standards.

4.7.2.2 Developer's Representations.

4.7.2.2.1 Developer is a limited liability company duly organized and validly existing under the laws of the State of Washington, and has the power to own its property and carry on its business as now being conducted. All actions on the part of Developer and all other actions on the part of its members necessary for the authorization, execution, delivery and performance of this Phase 3 Agreement have been duly taken. Developer has full power and authority to enter into, execute and deliver this Phase 3 Agreement and to perform its obligations under this Phase 3 Agreement.

4.7.2.2.2 This Phase 3 Agreement, when executed and delivered by Developer, and assuming it has been duly authorized, executed and delivered by the City, will be the legal, valid and binding agreement of Developer, enforceable in accordance with its terms.

4.7.2.2.3 No consent, approval, permission, authorization, order or license of any person or of any governmental body (except as described in the Phase 3 Agreement, and building and other permits necessary for construction) is necessary in connection with the execution, delivery and performance of this Phase 3 Agreement by Developer or any transaction contemplated hereby, except as may have already been obtained by Developer prior to the date of this Phase 3 Agreement. There is no provision in Developer's organizational documents which would be contravened by the execution and delivery of this Phase 3 Agreement or by the performance of any provision, condition, covenant or other term required to be performed by Developer under this Phase 3 Agreement.

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4.7.2.2.4 There is no pending or threatened litigation, tax claim, action, dispute or other proceeding of any nature whatsoever affecting Developer or any managing member or officer of Developer which could have a material adverse effect on the legal existence or powers of Developer or its financial conditions or operations or have a material adverse effect on the ability of Developer to perform its obligations under this Phase 3 Agreement and Developer is not in default with respect to any Requirements of Law that might result in any such effect.

4.7.2.3 Duration of Representations. Each of the foregoing representations and warranties shall expire and be of no further force or effect, unless either Party shall have made a claim based upon an alleged breach of such representations and warranties within seven (7) years following Final Completion of the Phase 3 Project.

4.7.3 Condition of Lot 3 Property. The City shall deliver sole and exclusive possession of the Lot 3 Property to Developer at Closing (free of any visible debris) and not subject to any encumbrance not approved by Developer.

4.7.4 Title Policy. Title Company shall be prepared to issue to Developer the Title Policy (or later date commitment) for the Lot 3 Property.

4.7.5 Entitlements. The City shall have approved a binding site plan for the Town Center Property and all zoning and entitlements necessary for Developer to construct the Phase 3 Project and operate a retail project on the Lot 3 Property.

4.7.6 Permits. The City, any governing authority and all utility providers shall have issued all permits necessary for Developer to construct those portions of the Phase 3 Project depicted on Exhibit C including but not limited to: site construction permits, building construction permits, signage permits, off-site construction permits, utility extension permits, etc.

4.7.7 Easements/Approvals. The City and any other governing authority or party shall have authorized any and all approvals and granted any easements necessary for the construction and operation of the Phase 3 Project.

4.8 Closing Date. As used in this Phase 3 Agreement, "Closing" and "Closing Date" mean the date on which the Deed and all other documents required to be recorded by this Phase 3 Agreement are recorded. Developer and the City Representative shall place into escrow with Title Company all instruments and documents necessary to complete the acquisition of the Lot 3 Property in accordance with this Phase 3 Agreement. In the event either the City or Developer has been unable, despite its reasonable, good faith efforts to satisfy all of the conditions for Closing set forth in this Phase 3 Agreement by the Closing Date, then unless the City Representative and Developer agree to a further extension of the Closing Date, this Phase 3 Agreement shall automatically terminate, and

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except as otherwise expressly provided herein, neither Party hereto shall have any further rights, duties, liabilities or obligations to the other. If the City is the party that is unable to perform all of its obligations hereunder at the Closing, the City agrees also to reimburse Developer for all of its cost and expenses in preparing to close this transaction. If Developer is the party that is unable to perform all of its obligations hereunder at the Closing, the City shall not have the right to sue Developer for specific performance.

4.8.1 Escrow. On or before the Closing Date, the following documents shall be delivered to Title Company, as Escrowee, each of which shall be in form and substance reasonably acceptable to the attorney for the other party:

4.8.1.1 By City. The City Representative shall deliver the following original documents, duly executed and acknowledged by the City:

4.8.1.1.1 The Deed.
4.8.1.1.2 Real Estate Excise Tax Affidavit.
4.8.1.1.3 FIRPTA Affidavit.
4.8.1.1.4 Any easements pertaining to the Lot 3 Property.
4.8.1.1.5 Owner's affidavit.
4.8.1.1.6 Any and all such other documents as may be necessary, and as are consistent with the provisions of this Phase 3 Agreement.

4.8.1.2 By Developer. Developer shall deliver the following original documents, duly executed and acknowledged by Developer:

4.8.1.2.1 Real Estate Excise Tax Affidavit.
4.8.1.2.2 Any and all other documents and agreements as may be required by the City or Title Company and as are consistent with the terms of this Phase 3 Agreement.

4.9 City's Closing Costs. In connection with the Closing, the City shall pay the cost of the Title Policy with standard owner's coverage, the Lot 3 Surveys and Phase I environmental review costs, one–half of the Closing escrow fees, the cost of recording documents to clear the City's title, transfer or excise taxes if applicable, and the City's attorneys' fees.

4.10 Developer's Closing Costs. In connection with the Closing, Developer shall pay the cost of the Title Policy to the extent in excess of the premium for standard owner's coverage (if Developer elects to obtain extended coverage), together with all endorsements to the Title Policy requested by Developer, one–half of the Closing escrow fees, all recording fees for the Deed, and Developer's attorneys' fees.

4.11 Prorations. All utilities and special assessments shall be prorated as of the Closing Date. Because the City is exempt from property taxes, no proration of ad valorem

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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 Lot 3 Property, from and after the Closing Date. The City represents that no special assessments or local improvement district assessments currently exist or are contemplated in connection with the Phase 3 Project.

4.12 Possession. Developer shall be entitled to sole and exclusive possession of the Lot 3 Property 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.

4.13 Memorandum of Phase 3 Agreement. The parties agree to record a Memorandum of this Phase 3 Agreement which will include only the Developer's construction obligations for the Phase 3 Project, a description of Developer's right to acquire Lot 3, and a description of Developer's Phasing Rights with respect to the Phased Properties.

5. Development.

5.1 Development Conditions. The following development conditions shall apply to the Phase 3 Project:

5.2 Construction. Developer shall commence construction of those portions the Phase 3 Project on Lot 3 identified on Exhibit C within twelve (12) months of Closing, and construction of those portions of the Phase 3 Project on Lot 3 not identified on Exhibit C within 24 months of Closing, subject to extension as provided herein, or by mutual agreement, or due to Unavoidable Delay. This timeline represents the outside date for commencement and shall not preclude the Developer and the City Representative from agreeing to a shorter schedule. Construction on the Phase 3 Project should be complete within 36 months of Closing. Notwithstanding anything in this Agreement to the contrary, Developer shall not be obligated to demolish and replace existing improvements, including curb, gutter sidewalk and landscaping, except where Developer may choose to do so as part of its Phase 3 Project.

5.3 Enforcement. In the event Developer fails to commence construction within the time described above and any extension for Unavoidable Delay, the City will have the right, but not the obligation, to reacquire the Lot 3 Property from Developer prior to the commencement of construction, together with all improvements thereon and appurtenances thereto, for a price equal to any cash paid by Developer at Closing, but not including impact fees or permit costs. Closing of the City's reacquisition shall occur within thirty (30) days following written notice and Developer will transfer title to the Lot 3 Property to the City by statutory warranty deed, free and clear of all liens and encumbrances except Permitted Exceptions. Title Company, as Escrow Agent, shall conduct the Closing, and Closing costs and prorations shall be handled in the same

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manner as provided in Section 4 Closing of Acquisition of Lot 3. If the City notifies Developer that it intends to reacquire the Lot 3 Property, but fails to close the reacquisition within sixty (60) days thereafter, the City shall not be in default under this Phase 3 Agreement, but Developer shall have the right to convey the Lot 3 Property to another Developer expressly subject, however, to all of the terms, covenants, conditions and provisions set forth in this Phase 3 Agreement.

5.4 Certificate of Completion. Upon the issuance of a certificate of occupancy for all buildings within the Phase 3 Project, Developer shall file a Notice of Completion with the City. Within three (3) business days after receipt of the Notice of Completion, the City shall inspect the Phase 3 Project and if the City concurs that all Developer construction obligations are complete, the City shall furnish the Developer with a Certificate of Completion in substantially the form attached as Exhibit B. If the City should find that Final Completion has not occurred upon its inspection, then the City shall immediately set forth in writing the deficiency(s) and any required corrective measures to remedy the deficiency(s). In such event the City shall re-inspect the Improvements and follow the procedure set forth above. The Certificate of Completion shall be a conclusive determination that the Parties' agreements with respect to the Developer's construction obligations for the Phase 3 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, and shall have the effect of completing Developer's obligations with respect to the Lot 3 Property and Phase 3 Project and shall terminate the Memorandum of Phase 3 Agreement as recorded.

6. Indemnification.

6.1 Developer's Indemnification of City. Developer shall protect, defend, indemnify, and save harmless the City and its respective officers, officials, employees and agents (collectively, the "City Indemnified Parties"), from any and all claims, demands, suits, penalties, losses, damages, judgments, or costs of any kind whatsoever 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 Phase 3 Agreement. Developer's obligations under this Section shall include, but not be limited to:

6.1.1 The duty to promptly accept tender of defense and provide defense to the City at Developer's own expense.

6.1.2 The duty to indemnify and defend the 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 the City only, with a full and complete indemnity and defense of claims made by Developer's employees or agents. The Parties

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acknowledge that these provisions were mutually negotiated and agreed upon by them.

6.1.3 In the event the City incurs any judgment, award, and/or costs arising therefrom, including attorneys' fees, to enforce the provisions of this Section, all such fees, expenses, and costs shall be paid by Developer.

6.1.4 Notwithstanding the provisions contained above, Developer's obligation to indemnify the City shall not extend to any claim, demand or cause of action to the extent caused by the negligence or willful misconduct of the City or breach of this Phase 3 Agreement by the City.

6.2 City's Indemnification of Developer. The City shall protect, defend, indemnify, and save harmless Developer and its respective officers, officials, employees and agents (collectively, "Developer Indemnified Parties"), from any and all claims, demands, suits, penalties, losses, damages, judgments, or costs of any kind whatsoever arising out of or in any way resulting from the City's officers, employees, agents, contractors and/or subcontractors of all tiers, acts or omissions, performance or failure to perform this Phase 3 Agreement. The City's obligations under this Section shall include, but not be limited to:

6.2.1 The duty to promptly accept tender of defense and provide defense to Developer at the City's own expense.

6.2.2 The duty to indemnify and defend Developer from any claim, demand and/or cause of action brought by or on behalf of any of the City's employees or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the City's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects Developer only, with a full and complete indemnity and defense of claims made by the City's employees or agents. The Parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

6.2.3 In the event Developer incurs any judgment, award, and/or costs arising therefrom, including attorneys' fees, to enforce the provisions of this Section, all such fees, expenses, and costs shall be paid by the City.

6.2.4 Notwithstanding the provisions contained above, the City's obligation to indemnify Developer shall not extend to any claim, demand or cause of action to the extent caused by the negligence of Developer or breach of this Phase 3 Agreement by Developer.

6.3 Notice of Claim. Any person making a claim for indemnification pursuant to this Section (an "Indemnified Party") must give the Indemnifying Party written notice of such claim (an "Indemnification Claim Notice") promptly after the Indemnified Party

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receives any written notice of any action, lawsuit, proceeding, investigation or other claim (a "proceeding") against or involving the Indemnified 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 the Indemnifying Party will not relieve the Indemnifying Party of its obligations pursuant to this Section except to the extent that the Indemnifying Party'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).

7. Damage and Destruction; Condemnation.

7.1 Damage and Destruction. In the event there is any damage or destruction to the Phase 3 Project prior to Final Completion, Developer shall give the City prompt written notice thereof generally describing the nature and cause of such casualty and the extent of the damage or destruction to the Phase 3 Project. Developer shall cause reconstruction and restoration of the Phase 3 Project in accordance with the applicable Construction Documents and the provisions of this Phase 3 Agreement. Developer will assign all insurance proceeds which Developer may be entitled to receive prior to Final Completion of the Phase 3 Project with respect to damage or destruction to the Construction Lender, or if there is no Construction Lender, a third party insurance trustee mutually acceptable to the City and Developer who shall disburse insurance proceeds to reimburse Developer for the cost of restoration or repair in accordance with the terms, covenants, conditions, provisions and procedures set forth in the Construction Loan Documents or if there are no Construction Loans outstanding at the time of such damage or destruction in periodic installments based upon the percentage of completion and otherwise in accordance with standard commercial construction loan administration.

7.2 Condemnation. As used in this Phase 3 Agreement, the term "condemnation" refers to a taking by any public or governmental authority under power of eminent domain or any transfer in lieu thereof.

7.2.1 Condemnation Prior to Closing Date. In the event condemnation proceedings are threatened against a material portion of the Lot 3 Property prior to the Closing Date, 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 Phase 3 Agreement, and except as otherwise expressly provided herein, neither party shall have any further rights or obligations to the other under this Phase 3 Agreement and all condemnation awards payable to the property owner by reason of such condemnation, if any, shall be paid to the City. If neither party elects to terminate this Phase 3 Agreement, the Phase 3 Agreement shall remain in full force and effect, Developer shall accept the Lot 3 Property affected thereby in its then condition and state of repair, 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.

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7.2.2 Condemnation After Closing Date. In the event of a condemnation of the Lot 3 Property after the Closing Date, to the extent that the Phase 3 Project may still be constructed in accordance with the Construction Documents and may be constructed in accordance with the Construction Documents as modified by changes acceptable to Developer and the City, Developer shall proceed to construct the Phase 3 Project in accordance with the Construction Documents, as modified, if applicable.

8. Default.

8.1 The following events shall constitute a "Default" or an "Event of Default":

8.1.1 The failure of either Party to keep, observe, or perform any of its duties or obligations under this Phase 3 Agreement; or

8.1.2 If Developer files a petition for bankruptcy or makes 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.

8.2 City Remedies Upon Developer Event of Default. Upon any Event of Default by Developer, the City shall give Developer written notice of the same, whereupon following receipt of such written notice Developer shall have thirty (30) days within which to commence all necessary action to cure any such Event of Default, (and if such cure is commenced, proceed to diligently and continuously prosecute such cure to completion within a reasonable period of time thereafter not to exceed sixty (60) days), except with respect to Events of Default for which a shorter cure period is stated herein. In the event Developer fails to cure such Event of Default within the time period set forth above, the City shall be entitled to exercise the specific remedies identified in this Phase 3 Agreement for particular defaults by the Developer, and where no specific remedy is identified, the City may exercise one or more of the following remedies:

8.2.1 Prior to Closing on the Lot 3 Property. If Developer fails to perform any material obligation under this Phase 3 Agreement, the City shall give the Developer written notice of same, whereupon following receipt of such written notice, Developer shall have thirty (30) days within which to commence all necessary action to cure any such failure (and if cure is commenced within such thirty (30) day period, proceed to diligently complete such cure within a reasonable period of time). In the event Developer fails to cure such default within the time period set forth herein and provided the City is not in default hereunder, then the City will have the right, as its sole and exclusive remedy, to terminate this Phase 3 Agreement, and except as otherwise expressly provided herein neither party shall thereafter have any further rights or obligations under this Phase 3 Agreement.

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8.2.2 After Closing. With respect to a Developer Event of Default occurring after Closing, and provided City is not in default hereunder, the City may pursue any available legal remedy except specific performance.

8.3 Developer Remedies Upon City Default. Upon any Event of Default by the City, Developer shall give the City written notice of the same, whereupon following receipt of such written notice the City shall have thirty (30) days within which to commence all necessary action to cure any such Event of Default, (and if such cure is commenced, proceed to diligently and continuously prosecute such cure to completion within a reasonable period of time thereafter not to exceed 60 days), except with respect to Events of Default for which a shorter cure period is stated herein. In the event the City fails to cure such Event of Default within the time period set forth above, Developer shall be entitled to exercise the specific remedies identified in this Phase 3 Agreement for particular defaults by the City, and where no specific remedy is identified, the Developer may exercise one or more of the following remedies:

8.3.1 Prior to Closing on the Lot 3 Property. If the City fails to perform any material obligation under this Phase 3 Agreement, Developer shall give the City written notice of same, whereupon following receipt of such written notice, the City shall have thirty (30) days within which to commence all necessary action to cure any such failure (and if cure is commenced within such thirty (30) day period, proceed to diligently complete such cure within a reasonable period of time). In the event the City fails to cure such default within the time period set forth herein and provided Developer is not in default hereunder, then Developer will have the right, as its sole and exclusive remedy, to terminate this Phase 3 Agreement, and except as otherwise expressly provided herein neither party shall thereafter have any further rights or obligations under this Phase 3 Agreement.

8.3.2 After Closing. With respect to a City Event of Default occurring after Closing, and provided Developer is not in default hereunder, the Developer may pursue any other available legal remedy except specific performance.

8.4 Limitation on Damages. Notwithstanding anything to the contrary set forth in this Phase 3 Agreement, the City and Developer agree that the recovery by either party of any damages suffered or incurred by it as a result of any breach by the other party of any of its obligations under this Phase 3 Agreement shall be limited to the actual damages suffered or incurred by the non-breaching party of its obligations hereunder. In no event shall either party be liable to the other party for any consequential, exemplary, special, indirect, incidental or punitive damages (including any damages on account of lost profits or opportunities or business interruption and the like), whether by statute, in tort or under contract, under any indemnity provision or otherwise.

8.5 Rights and Remedies Cumulative. Except as otherwise expressly stated in this Phase 3 Agreement, the rights and remedies of the Parties are cumulative, and the

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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.

8.6 Waiver. 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.

9. Dispute Resolution. 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 Phase 3 Agreement (each a "Matter in Dispute") using the procedures set forth herein.

9.1 Senior Management. If a Matter in Dispute arises, the aggrieved party shall promptly notify the other party to this Phase 3 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 administrator or manager within its organization with authority to bind such party to meet at a mutually agreed location to attempt to resolve the Matter in Dispute. 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 as a condition precedent to pursuing other alternative dispute procedures or litigation.

9.2 Mediation. If prior to completion of construction of the Phase 3 Project a Matter of Dispute arises between the City and Developer, 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 Phase 3 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.

9.2.1 Mediation Process. The City or Developer, by delivering written notice to the other, may refer any dispute described above to any natural person not employed by either the City or Developer or an affiliate of either who shall be approved by mutual agreement of the City and Developer ("Mediator").

9.2.2 Consideration of Disputes or Claims. Upon receipt by the Mediator of written notice of a dispute, either from the City or Developer, the Mediator shall convene a hearing to review and consider the dispute. Both the City and Developer shall be given the opportunity to present their evidence at this hearing. Both the City and Developer are encouraged to provide exhibits, calculations and other pertinent material to the Mediator for review prior to the hearing.

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9.2.3 Procedures. Upon the first referral to the Mediator of a Matter in 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 Phase 3 Agreement. Unless the City and Developer agree otherwise, the Mediator shall issue its recommendation as soon as possible but, in any event, not later than sixty (60) days following referral of the dispute to the Mediator.

9.2.4 Independence of Mediator. 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 the City and Developer, and that the recommendations concerning any such dispute are advisory only. The Mediator's recommendations shall be based on the pertinent Phase 3 Agreement provisions, and the facts and circumstances involved in the dispute. The recommendations shall be furnished in writing to the Parties.

9.2.5 City's Responsibility. The 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.

9.2.6 Developer Responsibility. Developer shall furnish the Mediator one copy of all documents it might have, other than those furnished by the City, which are pertinent to the performance of the Mediator.

9.2.7 Coordination. The Parties will coordinate to effectively assist the Mediator's operation.

9.2.8 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. 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 a 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 the City and Developer for payment. Satisfactorily submitted invoices shall be paid within sixty (60) days.

9.3 Litigation. Only after the mediation has concluded, may either party seek resolution of the Matter in Dispute through litigation and for any such litigation, jurisdiction and venue shall thereafter be in the Superior Court of the State of Washington for Pierce County.

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10. Miscellaneous.

10.1 Assignment. Developer shall not voluntarily or involuntary sell, transfer, convey, assign or otherwise dispose of its rights under this Phase 3 Agreement, in whole or in part to any entity not affiliated with Developer or its principals, without the prior written consent of the City Manager, which consent shall not be unreasonably withheld, conditioned or delayed. Such restrictions or prohibitions shall not apply to (i) any residential lease of any unit in the Phase 3 Project (but shall apply to a ground lease of all or substantially all of the Lot 3 Property or any substantial portion thereof to any person or entity not a resident of the Lot 3 Property); (ii) any mortgage, deed of trust, security agreement or security instrument granted or entered by Developer to provide financing for Developer's purchase of the Lot 3 Property or performance of its obligations to the City with regard to the Lot 3 Project; or (iii) a Transfer, or series of Transfers which in the aggregate, does not or do not result in a change of control of the Developer's interests in the Lot 3 Property or in Developer. The foregoing is intended to allow the Developer to add debt and/or equity-related investment partners to the ownership of the Lot 3 Property or a phase thereof, within the limits expressed in this Section 10. These provisions can be reasonably modified or waived by the City Manager from time to time upon request of the Developer.

10.2 Burden and Benefit. 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.

10.3 Neutral Authorship. In connection with the execution and delivery hereof, each party has been represented by counsel. Each of the provisions of this Phase 3 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 Phase 3 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 Phase 3 Agreement.

10.4 Terminology. All personal pronouns used in this Phase 3 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.

10.5 Complete Agreement; Amendment. This Phase 3 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.

10.6 Severability. Each provision of this Phase 3 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 Phase 3 Agreement is determined to be invalid and contrary to

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any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Phase 3 Agreement that are valid.

10.7 Relationship of Parties. Developer and the City shall not be construed as having a joint venturer or partnership, and neither shall have the power to bind or obligate the other party except as set forth in this Phase 3 Agreement. Developer shall have no right or authority, express or implied, to commit or otherwise obligate the City in any manner whatsoever except to the extent specifically provided herein or specifically authorized in writing by the City.

10.8 No Third Party Rights. The provisions of this Phase 3 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, 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 Phase 3 Project.

10.9 Representatives.

10.9.1 Representatives of Developer. Developer shall designate a Project Manager for the Phase 3 Project who shall be the single point of contact for the City on all matters arising under this Phase 3 Agreement and shall promptly render decisions to avoid delay in the orderly process of design and construction of the Phase 3 Project. The Developer's Project Manager may be changed from time to time.

10.9.2 Representatives of City. The City Representative shall designate a Project Manager who shall be the single point of contact for the Developer on all matters arising under this Phase 3 Agreement and shall promptly render decisions to avoid delay in the orderly process of design and construction of the Phase 3 Project. The City's Project Manager may be changed from time to time.

10.10 Notices. Any notices or other communications required or permitted by this Phase 3 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, or sent via facsimile or email transmission to the fax numbers or email address set forth below, with machine confirmation of receipt followed by a "hard copy" mailed regular mail, within one (1) business day to the addresses listed as follows:

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City:	City of University Place 3715 Bridgeport Way University Place, WA 98466
Attention:	City Manager
Facsimile:	253.460.2546
Email	
Developer:	Verus Partners, LLC 224 Westlake Ave. North, Suite 500 Seattle, WA 98109
Attention:	John Maus
Facsimile:	602-956-4998
Email:	jrmaus@verusholdings.com

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.

10.11 Non Waiver of Governmental Rights. Nothing contained in this Phase 3 Agreement shall require the City to take any discretionary action relating to development of the Improvements to be constructed on the Lot 3 Property as part of the Phase 3 Project, including, but not limited to, zoning and land use decisions, permitting, or any other governmental approvals.

10.12 Captions. The captions of this Phase 3 Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Phase 3 Agreement.

10.13 Counterparts. This Phase 3 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.

10.14 Further Assurance. 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 Phase 3 Agreement and the transactions contemplated hereby.

10.15 Authority. Each of the persons signing below represent and warrant that they have the requisite authority to bind the party on whose behalf they are signing.

10.16 Time is of the Essence. Time is of the essence of this Phase 3 Agreement. All periods of time referred to herein shall include Saturdays, Sundays and legal holidays in the State of Washington, except that if the last day of any period falls on any Saturday, Sunday or such holiday, the period shall be extended to the next business day.

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10.17 Independent Contractor. Developer is acting under this Phase 3 Agreement as an independent contractor and nothing herein contained, or any acts of Developer or the City, nor any other circumstances, shall be construed to establish Developer as an agent of the City. Developer shall be responsible for each of Developer's employees or other persons performing services to be performed by Developer hereunder and for determining the manner and time of performance of all acts to be performed by Developer hereunder.

10.18 Attorneys' Fees. Each party shall be responsible for payment of the legal fees and costs of its own counsel in the event of any litigation, arbitration or other proceeding brought to enforce or interpret or otherwise arising out of this Phase 3 Agreement.

10.19 Survival of Provisions. Except as otherwise expressly provided herein, the covenants, representations, agreements, terms and provisions contained herein shall survive and shall not be deemed to have merged with or into the Deed.

10.20 Exhibits. The Exhibits hereto are made a part of and incorporated into this Phase 3 Agreement.

10.21 Conflicts of Interests. No member, official or employee of the City shall make any decision relating to the Phase 3 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.

10.22 Non-Liability of City, Officials, Employees, and Agents. 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 Phase 3 Agreement.

10.23 Applicable Law. This Phase 3 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 of any action brought to enforce this Phase 3 Agreement shall lie exclusively in Pierce County, Washington. Jurisdiction shall lie with the Superior Court of the State of Washington. The Parties hereto consent to the jurisdiction of the Pierce County Superior Court and waive the right to file suit elsewhere.

11. Term of Phase 3 Agreement. This Phase 3 Agreement shall commence on the Effective Date and shall continue in force for a period of ten (10) years from the Effective Date unless sooner terminated or extended as provided herein. Following the termination hereof, this Phase 3 Agreement shall have no force and effect, subject to post-termination obligations of the Developer or the City which by the terms hereof or by applicable law survive or extend beyond such termination.

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IN WITNESS WHEREOF, the Parties have executed this Phase 3 Agreement effective as of the date first above written.

CITY OF UNIVERSITY PLACE	VERUS PARTNERS, LLC
_____	_____
Stephen P. Sugg, City Manager	John R. Maus Authorized Signer

Attest:

_____
Emelita Genetia, City Clerk

Approved as to form:

_____
Matthew S. Kaser, City Attorney

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EXHIBIT "A"

Definitions

The following terms within the Phase 3 Agreement are defined as follows:

"City Council" or "Council" means the University Place City Council.

"Certificate of Completion" means a certificate issued by the City to Developer pursuant to Section 5 Development of this Phase 3 Agreement.

"City Representative" means the City Manager of University Place or designee upon reasonable approval of Developer. Upon approval of this Phase 3 Agreement by the City Council, the City Representative for this Phase 3 Agreement shall be the City Manager and every reference to the City herein including but not limited to decisions of the City or actions to be taken at the discretion of the City shall mean a decision of the City Manager or at the discretion of the City Manager.

"Closing" and "Closing Date" mean the date on which the Statutory Warranty Deed and all other documents required to be recorded by this Phase 3 Agreement are recorded.

"Effective Date" means the date set forth in the first paragraph of this Phase 3 Agreement.

"Environmental Standards" means all federal, state and local environmental laws and ordinances and all regulations promulgated thereunder, whether currently in effect or enacted or amended from time to time in the future

"Event(s) of Default" shall be as defined in Section 8 herein.

"Final Completion" means that the City has issued final unconditional certificates of occupancy for the Phase 3 Project.

"Improvements" means all buildings, structures, improvements and fixtures placed or constructed in, under or upon the Lot 3 Property and all access ways, pedestrian areas, public amenities, fences, paved areas, utility distribution facilities, lighting, signage and other infrastructure improvements to be built by Developer on the Lot 3 Property.

"Mortgagee" means the holder of a first mortgage or deed of trust ("Mortgage") encumbering Developer's interest in any portion of the Lot 3 Property, the proceeds of which are used to finance or refinance the construction of Improvements.

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"Permitted Exceptions" means exceptions to title identified in the Title Policy approved or not disapproved by Developer within the time period set forth in this Phase 3 Agreement.

"Phase 3 Project" means the development of the Lot 3 Property, including construction of all Improvements and all related obligations of Developer under this Phase 3 Agreement.

"Lot 3 Property" means the real property identified as Lot 3 of the University Place Town Center Property in University Place, Washington, as identified in the Town Center Binding Site Plan.

"Substantial Completion" or "substantially complete" means the date on which all of the following have occurred: (i) the Improvements required to be developed by this Phase 3 Agreement are complete according to approved Plans, except for punchlist items that do not substantially prevent the use of the Improvements for their intended purposes; and (ii) the City Representative has issued a temporary or final certificate of occupancy for the building portions of the Improvements.

"Title Company" means Chicago Title Insurance Company at 4717 South 19th Street, Suite 101, Tacoma, Washington 98405.

"Unavoidable Delay" means subject to the exclusions in subsection 2 of this definition, and as more specifically defined below, any act, event or condition that is beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Phase 3 Agreement, and that directly affects the performance of this Phase 3 Agreement, by materially expanding the scope of the obligations of either party hereunder, materially interfering with, or materially delaying the performance of the obligations of either party hereunder, to the extent that such act, event or condition is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Phase 3 Agreement on the part of such party.

a. Inclusions. Subject to the foregoing, Unavoidable Delay may include, but is not limited to, the following:
    i. A change in law, except as otherwise provided in this Phase 3 Agreement;
    ii. Naturally occurring events (except weather conditions reasonably anticipated for the City) occurring within a fifty (50)-mile radius of University Place and directly affecting the performance of this Phase 3 Agreement, such as landslides, underground movement, earthquakes, fires, tornadoes, floods, lightning, epidemics and other acts of God;

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iii. Explosion, terrorism, sabotage or similar occurrence, war, blockade or insurrection, riot or civil disturbance occurring in the state of Washington and directly affecting the performance of obligations under this Phase 3 Agreement;

iv. The failure of any subcontractor (other than the Developer or any affiliate) to furnish services, materials, chemicals or equipment on the dates agreed to, but only if such failure is the result of an event which would constitute an Unavoidable Delay event if it affected the Developer directly, and the Developer is not able after exercising all reasonable efforts to timely obtain substitutes;

v. The preemption, confiscation, diversion, destruction or other interference in possession or performance of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any material portion of the Lot 3 Property;

vi. A violation of Applicable Law by a person other than the affected party or its subcontractors.

b. Exclusions. It is specifically understood that, without limitation, none of the following acts, events or circumstances shall constitute Unavoidable Delay:

i. Any act, event or circumstance that would not have occurred but for the affected party's failure to comply with its obligations hereunder;

ii. Changes in economic conditions, including, but not limited to, changes in interest rates, inflation rates, wage rates, insurance premiums, commodity prices, currency values, exchange rates;

iii. Changes in the financial condition of the Developer, or its affiliates or subcontractors affecting the ability to perform their respective obligations under this Phase 3 Agreement;

iv. The consequences of error, neglect or omissions by the Developer, any subcontractor, any of their affiliates or any other person in performing its obligations under this Phase 3 Agreement;

v. Union or labor work rules, requirements or demands which have the effect of increasing the number of employees employed by the Developer or otherwise increasing the cost to the Developer of performing its obligations under this Phase 3 Agreement;

vi. Weather conditions reasonably anticipated for the City of University Place, Washington;

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vii. Any act, event, circumstance or Change in Law occurring outside of the United States;

viii. Mechanical failure of equipment used or supplied by a Party to the extent not resulting from a condition that is listed in the "Inclusions" section of this definition;

ix. Labor disputes involving employees of the Developer, its Affiliates, or its Subcontractors;

x. Failure of the City in its governmental capacity to approve any design submittals due to its sole judgment that such submittal does not comply with the standard against which it is required to undertake the review;

xi. Failure of any Party to secure intellectual property rights which are or may be necessary for the performance of its obligations under the Phase 3 Agreement.

xii. The inability of any Party to secure financing.

UNOFFICIAL DOCUMENT
DRAFT

EXHIBIT "B"

Form of Certification of Completion

After recording return to

CERTIFICATE OF COMPLETION

GRANTOR: CITY OF UNIVERSITY PLACE

GRANTEE:

Legal Description

Assessor's Tax Parcel No(s):

Related Document: Phase 3 Purchase and Development Agreement (Doc. No. _____)

The City of University Place, a Washington municipal corporation, acting in its proprietary capacity (the "City"), hereby certifies that _____, a _____ ("Developer"), has satisfactorily completed construction of the Phase 3 Project on the Lot _____ Property described above (the "Property"), as such Project is described in the Memorandum of Phase 3 Agreement dated _____ (the "Phase 3 Agreement"), which was recorded in the Records of the Pierce County Auditor, Washington, as Document No. _____, on _____, ____.

This Certificate of Completion is and shall be a conclusive determination that the Developer has satisfied, or the City has waived, each of the agreements, covenants and conditions contained in the Phase 3 Agreement as to the construction of the Phase 3 Project.

Notwithstanding this Certificate of Completion, the Phase 3 Purchase and Development Agreement dated _____ includes certain covenants between the City and Developer that survive and continue after issuance of a Certificate of Completion, and nothing in this Certificate of Completion affects such survival.

The Phase 3 Agreement is hereby terminated to the extent it is an encumbrance on the Lot 3 Property.

UNOFFICIAL DOCUMENT
DRAFT

IN WITNESS WHEREOF, the City has caused this instrument to be executed this _____ day of _____, _____.

CITY OF UNIVERSITY PLACE

By

_____
Stephen P. Sugg, City Manager

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Stephen P. Sugg 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 City Manager of the City of University Place to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, _____.

Notary Public

Print/Type Name_____

My commission expires _____

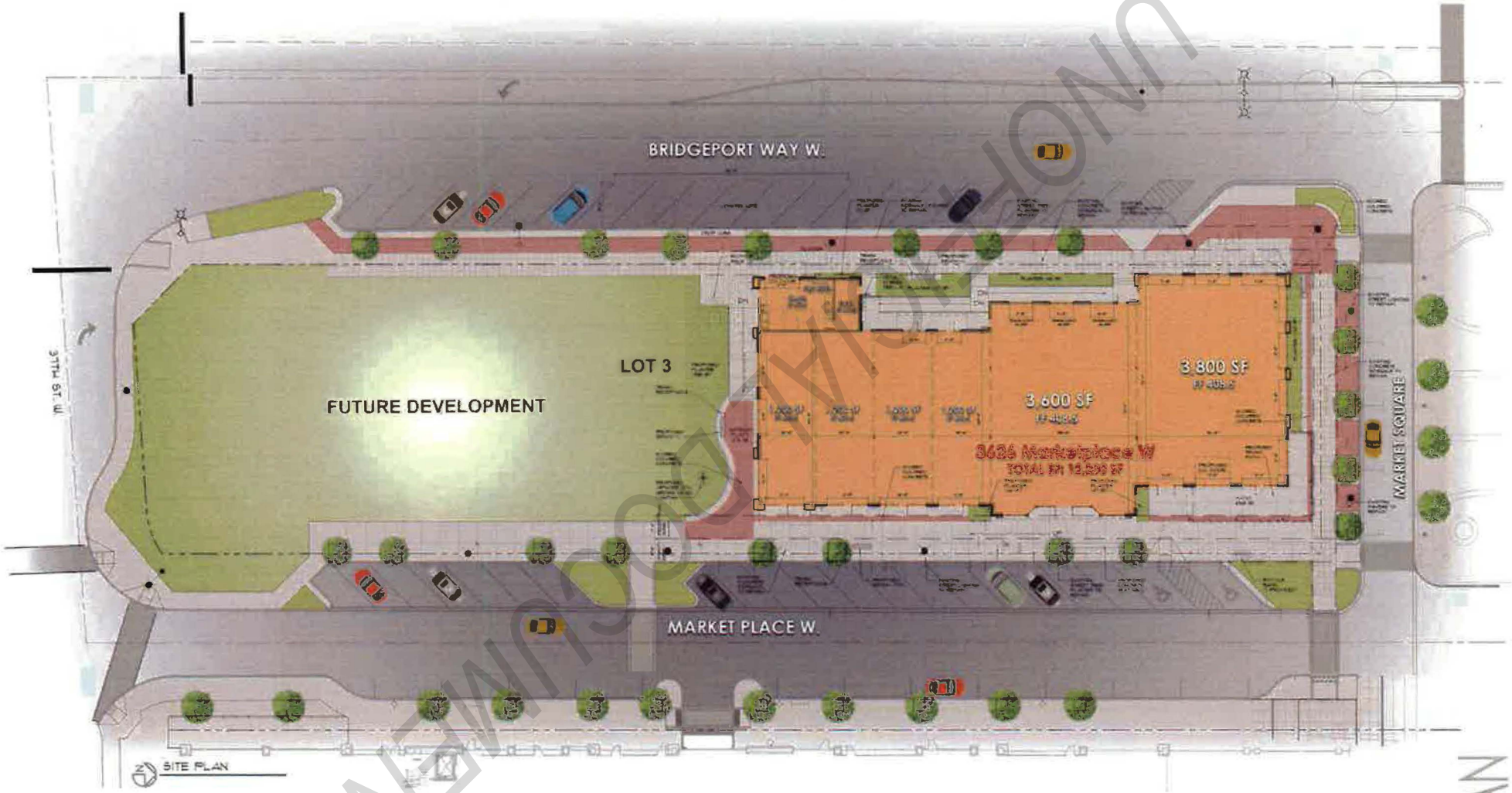
(Use this space for notary seal)

UNOFFICIAL DOCUMENT
DRAFT

EXHIBIT "C"

Developer's Designs

DRAFT
UNOFFICIAL DOCUMENT

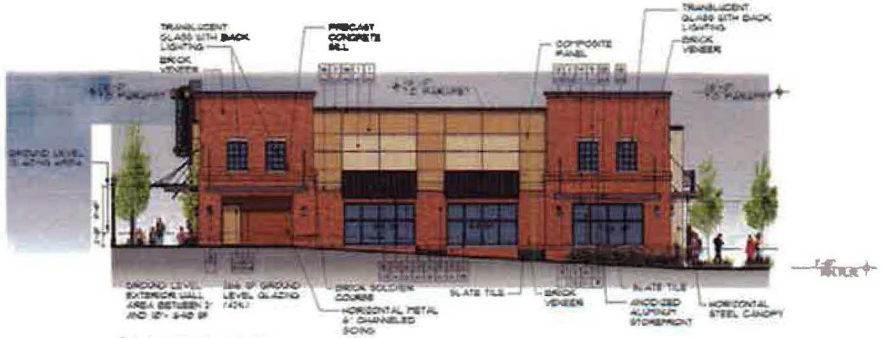


DRAFT MISSION

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03/28/2018 VILLAGE AT CHAMBERS BAY PHASE II - LOT 3 SITE PLAN

ddg ARCHITECTS



SOUTH ELEVATION

SCALE: 1/8" = 1'-0"



NORTH ELEVATION

SCALE: 1/8" = 1'-0"



EAST ELEVATION

SCALE: 1/8" = 1'-0"



WEST ELEVATION

SCALE: 1/8" = 1'-0"

MATERIAL SCHEDULE

1. COMPOSITE PANEL
2. INTEGRAL COLOR GROUND FACE CMU
3. SLATE TILE (1 & 2)
4. PRECAST CONCRETE
5. BRICK VENEER
6. ANODIZED ALUMINUM STOREFRONT
7. HOLLOW METAL DOOR
8. GLAZING
9. WALL SCONCE LIGHT FIXTURE
10. HORIZONTAL METAL CANOPY
11. PRE-FINISHED METAL COPING
12. PRE-FINISHED METAL CORNICE
13. METAL RAILING
14. BRICK SOLDIER COURSE
15. SLOPED METAL ROOF
16. COMPOSITE TRIM
17. METAL CHANNEL SIDING
18. VINYL SIDING
19. METAL CHANNEL
20. METAL RAILING
21. CAST-IN-PLACE CONCRETE

PAINT COLOR

A1 - SHERWIN WILLIAMS ZEN - HC-154
A2 - BROOKLYN BRIDGE SW - HC-173
A3 - RAVEN SW6258 - HC-178
A4 - OTHER BRICK SW - SW7020
A5 - PEARLING SW - SW 7

CONCRETE

B - NATURAL GRAY

METAL

C1 - RED BRONZE (DARKER)
C2 - DARK BRONZE
C3 - MATTE BLACK
C4 - TABLE MESA (LOOK SIMILAR TO WOOD GRAIN)
C5 - DARK SIERRA TAN

MASONRY

D1 - CABBLE RIDGE
D2 - BLEND

WOOD

E1 - PREFINISHED STAINED AND SEALED

GLASS

F - CLEAR TYP. BOH

STONE

G - BRAZIL GREY COBBLES- SLATE COLLECT

BRICK

H - GLAZING BRICK (TYP. BRICK TYPE 'A')

PREVIOUS DOCUMENT

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03/28/2018 VILLAGE AT CHAMBERS BAY PHASE II - LOT 3

ELEVATIONS

ddg ARCHITECTS