



CITY OF KIRKLAND

City Attorney's Office
123 Fifth Avenue, Kirkland, WA 98033 425.587.3030
www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Robin S. Jenkinson, City Attorney
Eric Shields, Director, Planning and Community Development
Kathy Brown, Director, Public Works
Tracey Dunlap, Deputy City Manager
Ellen Miller-Wolfe, Economic Development Manager

Date: February 26, 2015

Subject: AGREEMENT TO EXTEND AND AMEND REDEVELOPMENT AGREEMENT

RECOMMENDATION:

That the City Council approves the resolution which authorizes the City Manager to sign the Agreement to Extend and Amend Redevelopment Agreement for Totem Lake Mall to facilitate the sale and redevelopment of the property.

BACKGROUND DISCUSSION:

In 2004, Coventry II DDR Totem Lake, LLC (Coventry/DDR) purchased the 26-acre Totem Lake Mall site. Coventry/DDR received Design Review Board approval of the Conceptual Master Plan in December 2005. The City and Coventry/DDR entered the Redevelopment Agreement for the Totem Lake Mall in 2006. As the Council is aware, what followed was the economic downturn and protracted litigation between Coventry and DDR in Ohio and New York state courts.

PRESENT SITUATION:

CenterCal Properties, LLC (CenterCal) is a retail development company interested in acquiring the Totem Lake Mall property. CenterCal develops and acquires retail properties throughout the western United States. CenterCal properties include: BlackHawk Plaza (CA), Bridgeport Village, Cascade Station, Nyberg Woods (OR) and Valley Mall (WA). CenterCal projects currently in development include: The Village at Meridian (ID), Station Park (UT), The Collection at Riverpark (CA), Nyberg Rivers (OR) and The Trails at Silverdale (WA).

The Redevelopment Agreement entered between Coventry/DDR and the City in 2006 is due to expire in March 2016. In order for CenterCal to purchase the Totem Lake Mall property, CenterCal wants assurances that the City will assign and extend the existing Redevelopment Agreement. CenterCal needs to know that it will continue to retain the development standards vested in the existing Redevelopment Agreement and that the City will maintain its commitment to invest up to \$15,000,000 in the public elements associated with the Mall.

In order to retain the stormwater development standards in the existing Redevelopment Agreement, the City may need to make additional on-site and off-site stormwater system infrastructure investments.

To facilitate the purchase of the Totem Lake Mall property, CenterCal has formed a new legal entity, Village at Totem Lake, LLC, a Delaware limited liability company. Village at Totem Lake, LLC, has two members, each with a 50 percent interest: CenterCal Properties, LLC and Pacific Coast Capital, LLC (CenterCal's financial partner). Because this new entity will acquire the Totem Lake Mall and also assume the rights and obligations of Coventry under the Redevelopment Agreement, the Resolution, Agreement to Extend and Amend Redevelopment Agreement for Totem Lake Mall and the Consent to Assignment refer to Village at Totem Lake, LLC, otherwise these materials refer to CenterCal.

AGREEMENT TO EXTEND AND AMEND REDEVELOPMENT AGREEMENT FOR TOTEM LAKE MALL:

Under the proposed Agreement to Extend and Amend the Redevelopment Agreement for Totem Lake Mall (Agreement to Extend), the City agrees to immediately assign the existing Redevelopment Agreement to CenterCal and to extend the term of the Redevelopment Agreement. The Agreement to Extend provides for an initial five-year extension of the Redevelopment Agreement, with the ability to extend for an additional two years if, prior to the expiration of the initial five-year extension, CenterCal meets certain conditions described in Section II of the Agreement to Extend. The City's obligation to provide public financial participation in the amount of \$15,000,000 is similarly conditioned upon CenterCal meeting certain thresholds set forth in Section III of the Agreement to Extend.

STATE ENVIRONMENTAL POLICY ACT ADDENDUM

On January 20, 2006, the City issued a State Environmental Policy ACT (SEPA) Mitigated Determination of Nonsignificance for the Totem Lake Mall redevelopment project. CenterCal's conceptual development plan is very similar to the development plan proposed by Coventry/DDR. The approved changes to the Conceptual Master Plan are described below. A SEPA addendum is appropriate when a proposal has been modified, but the changes are not expected to result in any new significant adverse impacts. Based on the review of the City Transportation Engineer and City staff, no significant adverse impacts are anticipated as a result of modifications made to the previous proposal. The mitigation measures required with the 2006 SEPA determination will still apply to the project. However, since the proposal includes a change in the location of uses and access locations, City staff has determined, and CenterCal understands, that there will be a need for more detailed site plan and traffic analysis as the project design progresses. The need for, extent and/or design of some potential improvements, such as intersection improvements, will depend on decisions regarding access to the site which will be made subsequently by CenterCal, the Public Works Department and the Design Review Board. The SEPA Addendum was issued on February 26, 2015.

AMENDED CONCEPTUAL MASTER PLAN:

The Design Review Board approved the Totem Lake Mall Conceptual Master Plan (CMP) on December 5, 2005. The CMP provides and/or references conceptual plans (including anticipated uses), design guidelines, development standards, and the review processes to guide the redevelopment of the Mall. This was a requirement of the TL 2 zoning regulations. On January 28, 2015, CenterCal submitted an application to modify the approved CMP. Although CenterCal's

conceptual development plan is very similar to the development plan proposed by Coventry/DDR, there are noticeable differences that required a modification to the CMP. Some of the changes included:

- Moving the parking garage at the upper mall to the north property line adjacent to the EvergreenHealth campus.
- Relocating the residential uses at the lower mall to the southern portion of the upper mall across the street from the Yuppie Pawn property.
- Removing the six story office building at the upper mall and designating smaller multiple upper story office space opportunities at the lower and upper mall.
- Replacing the east/west boulevard concept at the upper mall with a public plaza.

In general, the changes can be summarized as a reconfiguration of the proposed uses and site plan in the approved CMP. Due to the minor nature of the proposed changes, the Planning Official approved the requested modification to the CMP on February 11, 2015. The changes did not substantially alter the proposed development or violate any requirement imposed by the Design Review Board and remain consistent with the design regulations, design guidelines, and Comprehensive Plan. The updated CMP can be found in Attachment A. Further review of the Mall redevelopment will occur in greater detail, and most likely in several phases, once CenterCal is ready to fully pursue its redevelopment plans. This subsequent review will involve City staff and the Design Review Board. The Amended CMP in Attachment A will provide the framework for the Design Review Board's review.

STAFF RECOMMENDATION:

City staff recommends that Council approves the resolution. Extension of the Redevelopment Agreement and future City investment in the Totem Lake Mall will support the potential development of retail, office and residential uses at the Totem Lake Mall site. The redevelopment of the Mall will strengthen its role as a retail center and community gathering place. A third-party review of the fiscal analysis of Totem Lake Mall redevelopment prepared by CenterCal concludes that the projected tax revenues would be sufficient to pay the debt service for the City's \$15,000,000 investment. Documents summarizing the review by Berk Consulting of the proposed project and subsequent information provided by CenterCal regarding different development scenarios are Attachment B to this memorandum. The City's obligation to acquire the completed public infrastructure constructed by CenterCal will be subject to CenterCal meeting certain thresholds set forth in the Agreement to Extend and Amend the Redevelopment Agreement.

Attachment A – Amended Conceptual Master Plan
Attachment B – Berk Memo

Totem Lake Mall

Amended Conceptual Master Plan

February __, 2015

TABLE OF CONTENTS

Chapter 1	Introduction and Overview.....	1
Chapter 2	Conceptual Master Plan Goals.....	4
Chapter 3	Existing Mall Configuration and Uses.....	5
Chapter 4	Proposed Mall Reconfiguration and Uses.....	7
Chapter 5	Transportation and Parking.....	9
Chapter 6	Conceptual Site Plan.....	13
Chapter 7	Design Guidelines.....	15
Chapter 8	Development Regulations.....	23
Chapter 9	Implementation of Amended Conceptual Master Plan.....	27

CHAPTER ONE

INTRODUCTION AND OVERVIEW

The Totem Lake Mall (hereafter referred to as “the Mall”) was originally constructed in 1973 as a two-story enclosed regional mall on a 26-acre property in Kirkland. The Mall is very well situated along Interstate 405, approximately five miles from downtown Kirkland. Despite its ideal location, the Mall has aged and is now experiencing a steady decline in quality, performance and desirability. Instead of reaching its potential as a premier regional shopping center and primary economic engine for the City of Kirkland (hereafter referred to as “Kirkland” or “the City”), the Mall has languished and is now generally considered to be an under-performing property. This downward transition is likely attributable to several factors, including age, failure to meet the demands of contemporary tenants, and an unusual configuration consisting of an upper mall and a lower mall with inadequate connectivity and sense of place.

Historically, investors and owners of the Mall have been unable to devise an economically feasible plan for upgrading and renovating the Mall to meet current standards and demands. While there are many factors that contributed to this situation, it appears that the primary factor was an inability to justify the significant expense associated with redevelopment. Unlike new construction, redevelopment of an existing property involves additional complexities and expense associated with relocation and accommodation of tenants; demolition, reconfiguration and modernization of aging and incompatible structures; extensive architectural challenges associated with assimilation of existing architectural elements into contemporary designs; site limitations and increasing costs of new construction.

Kirkland views the Mall as a key component of its overall economic vitality and has targeted redevelopment as a primary goal. In furtherance of this goal, Kirkland has paved the way for redevelopment through its comprehensive planning and adoption of development regulations and standards that are conducive to and encourage redevelopment. This effort was initiated in 2002, with adoption of the Totem Lake Neighborhood Plan, which sets forth a vision for Totem Center as a dense, compact

community, with a mix of business, commercial and residential uses, coupled with a high level of transit and pedestrian activity.

In 2004, Coventry II DDR Totem Lake LLC, a Delaware limited liability company (hereafter referred to as "Coventry/DDR"), purchased the Mall with a vision for redevelopment. Coventry/DDR carefully studied the regional demographics and retail landscape, the prime location of the Mall in relation to growth and development trends in the community, the development regulations and standards, and the potential benefits associated with redevelopment to both its investors and Kirkland. The indicators confirmed the potential for an economically feasible redevelopment of the Mall at varying intensities depending upon the level of public support and financial participation.

Coventry/DDR realized that the more elaborate redevelopment alternatives were not economically feasible without a significant level of public support and financial participation. While this created challenges, the benefits to Kirkland were readily apparent considering the enhanced revenues that would be generated and the potential for creation of a community center with a defined sense of place in furtherance of Kirkland's planning goals and objectives.

Coventry/DDR received City Design Review Board ("DRB") approval of the Conceptual Master Plan ("CMP") in December, 2005. Shortly thereafter, in January, 2006, the City approved and entered into a Redevelopment Agreement for Totem Lake Mall ("Redevelopment Agreement"). Combined, the CMP and Redevelopment Agreement govern redevelopment of the Mall. However, the economic downturn adversely impacted the ability of Coventry/DDR to move forward with redevelopment and the project languished for several years. Eventually, a decision was made to market the Mall to a developer with the ability to step in and complete the redevelopment in accordance with Kirkland's planning goals and objectives.

CenterCal Properties, LLC ("CenterCal") is the likely successor to Coventry/DDR. Upon Closing, CenterCal will own the same property previously owned by Coventry, which includes the entire Mall, except for two parcels that were sold in the 1970s to financial institutions ("Bank Parcels"). The Bank Parcels are shown on Exhibit 1. CenterCal is interested in acquiring the Bank Parcels and, if subsequently acquired, the Bank Parcels will be included in this CMP.

CenterCal's vision for redevelopment of the Mall includes the same array of permitted uses in the TL 2 Zone; demolition and reconstruction of the majority of the existing Mall; and creation of a vibrant public plaza with public amenities, anticipated to include public art, water feature(s), benches, trees, landscaping and similar improvements, achievable through a public/private collaboration involving financial participation by both CenterCal and the City. The overall objective is to create a community center with a defined sense of place.

However, CenterCal's conceptual plan accomplishes these objectives in ways that vary somewhat from the Coventry/DDR development proposal by focusing the intensity of mixed uses to take full advantage of the redesigned public plaza and realigned and reconstructed 120th Avenue NE; strategically locating residential uses to take full advantage of the public access created by the City's acquisition of property abutting Totem Lake (formerly Yuppie Pawn property); and reconfiguring the square footage of buildings and tenant spaces throughout the Mall to integrate the mixed uses with less focus on "big box" retailers and large office buildings.

This Amended CMP, coupled with a corresponding amendment to the Redevelopment Agreement ("Amended Redevelopment Agreement"), is necessary to ensure that the vision of CenterCal in its conceptual plan meets with the City's goals and objectives for redevelopment of the Mall.

This Amended CMP is an integral step in furtherance of redevelopment of the Mall. It contains the revised conceptual plans to achieve the overall goal of transforming this under-performing property into a regional shopping center with an array of mixed uses and public spaces. This Amended CMP will serve as the conceptual framework for redevelopment of the Mall.

It is important to emphasize the conceptual nature of the Amended CMP. It provides a basic "conceptual" rather than "detailed" framework for redevelopment. As plans evolve and are further refined, it is possible that there will be changes to the overall conceptual framework, which will be addressed through the appropriate regulatory processes.

CHAPTER TWO

CONCEPTUAL MASTER PLAN GOALS

The goals established by this Amended CMP are as follows:

- To provide a conceptual framework for redevelopment of the Mall in a manner that furthers the planning goals of Kirkland, creates a unique sense of place, and transforms an under-performing property into a vibrant regional shopping center with a public plaza and an array of mixed uses permitted in the TL 2 Zone, which may include, without limitation, retail, office, cinema, hotel and residential uses.
- To provide the conceptual framework for redevelopment of the Mall in one or more phases over a period of time consistent with the Amended Redevelopment Agreement.
- To identify the design guidelines, development standards and applicable criteria that will govern redevelopment of the Mall.
- To specify the processes and procedures applicable to implementation of the Amended CMP and further design review after adoption.

CHAPTER THREE

EXISTING MALL CONFIGURATION AND USES

The Mall is located on a 26-acre site northwest of the intersection of 124th Street NE and Interstate-405. Exhibit 1 shows the existing site conditions, building and parking configuration at the Mall. Totem Lake Boulevard extends along the westerly boundary of the property, parallel to Interstate-405, while 120th Avenue NE runs approximately north and south, effectively dividing the Mall into a 16.54-acre “lower mall” and a 9.63-acre “upper mall”. In addition to the main upper and lower mall buildings, there are several additional free-standing retail buildings within the Mall.

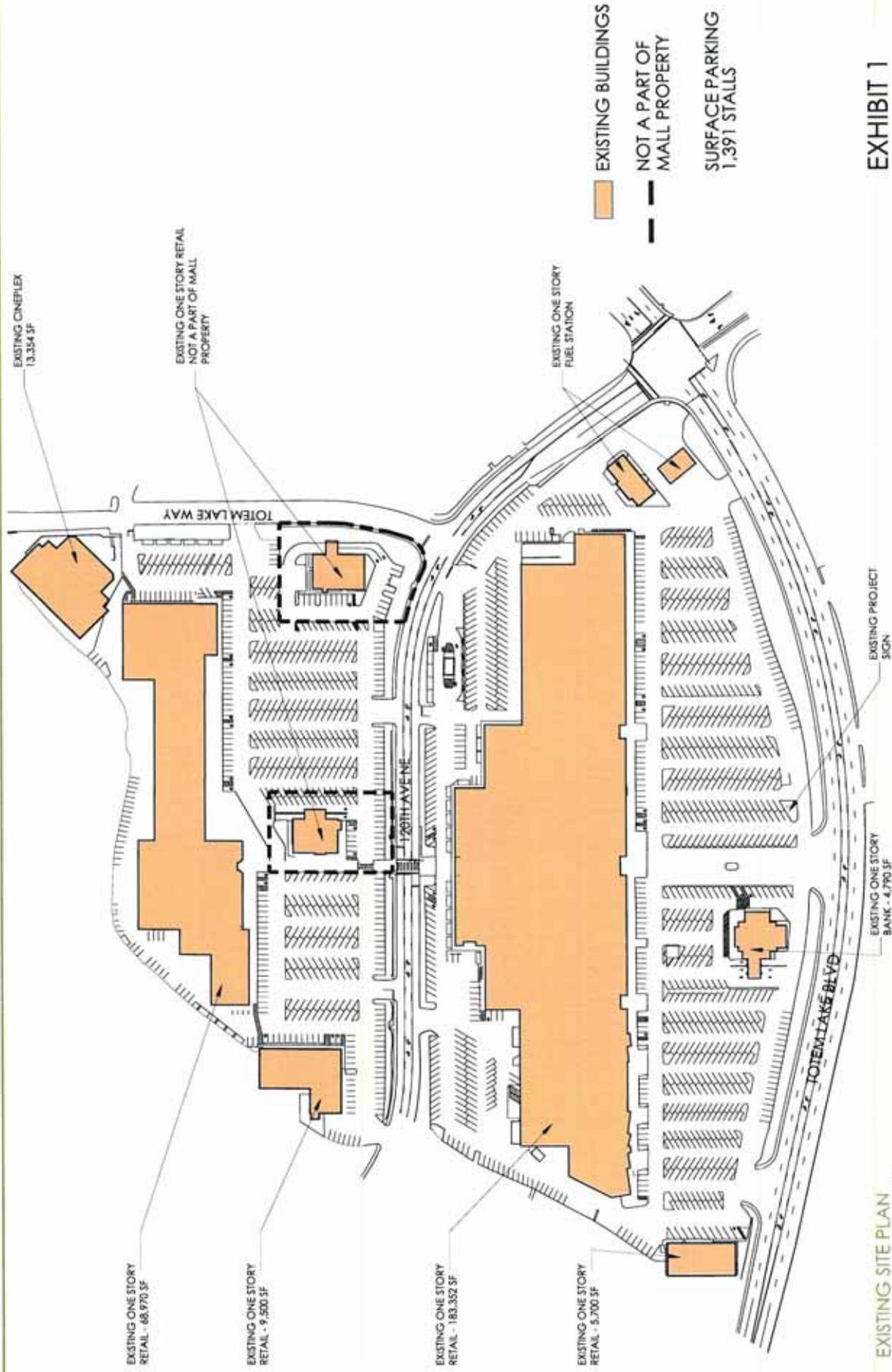
The overall building configuration, coupled with the location of 120th Avenue NE, creates a dull and uninviting environment, portraying a suburban “strip center” image as opposed to a regional shopping center. There is no store frontage on 120th Avenue NE and signage is poor. The upper mall faces the backside of the lower mall along 120th Avenue NE, and the lower mall impedes views to the upper mall. The separation of the upper mall from the lower mall by a very busy connector street impedes pedestrian-friendly cross-shopping, segregates the malls, and eliminates the unique identity and sense of place that should be associated with the Mall.

The two primary mall buildings were constructed during the mid-1970s – the lower mall building in 1972 and the upper mall building in 1974 – with the remaining free-standing structures added sporadically over the next decade. The buildings contain approximately 290,000 square feet. Tenant improvements and remodeling have occurred from time-to-time over the years, including a large remodel of the anchor unit in the lower mall. Storefronts in the upper mall are aligned to the parking lot. The larger lower mall has outdoor facing entrances for the larger units on the north and south ends, with an additional inner pedestrian area typical of larger enclosed malls providing access to the anchor tenant and smaller units in the center of the structure. The age of the structures and the unappealing configuration contribute to the economic obsolescence of the Mall and its current under-performing status.

The entire Mall is located within the TL 2 Zone as set forth in the Kirkland Zoning Code, Section 55.21. The TL 2 Zone allows a full spectrum of uses, including: (1) retail sales of goods and services, movie theatres, restaurants, fast food

establishments, taverns, banks and other financial institutions and service providers; (2) offices; (3) residential; (4) vehicle service stations; (5) hotels or motels; (6) churches; (7) schools and day-care centers; (8) assisted living facilities; (9) convalescent centers and nursing homes; (10) public utilities, government facilities or community facilities; and (11) public parks. All of the existing uses within the Mall are consistent with the uses allowed in the TL 2 Zone.

THE VILLAGE AT TOTEM LAKE



CHAPTER FOUR

PROPOSED MALL RECONFIGURATION AND USES

The CenterCal redevelopment conceptual plan that is contemplated for the Mall involves substantial demolition of existing buildings, new construction of buildings, one or more parking structures, a redesigned public plaza; new lower mall east/west connection between Totem Lake Boulevard and 120th Avenue NE (hereafter referred to as the “East/West Connector”); and realignment and reconstruction of 120th Avenue NE. The redevelopment will occur in one or more phases over a period of time consistent with the Amended Redevelopment Agreement.

The anticipated uses within the Mall after redevelopment will be within the spectrum of permitted uses in the TL 2 Zone. It is currently anticipated that the leased retail space will be utilized for typical retail uses, such as department stores and shops, restaurants, fast food establishments, coffee shops, taverns, banks, financial institutions, fitness and entertainment establishments, hotel and other retail businesses and service providers. A new modern multi-screen cinema is contemplated in the upper mall. Office and residential uses are currently contemplated and will be strategically located within the Mall to take advantage of public streets, parking, public plaza amenities and views and access to Totem Lake. The mix of uses; location of uses; building layout; and square footages associated with buildings and uses will ultimately depend upon market conditions, tenant demands and synergies within the Mall. Parking will include both surface parking and one or more parking structures with adequate parking to meet anticipated demand. The completed Mall is anticipated to include up to 1,000,000 square feet or more.

CHAPTER FIVE

TRANSPORTATION AND PARKING

To successfully redevelop the Mall, it will be crucial that adequate consideration is given to transportation and parking plans. Transportation plans include both vehicular circulation (public transportation/bus service and private vehicles) and pedestrian circulation. Parking plans include an evaluation of required parking to adequately meet the anticipated demand, and also the allocation and strategic positioning of parking throughout the Mall. Considering the unique circumstances presented by 120th Avenue NE bisecting the upper mall and lower mall, a successful redevelopment of the Mall will also require redesign, realignment and reconstruction of 120th Avenue NE to assimilate this busy street into the Mall in a way that is inviting, pedestrian-friendly, and safe.

A. TRANSPORTATION.

1. Vehicle Circulation Plan.

Exhibit 2 depicts the anticipated Vehicular Circulation Plan for the Mall. The circulation pattern demonstrates passenger car circulation, service entry/loading circulation, and public transportation.

It is contemplated that there will be several vehicular entrances for passenger car circulation into the Mall from Totem Lake Boulevard, 120th Avenue NE, and NE Totem Lake Way. These will provide access to the Mall, the new East/West Connector, surface parking lot areas, parking structure(s), on-street parking, and service entry/loading areas.

Public transportation is generally provided along 120th Avenue NE and Totem Lake Boulevard. Currently, there are only two bus stations, one located at the intersection of 120th Avenue NE and Totem Lake Boulevard, and the other along 120th Avenue NE near NE Totem Lake Way, which are shown on Exhibit 2. It is anticipated that METRO will evaluate the public transportation needs and modify the public transportation elements to meet the demands created by the Mall, such as providing a bus stop near the intersection of 120th Avenue NE and the new East/West Connector.

2. Pedestrian Circulation Plan.

Exhibit 3 depicts the anticipated Pedestrian Circulation Plan for the Mall. The circulation pattern demonstrates pedestrian exterior connections, interior connections and pedestrian activity areas.

Exterior pedestrian connections will be along 120th Avenue NE, NE Totem Lake Way, and existing sidewalks on Totem Lake Boulevard, which will provide access to the Mall from adjoining properties and streets. Interior connections will emphasize access to the public plaza as the hub of pedestrian activity within the Mall. There will be interior pedestrian connections along the new East/West Connector between Totem Lake Boulevard and 120th Avenue NE; along storefronts in the lower mall; along storefronts and potential residential structures in the upper mall that do not front on the public plaza; and between the public plaza and parking structure(s). The primary pedestrian activity area will be focused along the new East/West Connector, the public plaza and 120th Avenue NE.

3. 120th Avenue NE.

It is anticipated that through a joint effort between the City and CenterCal, 120th Avenue NE will be redesigned, realigned and reconstructed during the early stages of Mall redevelopment. As currently existing, 120th Avenue NE is a very busy thoroughfare and utilized for both access to the Mall and general connection to adjoining streets and boulevards. This creates a potentially unsafe and serious impediment to achieving the connectivity and sense of place between the upper mall and lower mall.

By redesigning and realigning 120th Avenue NE, it will be possible to incorporate both traffic calming techniques and pedestrian-friendly improvements to eliminate the negative factors that impact the Mall. At this stage of development, only preliminary thoughts and ideas have surfaced regarding ways in which to achieve the goals and objectives for 120th Avenue NE. These ideas include (1) consideration of narrowing 120th Avenue NE or finding other solutions to calm traffic and encourage alternative vehicular routes for connectivity to adjoining streets and boulevards; (2) methods to enhance pedestrian-oriented walkways and crosswalks with special street improvements, such as raised pavement and colored pavement tiles, to clearly identify pedestrian crossings; (3) strategic placement of trees and landscaping to identify and emphasize pedestrian crossings; and (4) signalization at strategic locations along 120th Avenue NE to enhance the safety to pedestrians and slow traffic.

4. Transportation Concurrency.

Coventry/DDR retained Transportation Services, Inc. (“TSI”) to perform a traffic impact analysis, including a daily and PM peak hour trip generation forecast for each time frame, to test for traffic concurrency. TSI concluded that the proposed Mall redevelopment would pass concurrency. The City has issued a Traffic Concurrency Certification Notice for the redevelopment project and a Certificate of Concurrency will be issued with the first building permit for the Project.

B. PARKING.

1. Parking Requirements.

CenterCal will retain the services of a parking consultant to analyze and evaluate the number of parking spaces required to meet the anticipated demand for parking at the redeveloped Mall. The evaluation will include review of this Amended CMP, and data including anticipated tenant mix, square footage of retail and office uses, number of seats in the proposed cinema, number of residential units and other pertinent information. The evaluation shall apply the Urban Land Institute’s shared parking methodology to develop a model to project parking demand characteristics at the Mall by hour of the day, month of the year, and weekday versus weekend or determined by the City Transportation Engineer.

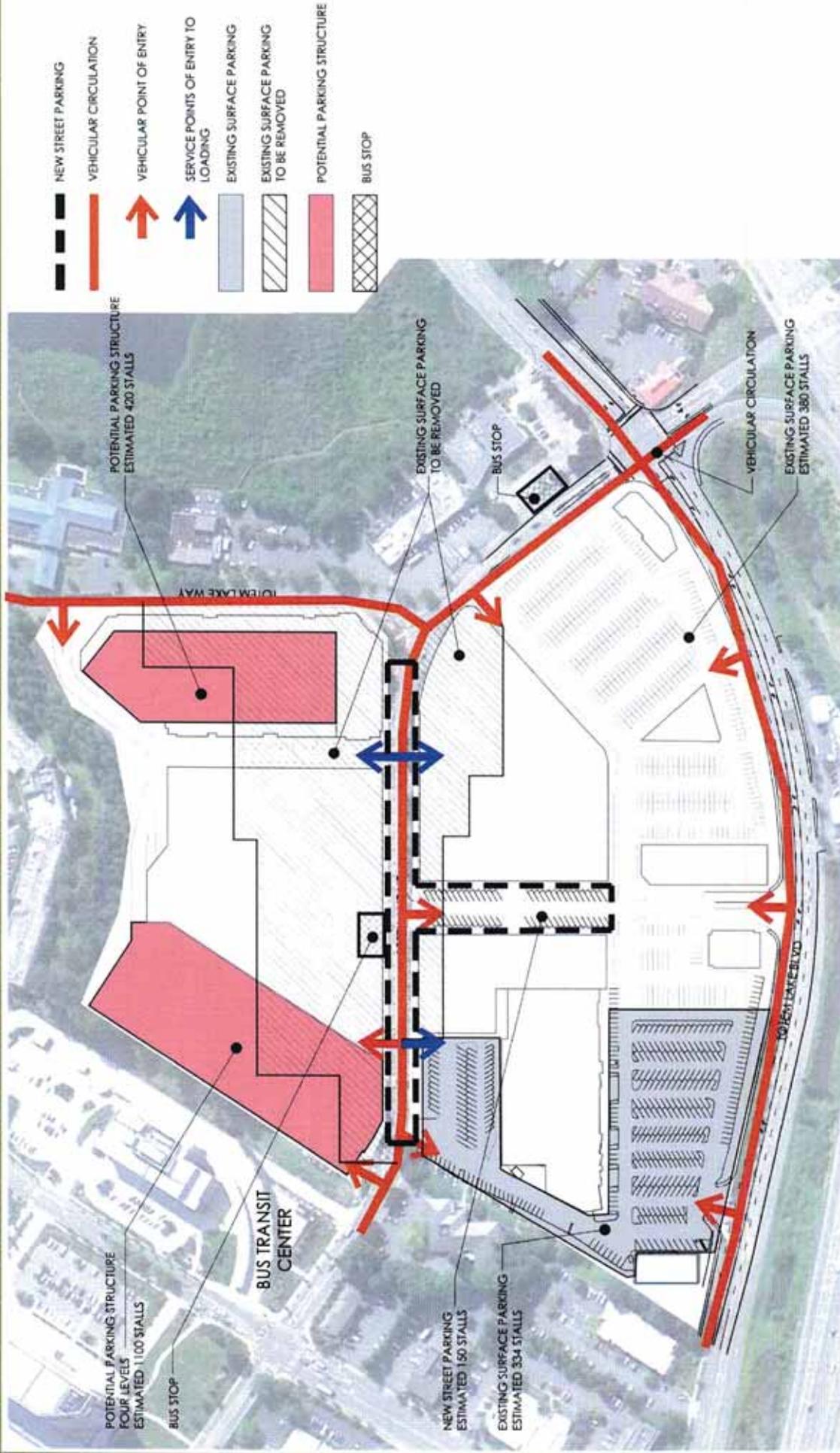
The concept of shared parking is particularly applicable at the Mall with an array of mixed uses. Shared parking is the use of a parking space by vehicles generated by more than one land use. The ability to share parking spaces is the result of two conditions: (1) Variations in the accumulation of vehicles by hour, by day or by season at the individual land uses; and (2) relationships among the land uses that result in visiting multiple land uses on the same auto trip. To illustrate, office buildings require parking spaces during daytime hours on weekdays, while restaurants and entertainment venues have peak parking needs during the evening and weekends.

The parking evaluation will identify parking demand among the various mixed uses and opportunities for shared parking. CenterCal will deliver the parking evaluation to the City Planning Official and City Transportation Engineer for review and approval, which will then establish the number of parking spaces necessary for redevelopment of the Mall.

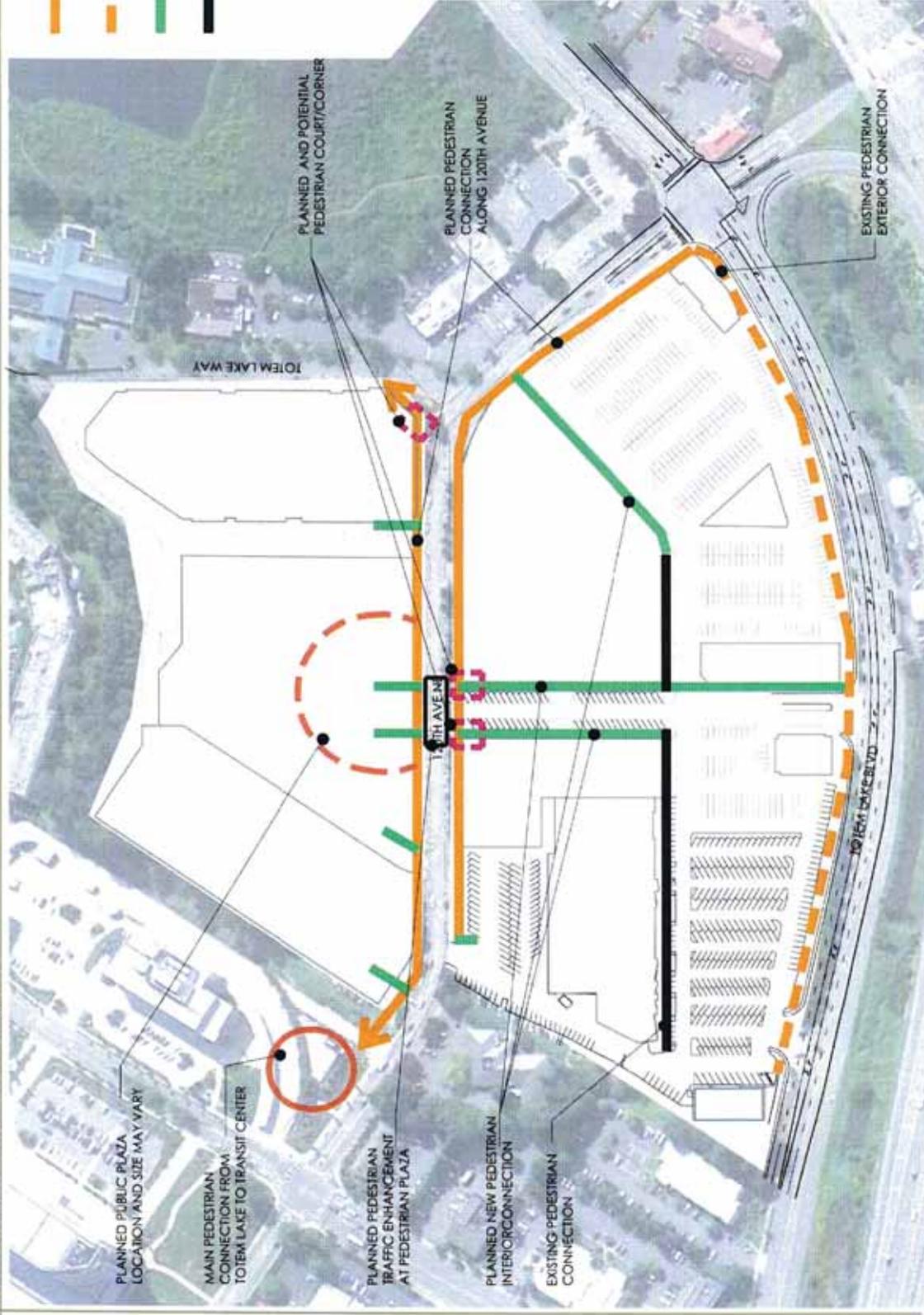
2. Parking Facilities.

Parking facility requirements within the redeveloped Mall will continue to evolve as the final development plan is refined. Once the number of required parking spaces is determined, CenterCal will provide adequate parking to meet anticipated parking demand by providing a combination of on-street parking, surface parking lot areas and one or more parking structures. Future phases may include development within locations that are currently utilized for surface parking lots. In the event of reduction or elimination of surface parking lot areas in future phases, CenterCal will incorporate parking structures or other measures to ensure adequate parking.

THE VILLAGE AT TOTEM LAKE



THE VILLAGE AT TOTEM LAKE



- PLANNED PEDESTRIAN CONNECTION ALONG 120TH AVENUE
- EXISTING PEDESTRIAN EXTERIOR CONNECTION
- PLANNED NEW PEDESTRIAN INTERIOR CONNECTION
- EXISTING PEDESTRIAN CONNECTION
- PLANNED AND POTENTIAL PEDESTRIAN COURT/CORNER
- PLANNED PEDESTRIAN PLAZA

CHAPTER SIX

CONCEPTUAL SITE PLAN

Redevelopment of the Mall involves many complex issues that must be addressed simultaneously and effectively in a manner that satisfies tenants, especially national tenants, while also meeting or exceeding the design guidelines and parameters desired by the City. This is a very challenging task. Premier tenants are highly desirable and also very demanding to ensure that the resulting lease space will satisfy their business objectives, space requirements and technical needs, which are frequently established on a national rather than site-to-site basis. For the redevelopment to be successful there must be a balance that meets the needs of the tenants and also satisfies the desires of the City. CenterCal will implement the Design Guidelines and Development Regulations in a meaningful way to accommodate the desires of the City, while also remaining cognizant of the demands and needs of prospective tenants. Refinement of the architectural elements will follow input, direction and approval of the DRB.

Exhibit 4 sets forth a Conceptual Site Plan that shows the most recent conceptual plan for redevelopment and construction within the Mall. The uses are anticipated to include primarily a mix of retail, office, cinema, hotel and residential uses as permitted in the TL 2 Zone, but the array of uses, square footage, building configurations, and locations will likely continue to evolve and will be provided in greater detail to the DRB as part of the subsequent DRB review and approval of phase plans (“Phase Plans”) described in Chapter 9 of this Amended CMP.

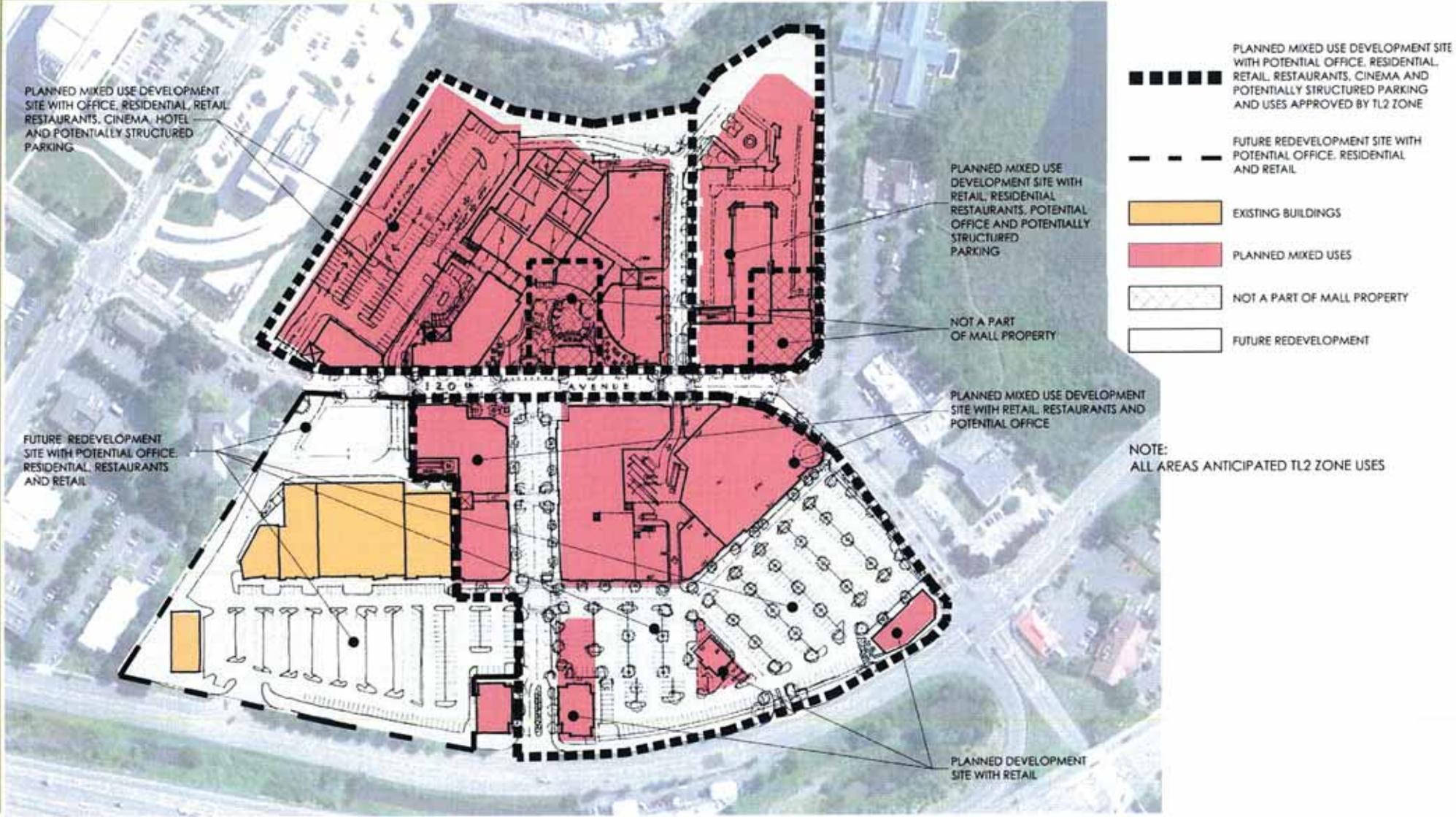
Exhibit 5 contains conceptual views and perspectives of CenterCal’s current vision for the completed Mall redevelopment project. The conceptual drawings establish a general framework for redevelopment of the Mall, but there will be further refinement as detailed development plans evolve, tenant needs and synergies are addressed, and market demands become evident. Once refined, one or more Phase Plans will be presented to the DRB for review, input and approval.

Exhibit 6 sets forth the Conceptual Demolition Plan, which is anticipated to involve demolition of most of the existing buildings during the redevelopment project. Demolition will include most of the one story retail building located in the lower mall, leaving that portion more recently constructed on the northerly end. Demolition in the

upper mall will include demolition of the upper mall buildings, including the existing cinema, but potentially excluding the Bank Parcels if not acquired. In the event that one or more of the Bank Parcels are not acquired, then the public plaza may need to be realigned and/or relocated in the final site development plan. This may require a review under the applicable conceptual master plan modification process.

The conceptual site plan does not contemplate that the Mall will expand beyond its existing property boundaries in the foreseeable future. However, nothing in this Amended CMP should be construed to prohibit expansion of the TL 2 Zone to incorporate other properties into the Mall in a manner that complies with the local Development Regulations and uses allowed within the TL 2 Zone.

THE VILLAGE AT TOTEM LAKE



CONCEPTUAL SITE PLAN
THE VILLAGE AT TOTEM LAKE - CONCEPTUAL MASTER PLAN

THE VILLAGE AT TOTEM LAKE



OVERALL SITE VIEW
THE VILLAGE AT TOTEM LAKE

THE VILLAGE AT TOTEM LAKE



OVERALL SITE - SOUTHEAST VIEW
THE VILLAGE AT TOTEM LAKE



THE VILLAGE AT TOTEM LAKE



PLAZA VIEW AT MAIN ENTRY DRIVE & 120TH AVENUE
THE VILLAGE AT TOTEM LAKE



THE VILLAGE AT TOTEM LAKE



MAIN ENTRY DRIVE - VIEW NORTHEAST
THE VILLAGE AT TOTEM LAKE

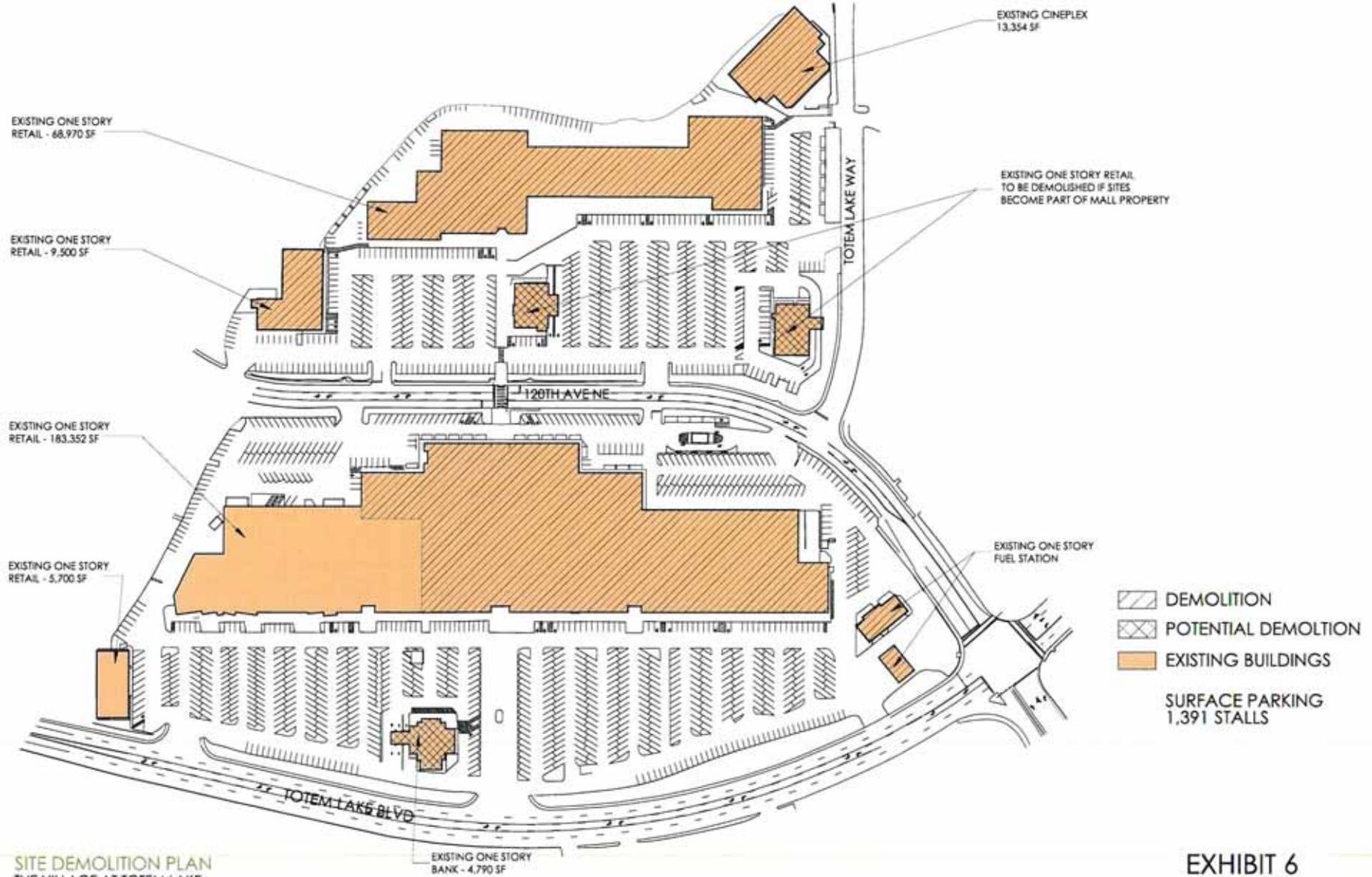
THE VILLAGE AT TOTEM LAKE



120TH AVENUE - SOUTH VIEW
THE VILLAGE AT TOTEM LAKE



THE VILLAGE AT TOTEM LAKE



SITE DEMOLITION PLAN
THE VILLAGE AT TOTEM LAKE



EXHIBIT 6

CHAPTER SEVEN

DESIGN GUIDELINES

A. Vision For Redevelopment.

The Mall should be redeveloped as a contemporary regional shopping center, designed to attract regional customers to amenities commensurate with similarly situated regional malls. It is important that the Mall be redeveloped in a manner that creates a unique identity, with clear boundaries, and a sense of place. Buildings and public space should be functional, pedestrian-oriented, properly scaled and aesthetically pleasing through incorporation of architectural design elements. The architectural character of the buildings within the Mall should present a consistent image with unified design features.

While most customers will continue to arrive by private automobile or public transportation, the Mall should be pedestrian-friendly, with emphasis on the public plaza, generous sidewalks, pedestrian amenities, landscaping and safe internal and external circulation systems. The public plaza should be a focal point within the Mall, providing landscape features and pedestrian amenities to encourage use and provide an aesthetically pleasing transition from the surrounding urban density.

There should be clearly identifiable building and pedestrian access points and entryways. Pedestrian connections should exist (1) between the upper mall and lower mall (east and west of 120th Avenue NE); (2) internal to the Mall; and (3) between the Mall and adjacent properties, including the Evergreen Hospital campus and the Transit Center, along 120th Avenue NE. Realignment and reconstruction of 120th Avenue NE is important to better facilitate pedestrian-oriented use of the Mall and promote connectivity within the Mall. Traffic calming features should be incorporated into the redesign to reduce the speed and increase safety, while also encouraging the use of nearby streets and boulevards for through traffic.

There should be adequate parking provided at various access locations throughout the Mall. Parking should be a combination of surface parking lots, parking structures, and on-street parking strategically located to ensure easy, safe and functional access to the array of mixed uses within the Mall. Efforts should be made to incorporate architectural elements, such as trellises, landscaping, artwork or murals, to soften the impact of parking structures and provide a more aesthetically appealing appearance.

Landscaping and signs throughout the Mall should be addressed through one or more property-wide plans to ensure consistency and allow evaluation of the overall impact on the appearance of the Mall both on-site and as viewed from Interstate-405, Totem Lake Boulevard and adjacent streets.

B. Applicable Design Guidelines.

In 2002, Kirkland adopted the Totem Lake Neighborhood Plan, which sets forth specific goals and objectives for Totem Center. These include the following:

- *Accommodate high density, transit-oriented development, consistent with the district's position in an Urban Center.*
- *Ensure that public and private development contributes to a lively and inviting character in Totem Center.*
- *Reinforce the character of Totem Center through public investments.*
- *Produce buildings that exhibit high quality design, incorporate pedestrian features and amenities and display elements of both continuity and individuality.*
- *Provide public spaces that are focal points for the community.*
- *Provide visual and functional connections between adjacent developments through landscaping, public spaces and pedestrian connections.*

These specific goals and objectives provide strong support for redevelopment of the Mall to meet the desire of Kirkland to encourage urban density development in Totem Center in a way that will enhance the public image and accommodate pedestrian-oriented shopping opportunities within Totem Center.

The “Design Guidelines for Pedestrian-Oriented Business Districts,” adopted by Kirkland on May 6, 2003, and subsequently amended to include specific provisions applicable to the TL 2 Zone on August 4, 2004, are incorporated by reference into the Kirkland Municipal Code, Section 3.30.040 (hereafter “Design Guidelines”). These Design Guidelines are applicable to redevelopment of the Mall. However, the design regulations contained in the Kirkland Zoning Code, Chapter 92, are not applicable to redevelopment of the Mall within the TL 2 Zone.

The Design Guidelines do not set a particular style of architecture or design theme. Rather, they establish a greater sense of quality, unity, and conformance with Kirkland's physical assets and civic role. The Design Guidelines focus on creating a high-quality pedestrian environment, especially along pedestrian-oriented streets. The following are pertinent provisions of the Design Guidelines that should be considered by the DRB when evaluating subsequent design elements of the overall Mall redevelopment:

I. **PEDESTRIAN-ORIENTED ELEMENTS:**

- *Sidewalk Width – Movement Zone. A sidewalk should support a variety and concentration of activity yet avoid overcrowding and congestion. The average sidewalk width should be between 10' and 18'. New buildings on pedestrian oriented streets should be set back a sufficient distance to provide at least 10' of sidewalk. If outdoor dining, seating, vending or displays are desired, an additional setback is necessary. New development in TL 2 should provide sidewalks at the recommended width, to contribute to the pedestrian-orientation of new development. Public gathering places, such as pedestrian-oriented plazas linked to the sidewalk, should be encouraged.*
- *Sidewalk Width – The Storefront Activity Zone. New buildings should be set back a sufficient distance from the front property line a minimum of 10' to allow enough room for pedestrian movement. Wider setbacks should be considered to accommodate other sidewalk uses that would benefit businesses and the pedestrian environment. Lighting and special paving of the storefront activity zone are also beneficial.*
- *Pedestrian Coverings. Awnings or canopies should be required on facades facing pedestrian-oriented sidewalks. A variety of styles and colors should be encouraged on pedestrian-oriented streets, and a more continuous, uniform style encouraged for large developments on entry arterial streets.*
- *"Pedestrian-Friendly" Building Fronts. All building fronts should have pedestrian-friendly features, such as transparent or decorative windows, public entrances, murals or artwork, bulletin boards, display windows, seating, or street vendors. Blank walls should be mitigated where feasible using architectural techniques such as recessing the wall with niches, artwork on the surface, or installation of trellises or similar architectural features. Since pedestrians move slowly along the sidewalk, the street level of buildings must be interesting and varied. Since the potential exists for large tenants to locate within TL 2, efforts should be made to minimize the impacts of these uses along pedestrian-oriented streets and concourses. Along 120th Avenue NE, buildings should be designed to add vitality along the sidewalk, by providing*

multiple entrance points to shops, continuous weather protection, outdoor dining, transparency of windows and interactive window displays, entertainment and diverse architectural elements. Ground floor development in TL 2 should be set close to the sidewalk along pedestrian streets and concourses to orient to the pedestrian and provide appropriately-scaled environment.

- Upper-Story Activities. All buildings on pedestrian-oriented streets should be encouraged to have upper-story activities overlooking the street, as well as balconies and roof decks with direct access from living spaces. Planting trellises and architectural elements are encouraged in conjunction with decks and bay windows. Upper-story commercial activities are also encouraged.
- Lighting From Buildings. All building entries should be well lit. Building facades in pedestrian areas should provide lighting to walkways and sidewalks through building-mounted lights, canopy – or awning-mounted lights, and display window lights. Encourage a variety in the use of light fixtures to give visual variety from one building façade to the next. Back-lit or internally-lit translucent awnings should be prohibited.
- Pedestrian-Oriented Plazas. Successful pedestrian-oriented plazas are generally located in sunny areas along a well-traveled pedestrian route. Plazas must provide plenty of sitting areas and amenities and give people a sense of enclosure and safety. Public spaces, such as landscaped and/or furnished plazas and courtyards should be incorporated into the development, and be visible and accessible from either a public sidewalk or pedestrian connection. Primary pedestrian access points to retail development in TL 2 along 120th Avenue NE may be especially effective locations for public plazas.
- Pedestrian Connections – Commercial. Developments should have well-defined, safe pedestrian walkways that minimize distances from the public sidewalk and transit facilities to the internal pedestrian system and building entrances.
- Blank Walls. Blank walls should be avoided near sidewalks, parks, and pedestrian areas. Where unavoidable, blank walls should be treated with landscaping, art, or other architectural treatments.

II. PUBLIC IMPROVEMENTS AND SITE FEATURES

- Pathway Width. Design all major pedestrian pathways to be at least 8' wide. Other pathways with less activity can be 6' wide. Through-site connections from street to street, between the upper and lower portions

of TL 2, and within TL 2 are needed to provide convenient pedestrian mobility, and to contribute to the village-like character desired for TL 2. Pedestrian connections to surrounding related uses, such as the hospital campus and transit center should also be provided.

- *Gateway Features. Construct entry gateway features at locations noted in the Comprehensive Plan. Gateways may be constructed in conjunction with commercial development. Emphasis should be placed on framing the view into the district. The Transit Center on the hospital campus should be a “landmark” feature for both the Totem Center district and the hospital campus, providing a focal point for residents, employees and visitors. A combination of signs and symbols linking the transit center to the pedestrian connection along NE 128th Street, the flyer stop and the Park and Ride should be provided. A prominent entry to the district exists at the intersection of NE 128th Street and Totem Lake Boulevard, where vehicles and pedestrians arrive from the crossing over I-405. Entry features provided in this area should contribute to the identity associated with the Totem Center district. Public art and private efforts can be used to establish gateway features to strengthen the character and identity of Totem Center and the neighborhood. At the northern entry to Totem Center at 120th Avenue NE and NE 132nd street, a neighborhood entry sign or other identifying neighborhood feature should be provided. Another important entry point identified in the neighborhood plan is along Totem Lake Boulevard, just east of 120th Avenue NE. A feature providing a sense of entry into the Totem Center district at this location would be appropriate.*
- *Parking Lot Location and Design. Minimize the number of driveways by restricting curb cuts and by encouraging property and business owners to combine parking lot entrances and coordinate parking areas. Encourage side and rear yard parking areas by restricting parking in front yards. Require extensive screening where there is front yard parking. Throughout Totem Center, parking areas located between the street and the buildings should be discouraged. This is particularly critical in TL 2, where buildings should front on 120th Avenue NE to foster the desired pedestrian-oriented environment.*
- *Circulation Within Parking Lots. Parking lot design should be clear and well organized. Space should be provided for pedestrians to walk safely in all parking lots.*
- *Parking Lot Landscaping. Parking lots must be integrated with the fabric of the community by creatively using landscaping to reduce their visual impact. Screening and landscaping should be required where parking is adjacent to sidewalks in order to improve visual qualities and reduce clutter. Within TL 2, the provision of landscaping to soften the*

impacts of cars and pavement is important. Clusters of trees rather than single trees may be more effective in certain portions of the mall's parking areas. Visibility of the mall from the freeway should be considered when evaluating the locations and types of landscaping to be used.

- *Parking Garages. The intrusive qualities of parking structures must be mitigated. In pedestrian areas, ground-level retail uses or appropriate pedestrian spaces should be required. Also, extensive landscaping should be required near residential areas in high visibility locations. On hillsides and near residential areas the stepping back or terracing of upper stories should be considered to reduce scale. The development densities planned for Totem Center may result in the need for large parking structures to support them. Careful design of the structures will be important to retain a visually attractive environment. The location of parking structures along pedestrian-oriented streets or pedestrian pathways should be discouraged. Where parking structures cannot be located underground and must be provided on the ground floor, an intervening use should be provided to retain the visual interest along the street. If parking areas are located in a separate structure from the primary use, the structure must be set back from the street, and screened with substantial landscaping. Within TL 2, if it is not possible or practical to locate parking structures behind a building or underground, structural parking should be developed, oriented and screened to complement adjacent buildings, reduce automobile and pedestrian conflicts, and support the pedestrian environment. Artwork, display windows, trellises and/or dense vegetation are examples of screening devices that may be successful in balancing the scale of the structure with the pedestrian element.*
- *Street Trees. Street trees within TL 2 should be selected to achieve the varying objectives of the district. Some preliminary ideas for a street tree planning plan are:*
 - *Totem Lake Boulevard. South of NE 128th Street, trees should be planted that balance the goals of creating a “greenway” along the boulevard, providing a safe and inviting pedestrian experience and enabling visibility of the site’s businesses to the freeway traveler. Smaller trees planted at frequent intervals anchored by larger, “boulevard” trees at primary site entrances would achieve this objective. As an alternative or additional component, groupings of trees planted behind a meandering sidewalk may also be effective.*
 - *120th Avenue NE. South of NE 128th Street, choose street trees that will emphasize the pedestrian connection between the upper*

and lower mall, such as the use of larger trees at crossings and major points of entry. Choose spacing and varieties to create a plaza-like character to encourage pedestrian activity. Trees in planters and colorful flower beds will soften the area for pedestrians but allow visual access to adjoining businesses.

III. SCALE

- *Fenestration Patterns. Varied window treatments should be encouraged. Ground floor uses should have large windows that showcase storefront displays to increase pedestrian interest. Architectural detailing at all window jambs, sills, and heads should be emphasized.*
- *Architectural Elements. Architectural building elements such as arcades, balconies, bay windows, roof decks, trellises, landscaping, awnings, cornices, friezes, art concepts, and courtyards should be encouraged. Balconies provide private open space, and help to minimize the vertical mass of structures. Residential building facades visible from streets and public spaces should provide balconies of a sufficient depth to appear integrated into the building and not “tacked on”.*
- *Building Modulation – Vertical. Vertical building modulation should be used to add variety and to make large buildings appear to be an aggregation of smaller buildings.*
- *Building Modulation – Horizontal. Horizontal building modulation may be used to reduce the perceived mass of a building and to provide continuity at the ground level of large building complexes.*

IV. BUILDING MATERIAL COLOR AND DETAIL

- *Ornamental and Applied Art. Ornament and applied art should be integrated with the structures and the site environment and not haphazardly applied. Significant architectural features should not be hidden, nor should the urban context be overshadowed. Emphasis should be placed on highlighting building features such as doors, windows, eaves, and on materials such as wood siding and ornamental masonry. Ornament may take the form of traditional or contemporary elements. Original artwork or hand-created details should be considered in special places.*
- *Color. Color schemes should adhere to the guidelines enumerated above. The use of a range of colors compatible with a coordinated color scheme should be encouraged.*
- *Street Corners. Property owners and developers should be encouraged to architecturally enhance building corners.*

- Signs. All signs should be building-mounted or below 12' in height if ground mounted. Maximum height is measured from the top of the sign to the ground plane. No off-premises commercial signs, except public directional signs, should be permitted. No billboards should be permitted. Signs for individual parking stalls should be discouraged. If necessary, they should not be higher than necessary to be seen above bumpers. Parking lot signs should be limited to one sign per entrance and should not extend more than 12' above the ground. Neon signs, sculptural signs, and signs incorporating artwork are encouraged. Signs that are integrated with a building's architecture are encouraged. Shingle signs and blade signs hung from canopies or from building facades are encouraged. Traditional signs such as barber poles are encouraged. Signs within TL 2 should be coordinated through a sign package for the entire property.

V. NATURAL FEATURES

- Landscaping. The placement and amount of landscaping for new and existing development should be mandated through design standards. Special consideration should be given to the purpose and context of the proposed landscaping. The pedestrian/auto landscape requires strong plantings of a structural nature to act as buffers or screens. The pedestrian landscape should emphasize the subtle characteristics of the plant materials. The building landscape should use landscaping that complements the building's favorable qualities and screens its faults. Natural Features. An important goal in the Totem Lake Neighborhood Plan is to establish a "greenway" extending in an east/west direction across the neighborhood. Portions of the greenway follow Totem Lake Boulevard, along the western boundary of TL 2. Properties abutting the designated greenbelt should be landscaped with materials that complement the natural areas of the greenway where possible.
- Culverted Creeks. One channel of the Totem Lake tributary extends along I-405, west of Totem Lake Boulevard in a culvert to Totem Lake. If it is feasible, restoration of this streambed could be incorporated into the "greenway" design developed for this segment of Totem Lake Boulevard.

CHAPTER EIGHT

DEVELOPMENT REGULATIONS

The land development standards applicable to redevelopment of the Mall are contained in the TL 2 Zone regulations, adopted by the City on August 4, 2005, and codified in the Kirkland Zoning Code, Section 55.21 (referred to herein as the “Development Regulations”). Landscaping is subject to the development regulations in Kirkland Zoning Code, Chapter 95, and the Special Regulations set forth in the Development Regulations. Signage is not subject to the development regulations in Kirkland Zoning Code, Chapter 100, except as specifically stated in the Development Regulations and described herein. The amount of required parking will be established as described in Chapter 5 of this Amended CMP.

Development must be part of a CMP for the entire property. The CMP is required to follow the process set forth in Kirkland Zoning Code, Chapter 142. The CMP has been approved by the DRB, and the Amended CMP has been approved by the City Planning Official. Subsequent development proposals must follow the Design Review or Administrative Design Review process as set forth in the Notice of Approval for the CMP, as amended.

Where a CMP is utilized, the Development Regulations apply uniform standards to all permitted uses in the TL 2 zone. The following sets forth these applicable Development Regulations:

1. **Lot Size (minimum and maximum):**

The minimum lot size is 1.5 acres. However, parcels smaller than 1.5 acres may be added to a previously approved CMP, if the applicable criteria set forth in the Notice of Approval for the approved Conceptual Master Plan, and/or amendments thereto, are met.

2. **Required yards (minimum and maximum):**

There are no minimum or maximum required yards. Instead, the Development Regulations contemplate that any required yards will be established in the CMP. Given the location, urban density, generous sidewalks, extensive public plaza and surrounding public streets and boulevard within the TL 2 Zone, and considering that buildings are encouraged to be built up to sidewalks to enhance the pedestrian-oriented activities, there

shall be no required building setbacks along front, side or rear yards required by this Amended CMP.

3. **Lot Coverage (maximum):**

The maximum lot coverage is 80 percent.

4. **Height of Structure (maximum):**

Maximum structure height ranges from 90' to 135' above average building elevation. Generally, structure height is limited to 90'. However, structure height may exceed 90' above average building elevation in accordance with a development proposal associated with this Amended CMP; provided, that no more than 10% of the gross site area included within the CMP may have increased building height, and the increased building height cannot exceed 135' above average building elevation.

5. **Landscape Category.**

There is no designated landscape category for this use. Instead, the Development Regulations incorporate Special Regulations requiring establishment of a circulation system for vehicles and pedestrians, which specify design principles that include use of landscaping to emphasize entries into buildings and pedestrian areas, to enhance public spaces, and to screen blank walls and service areas. In addition, landscaping should also be provided in plazas, along pedestrian circulation routes, and in parking areas.

6. **Sign Category.**

The Development Regulations incorporate Special Regulations requiring that all signs within a TL 2 Zone development must be approved under a Master Sign Plan application (Kirkland Zoning Code, Section 100.80).

7. **Required Parking Spaces.**

There are no required parking spaces designated by the Development Regulations. Instead, the Development Regulations provide that required parking spaces will be determined in accordance with the process set forth in Chapter 5 of this Amended CMP.

8. **Additional Special Regulations.**

In addition to the Special Regulations within TL 2 described above, the following are applicable:

A. **Circulation Plan for Vehicles and Pedestrians.** A CMP must establish a circulation system for vehicles and pedestrians, which is shown on Exhibits 2

and 3 of this Amended CMP. The site plan submitted to the DRB in conjunction with Phase Plan approval should be pedestrian-oriented, and incorporate the following design principles:

- *Siting of buildings should be oriented to the pedestrian network. Isolated building pads should be minimized.*
- *Storefronts should be oriented to pedestrian and vehicular circulation routes.*
- *Ground floor spaces should be designed in a configuration that encourages pedestrian activity and visual interest. Uses other than retail, restaurants, taverns and fast food restaurants may be permitted on the ground floor of structures only if the use and location do not compromise the desired pedestrian orientation and character of the development.*
- *Pedestrian connections:*
 - *Between the upper and lower portions of the property (east and west of 120th Avenue NE);*
 - *Internal to the site (between 120th Avenue NE and Totem Lake Boulevard), and/or other locations that provide convenient pedestrian mobility and contribute to the pedestrian and retail character of the development; and*
 - *To surrounding developments including the hospital campus, the transit center and the mixed use area to the north of TL 1A. The alignment of the pedestrian connection to properties in TL 1A should be designed to coincide with the alignment of 119th Avenue NE to the north.*
- *Clearly identifiable building and pedestrian access points and entryways.*
- *Provision of useable public spaces, plazas or pocket parks, and public amenities, such as art, sculptures, fountains or benches.*
- *Use of landscaping to emphasize entries into buildings and pedestrian areas to enhance public spaces, and to screen blank walls and service areas. Landscaping should also be provided in plazas, along pedestrian circulation routes, and in parking areas.*
- *Design techniques to prevent the dominance of large single occupant structures, such as smaller building footprints and multiple tenant spaces on the ground floor at the street.*

- *Placement of parking areas behind buildings located on pedestrian-oriented streets and pathways.*
- *Placement of loading and service areas away from 120th Avenue NE and pedestrian areas.*
- *Location of drive-through facilities to not compromise the pedestrian orientation of the development.*

B. **Vehicle Service or Repair Activity.** Any vehicle service or repair activity must be entirely contained within an enclosed structure, and the orientation of the use and activity must be away from pedestrian circulation routes and spaces.

C. **Vehicle Sales.** Vehicle sales are permitted only if the vehicles are displayed in an indoor showroom, and the showroom does not occupy more than 10,000 square feet.

D. **Prohibited Uses.** The following uses are not permitted in TL 2 Zone:

- i. Retail establishments providing storage services unless accessory to another permitted use.
- ii. Outdoor storage of bulk commodities, except in the following circumstances: (1) If the square footage of the storage area is less than 5 percent of the total square footage of the retail structure, or as provided for in this Amended CMP; or (2) if the commodities represent growing stock in connection horticultural nurseries, whether the stock is in open ground, pots, or containers.
- iii. Storage and operation of heavy equipment except normal delivery vehicles associated with retail uses.

CHAPTER NINE

IMPLEMENTATION OF AMENDED CONCEPTUAL MASTER PLAN

It is anticipated that the Amended CMP will be implemented over a number of years consistent with the Amended Redevelopment Agreement. In addition to this Amended CMP, redevelopment of the Mall will be subject to the Amended Redevelopment Agreement, as may be further amended or modified from time-to-time. Upon approval of this Amended CMP, any and all phases will be subject to further DRB Phase Plan review and approval as set forth below. This Chapter provides the Conditions of the Amended CMP and governs the phasing process and potential modifications to the Amended CMP or approved Phased Plans.

1. Development Agreement.

The Redevelopment Agreement for Totem Lake Mall was approved by the City on January 17, 2006. The Amended Redevelopment Agreement was approved by the City in February, 2015. The Amended Redevelopment Agreement and this Amended CMP shall control redevelopment of the Mall. In the event of a discrepancy between the Amended CMP and the Amended Redevelopment Agreement, the provisions of the Amended Redevelopment Agreement shall control.

2. Phase Plan Review.

Redevelopment of the Mall may consist of one or more phases. Kirkland Zoning Code, Chapter 142, Design Review, shall apply to the Phase Plans. In the event that more than one phase is proposed, the various phases may be pursued separately, simultaneously or otherwise without regard to completion or progress on any other phase of the Project. In Phase Plan approval, the DRB shall apply the design guidelines and applicable conditions in this Amended CMP, as may be modified, amended or changed by the Amended Redevelopment Agreement.

3. Traffic Conditions.

Kirkland has issued a Concurrency Notice associated with the redevelopment of the Mall. The Amended Redevelopment Agreement addresses traffic and parking impacts and requirements, traffic analyses, payment of road impact fees, roadway dedications, and related matters. The terms and conditions of the Amended

Redevelopment Agreement shall govern traffic matters within the Mall redevelopment project.

4. Amended CMP Approval/Conditions/Modifications.

On November 7, 2005, the DRB approved the original Conceptual Master Plan. In February, 2015, the Planning Official approved the Amended CMP, subject to the following conditions:

A. Subject to the vested rights provisions of the Amended Redevelopment Agreement, the Amended CMP, and subsequent Phase Plans, shall be subject to the applicable requirements contained in the KMC, KZC, and Building and Fire Code; provided, however, that the provisions of this Condition are not intended to, and shall not, prevent CenterCal from contending that any aspect of the Project is an existing non-conforming use, or otherwise “grandfathered” from application of any such regulatory requirements. It is the responsibility of CenterCal to ensure compliance with the various provisions contained in these ordinances; provided, however, when a condition of approval conflicts with a development regulation, the condition of approval shall be followed.

B. Review and approval of improvements and public amenities to be located within the public plaza, and shared use arrangements between the City and CenterCal with regard to the public plaza, shall be consistent with the Amended Redevelopment Agreement.

C. Unless otherwise determined by the DRB in the future, at its sole discretion, any contemplated Phase Plans shall be subject to further DRB approval pursuant to KZC Chapter 142.35.

D. The term of this Amended CMP shall extend through the duration of the term of the Amended Development Agreement.

E. Future modification of the Amended CMP, or any subsequent Phase Plans, shall be governed by the provisions of KZC 142.50 Modifications as follows:

1. The Planning Official may approve a modification to the Conceptual Master Plan, or any Phase Plans, for the proposed development if:

- a. The need for the modification was not known and could not reasonably have been known before the Design Review approval was granted;
 - b. The modification is minor and will not, in any substantial way, change the proposed development or violate any requirement imposed by the Design Review Board. The Planning Official may consult with the Design Review Board in his/her decision; and
 - c. The development that will result from the modification will be consistent with the design regulations, design guidelines, and Comprehensive Plan.
2. Any modification, other than as specified in subsection (1) of this section, must be reviewed and decided upon as a new Design Review approval under this chapter.
- F. In conjunction with review of Phase Plans, CenterCal shall submit with their design review application, detailed plans and/or detailed language that address the following matters to the extent such matters are applicable to the particular phase being submitted for approval:
1. Clarification of the overall pedestrian circulation patterns relating to Totem Lake Boulevard, the cinema and the stand alone retail adjacent to the west parking lot.
 2. A pedestrian pathway on the Mall property connecting with the approved pedestrian connection on the Evergreen Hospital property, adjacent to the transit center.
 3. Continued existence of a pedestrian connection on the lower mall that connects to an adjoining medical office building at 12707 120th Avenue NE.
 4. Establishment of a pedestrian connection at the south end of the existing lower mall to facilitate pedestrian circulation between 120th Avenue NE and Totem Lake Boulevard.
 5. Unless otherwise mutually agreed between the City and CenterCal, incorporate the narrower design approved for the East/West Connector between Totem Lake Boulevard and 120th Avenue NE approved in the original CMP.

6. Buildings fronting the public plaza and along the East/West Connector between Totem Lake Boulevard and 120th Avenue NE shall contain continuous retail frontage except for circulation areas or public amenities that contribute to the pedestrian environment, or as otherwise provided in Condition 8 below. Design techniques shall be used to prevent the dominance of large single occupant structures.
7. Create a focal point at the eastern terminus of the public plaza.
8. Uses other than retail, restaurants, taverns, fast food restaurants, cinemas, fitness facilities, spas, entertainment, and banking facilities may be permitted on the ground floor of structures only if the use and location do not compromise the desired pedestrian orientation and character of the development.
9. Identify suitable locations for public amenities, such as art, sculptures, fountains and benches.
10. Provide a conceptual landscape plan, with performance standards/goals, that show trees in the following areas:
 - a. Pedestrian walkway along western frontage of lower Mall;
 - b. 120th Avenue NE and the public plaza;
 - c. Totem Lake Boulevard fronting the Autozone store;
 - d. Lower Mall parking lot; and
 - e. Landscaping or other design features on the top level of parking structures.
11. In addition to the design guidelines in this Amended CMP, the following standards shall be applied:
 - a. The Project shall include diverse forms of overhead weather protection where adjoining a pedestrian walkway;
 - b. Changes of color and materials shall be utilized to help break up the mass of the buildings; and
 - c. The portions of the lower Mall to be retained shall be architecturally consistent with the new construction.

12. Loading and service areas shall be located away from 120th Avenue NE and pedestrian areas. Plans shall address and mitigate impacts of loading and service areas on adjoining properties.
13. Roofscapes shall be considered.

MEMORANDUM

DATE: February 27, 2015
TO: Tracey Dunlap, Director of Finance & Administration, City of Kirkland
FROM: Michael Hodgins, Principal, BERK Consulting
RE: Risk Assessment of Minimum Build Scenarios in Support of Totem Lake Redevelopment Agreement

The purpose of this memorandum is to address the specific questions raised by the City with respect to potential language to be included in the amendment to development agreement for Totem Lake to provide a quantifiable development trigger to align with City participation in the infrastructure investments. This memo builds on the findings of our assessment of potential fiscal impacts of the redevelopment of Totem Lake Mall, transmitted in a memo dated February 2, 2015. The overall conclusions of that review include:

- **Proposal fiscal impacts.** Generally the fiscal analysis provided by CenterCal used appropriate methods and reasonable assumptions to estimate the potential taxes produced by the businesses that would be located in the redeveloped mall. BERK proposed a few modest changes to the base assumptions to reflect our understanding of likely impacts. Some of these changes added to the revenues, while others reduced some of the expected fiscal benefit, though overall the expected gross tax revenues from the activity on site at the steady state year increased between 1.2% and 3.8%.
- **Redistributive effects of new retail development.** There is a critically important difference between the overall tax revenue production from a particular redevelopment site and the incremental tax revenues that the City might reasonably expect. The net fiscal benefits to the City overall will be lower than the on-site production of sales tax because there will be some transfer of spending from retail areas in the city to the expanded Totem Lake Mall. The magnitude of the redistributive effects will depend on the final tenant mix in the redevelopment project. To be conservative, a range of redistribution was assumed of between 25% and 50%, leading to a **reduction** in expected net sales tax revenues of between \$340,000 and \$680,000 at the steady state year.
- **Cost of service implications.** The other area of financial risk related to the City's investment in the Totem Lake redevelopment project is the potential for the activity on-site to generate additional demand for City services, particularly public safety and emergency medical services. Currently, there is no assumed impact on the cost of City services, therefore, in the event there are new demands then the excess revenues from the site (beyond the debt service requirements) would be needed to support these services to avoid an impact on the City's overall budget.
- **Ability to support investment in the redevelopment project.** The City's proposed \$15 million investment would be made by issuing LTGO bonds that would be repaid by the net revenues from the development. Using the mid-point estimate of net incremental revenues (after accounting for redistribution risk), then at the steady state year, the project would cover the debt service plus a 10% coverage requirement and still provide excess revenues of between \$219,000 (assuming a 20-year bond) and \$479,000 (assuming a 30-year bond).
- **Risk associated with inaction.** The current reality is that the Totem Lake Mall site is a missed opportunity for the City to maximize its relative competitiveness in the eastside retail marketplace. Every year that this site continues to produce at a status quo level, is another year where the City's retail base is losing ground to its neighbors. As a result, a City's investment in redevelopment can also be viewed as a risk mitigation strategy unto itself, putting the City in a much stronger position to maintain and potentially grow its retail base in the face of competition from neighboring communities.

To further mitigate some of the City’s financials risks, there is an interest in linking the City’s investment to a measurable trigger that would reflect adequate progress in the redevelopment of the site. In particular, there is a desire to align the issuance of the LTGO bonds with a reasonable development threshold that would indicate the likelihood that tax revenues will be sufficient to support the debt service. Toward this end, BERK reviewed the fiscal implication of a series of minimum development scenarios generated by CenterCal to assess options for establishing minimum development thresholds that might trigger the issuance of the City bonds.

In addition, on February 24th, CenterCal submitted additional information that offered the company’s perspective on the fiscal review memo. The primary area of concern raised was the degree of potential redistribution that was identified in the fiscal review and the company offered a series of market analysis exhibits to support their conclusion that the redistribution risk was lower. Clearly if the redistribution effects are lower, then the City’s financial risks are significant reduced. We address the issues raised in the CenterCal memo in a general discussion of risk mitigation below.

Risk Assessment for City Financing of Totem Lake Infrastructure

Both the City and CenterCal have an interest in ensuring that the development agreement provides reasonable flexibility to respond to actual market conditions. If the agreement is too proscriptive, then the challenges of redeveloping the mall to mutual benefit will be increased. However, the City also must have reasonable assurance that the ultimate development will be reasonably in alignment with the current proposal, since this is the basis for the City’s commitment to investing in the supporting infrastructure. To evaluate these tradeoffs, CenterCal identified a series of possible minimum build scenarios to illustrate the fiscal implications of alternative smaller development options. Exhibit 1 provides a summary of the different scenarios and compares these to the current proposed plan.

**Exhibit 1:
Alternative Minimum Build Scenarios (SF of building)**

Development Program	Current Proposed	CenterCal Minimum Build Scenarios					Office
		Scen A	Scen B	Scen C	Scen D	Scen E	
Base program:	523,460	523,460	523,460	523,460	523,460	523,460	523,460
Retail General	187,460	187,460	187,460	187,460	187,460	187,460	187,460
Grocery Component	42,000	42,000	42,000	42,000	42,000	42,000	42,000
Specialty Grocer	14,000	14,000	14,000	14,000	14,000	14,000	14,000
Residential	280,000	280,000	280,000	280,000	280,000	280,000	280,000
Flexible elements:	145,040	88,221	72,618	35,000	80,075	298,460	0
Retail General	110,040	88,221	72,618	0	40,075	18,460	0
Cinema Component	35,000	0	0	35,000	0	0	0
Residential	0	0	0	0	0	280,000	0
Fitness	0	0	0	0	40,000	0	0
Other:	150,000	0	0	0	0	0	150,000
Office Component	150,000	0	0	0	0	0	150,000
GRAND TOTAL	818,500	611,681	596,078	558,460	603,535	821,920	673,460

The table identifies the common elements to all scenarios (the base program) and then shows the flexible elements of each to more clearly identify what is changing in each scenario. BERK added a sixth scenario to show the impact of adding the office component from the current proposed plan to the comment elements of the other scenarios. As is shown, the minimum build scenarios range in size from 558,000 SF to 822,000 SF, as compared to the 818,500 SF in the proposed plan. The largest minimum build assumes a doubling of the residential component, which is a significant increase in development scale, but a higher risk proposition from a fiscal impact perspective.

Exhibit 2 presents the results of BERK’s fiscal assessment of these minimum build scenarios and the potential impact on a 30-year LTGO bond for the \$15 million City investment in the infrastructure supporting the redevelopment. As is shown in the exhibit, all of the scenarios reviewed are estimated to generate sufficient net revenues (**beyond the current production at Totem Lake Mall**) to support the debt service requirements. Only Scenarios A and B, do not also generate sufficient revenues to cover the additional 10% debt service coverage requirement. As a result, there

appears to be sufficient financial capacity in all of these minimum build options to at least support the basic debt service payments, once the project achieves its steady state performance.

ATTACHMENT B

**Exhibit 2:
Implications for Debt Service Repayment**

Revenue by Source	Current Proposed	CenterCal Minimum Build Scenarios					Office
		Scen A	Scen B	Scen C	Scen D	Scen E	
Revenues: no redistribution risk	1,016,248	474,895	463,916	699,439	692,895	659,883	652,197
Annual Sales Tax (on-site)	37,573	5,950	5,950	12,073	177,424	11,900	31,450
Annual Admissions Tax	253,292	0	0	253,292	0	0	0
Property Tax	423,203	321,029	312,576	288,134	327,180	434,923	348,693
Head Tax / Business License	99,912	31,510	30,390	30,530	49,406	26,504	86,663
Utility Taxes	202,269	116,406	114,999	115,409	138,886	186,557	185,392
Revenues: with redistribution risk	466,297	434,857	412,374	307,734	365,481	334,334	307,734
Annual Sales Tax (on-site)	932,594	869,714	824,747	615,468	730,961	668,669	615,468
Discount for redistribution (50%)	(466,297)	(434,857)	(412,374)	(307,734)	(365,481)	(334,334)	(307,734)
Net incremental revenues	466,297	434,857	412,374	307,734	365,481	334,334	307,734
GRAND TOTAL	1,482,545	909,752	876,290	1,007,173	1,058,376	994,217	959,931
Effective redistribution share	34%	31%	30%	22%	26%	24%	22%
Debt Service Implications (30-Year)							
Annual debt service	867,451	867,451	867,451	867,451	867,451	867,451	867,451
Total required with DSCR of 1.1	954,197	954,197	954,197	954,197	954,197	954,197	954,197
Net revenues after D/S	615,093	42,300	8,838	139,721	190,924	126,766	92,480
Net revenues after D/S + DSC	528,348	(44,445)	(77,907)	52,976	104,179	40,021	5,735

To more fully understand one of the key financial risks associated with the project, the analysis in Exhibit 2 splits the revenue streams between those that are subject to redistribution risks and those that are not. This helps to identify the relative scale of this the portion of the estimated fiscal benefits. The discount for potential redistributive effects is based on reducing the net on-site sales taxes for each scenario by 50%. By applying the redistribution discount to the net sales (total on-site sales tax less the current estimate of sales tax revenue produced at Totem Lake Mall), the effective redistribution share for overall sales ranges from 22% to 35% depending on the scenario.

Development Thresholds

Based on the minimum build scenarios, BERK evaluated a series of options for establishing a range of acceptable minimum development that would trigger the City's investment. There are three key variables that will drive the success of the City's participation in the redevelopment project:

1. **Scale of the initial development.** The initial phase must be of sufficient size to mitigate City financial risk
2. **Mix of uses.** The fiscal benefits vary considerably based on mix of uses, and so there must be some accounting for the initial mix of uses as well.
3. **Quality.** A major factor that underlies most of the assumptions in the fiscal analysis is that the redevelopment will be a very high quality project that will attract strong tenants and drive on-site values and business activity.

Ultimately the balance of these key factors will determine the actual performance of the project when it comes time for the City to issue the bonds to support the infrastructure. For example the scale of the project could offset the fiscal impact of a different mix of uses.

Based on the scenarios in Exhibit 1, a minimum gross leasing area of 600,000 SF, with at least 250,000 SF of retail should produce sufficient revenue to service the debt. The final key component of the minimum build requirements is the quality issue. Ideally, we would propose that the initial phase provide at least \$375 per square foot of new development as measured by permit value or the King County Assessor.

Other Mitigating Factors

Notwithstanding the previous analysis, it is worth exploring other factors that may reduce the City's financial risk. In particular: (1) sales tax on construction; and, (2) the tax revenue upside of the retail market opportunity presented by the current redevelopment proposal.

Sales tax on construction. The financial risk assessment has been appropriately focused on the potential that the project can support the ongoing debt service requirements related to the City's investment. Toward this end, the assessment of fiscal benefits has been limited to the ongoing revenues that might reasonably be expected once the project achieves a steady state of operations.

As a result, the analysis ignores the one-time revenues from sales tax on construction. Depending on the development scenario, it is estimated that these revenues could range from \$1.3 million to \$2.1 million, where the low end is based on the least productive minimum build scenario and the high end is based on the more optimistic estimates of value for the current proposed plan.

While it is not appropriate to consider these funds for ongoing debt service requirements, they do present an opportunity to mitigate debt service risks by establishing a debt service coverage fund. By placing the one-time revenues in a restricted debt service coverage account, the City would be using revenue generated by the redevelopment project as insurance for years where the net revenues may not be sufficient to meet debt service requirements. Once it can be demonstrated that the ongoing net revenues are more than sufficient to meet the debt requirements, any balance in the debt service coverage account could be transferred to other City purposes.

Retail market opportunity. As discussed in the February 2, 2015 memo, estimating the impact of the redevelopment mall on the distribution of spending in Kirkland is a very difficult proposition. The distribution of retail spending is a function of a very dynamic set of factors, including distribution of population and income and competition among retailers and retail centers. There are two controlling factors that will ultimately determine the impact of redistribution:

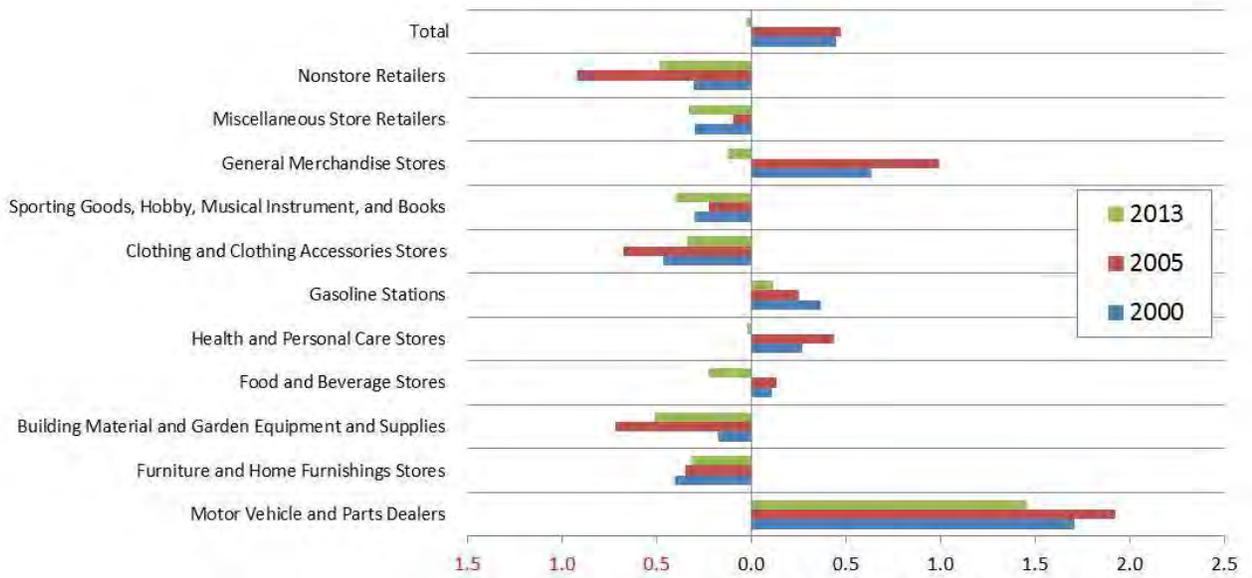
1. Retailers in Kirkland compete in a mature retail market, which represents a finite pool of spending. As an inner-ring city, Kirkland is surrounded by geographic barriers and sources of developed or emerging retail competition (including retail centers in Bellevue, Woodinville, Redmond, Lynnwood, and Issaquah).
2. With a relatively fixed pool of spending in the short term, most of the "new" retail dollars captured in a redeveloped Totem Lake will come from reductions in sales elsewhere within the Eastside retail market. The only situation where a new store can affect the total pool of market spending is (1) if its introduction shifts spending from other activities to retail purchases or (2) if it draws new spending from outside the broader eastside market.

The market analysis materials presented by CenterCal certainly support the concept that the City is currently underserved in a number of significant retail sectors. As such, there is clearly an opportunity where the correct mix of tenants might result in a recapturing of Kirkland resident spending that is currently going to other jurisdictions as well as attract new spending from outside the City. To further enhance this point, BERK reviewed historical sales tax data for Kirkland and other eastside cities and determined that the City not only underserved in certain key market segments, but that the trend over the past decade plus has been a deteriorating competitive situation relative to its neighbors.

Exhibit 3 presents a comparison of the relative size of the Kirkland market in several retail sectors in relation to the broader Totem Lake market area, which we have defined as Kirkland, Kenmore, Redmond, and Woodinville. While the overall capture for the City is reasonably balanced, this is primarily a function of auto sales and general merchandise stores (Costco) which have traditionally played an outsized role in the City sales tax base. Even in these segments, however, the relative strength has declined since 2000.

Exhibit 3:
Relative Market Position of City versus Broader Totem Lake Market Area

ATTACHMENT B



The chart clearly shows that there are significant gaps in the City’s retail base and that a successful redevelopment of Totem Lake Mall could go a long way to addressing some of these gaps. This situation should be viewed as an opportunity that would not only offer the potential to at least slow, if not actually turn around some of the trends illustrated above, but also mitigate the redistribution risks discussed above.

MEMORANDUM

DATE: February 2, 2015
TO: Tracey Dunlap, Director of Finance & Administration, City of Kirkland
FROM: Michael Hodgins, Principal, BERK Consulting
RE: Review of CenterCal Fiscal Analysis and Risk Assessment of Totem Lake Agreement

At the request of the City of Kirkland, BERK has reviewed the developer's fiscal analysis of the proposed redevelopment of Totem Lake Mall, transmitted to us on January 9, 2015. Our review was limited to the following key issues identified by the City:

- Review and/or confirm projections of new one-time and ongoing City revenues resulting from the development of the mall, including estimated timing of new revenue receipts based on proposed phasing of the development.
- Analyze the sensitivity of the revenue projections to alternative assumptions about the development timing and/or productivity.
- Identify financial risks associated with a potential City investment of \$15 million in supporting infrastructure.

Summary of Findings

Upon review of the analysis and after conducting independent research to confirm reasonableness of several key assumptions, we arrive at two principal conclusions:

- **Tax revenue production assumptions.** The basic assumptions used to estimate gross tax and fee revenue generated by the activity within a redeveloped Totem Lake Mall appear to be reasonable and the conclusion regarding total revenue impacts from the site are reasonably well supported, with the following exceptions:
 - **Assessed value versus market value.** The analysis makes assumptions about the value of each component of the redeveloped property that may be reasonable from a sales valuation standpoint, but would be higher than what might be expected from a property tax valuation. To be conservative, some of the values were reduced to match more recent development activity in the Bellevue, Redmond, and Kirkland market area. These reduced values result in a **reduction** in annual property tax revenues of between \$45,000 and \$105,000.
 - **Levy rate assumptions.** The analysis assumes the 2015 levy rate will apply to the estimated bump in the City's assessed value base when the new development is added to the property tax rolls. Given that the development is expected to be phased in over three years (starting in 2018), the appropriate levy rates will be those in place when the redeveloped property is added as new construction value to Kirkland's tax base. To be conservative, levy rates were estimated to reflect a likely downward trend as a result of revaluation and the 1% levy limit. The result is a **reduction** the levy bump from new construction ranging from \$21,500 to \$24,650 at the steady state year.
 - **Utility taxes understated.** The analysis does not account for utility tax revenues from telephone, solid waste, surface water or cable franchise fees. Adding these to the analysis results in an estimated \$128,500 **increase** in revenues from the redevelopment.
 - **Sales tax from office and residential uses.** The analysis did not include any new sales tax production from the office or residential uses. These uses will have a modest impact on the sales tax base due to purchases made by businesses or residents which are credited to the location of delivery. When

including a reasonable estimate for these sources of new taxes revenues, the annual steady state revenues are **increased** by approximately \$31,500.

- **Overall production versus incremental revenues.** There is a critically important difference between the overall tax revenue production from a particular redevelopment site and the incremental tax revenues that the City might reasonably expect. There are two significant factors that will ultimately determine the net financial benefits of the redevelopment project, which in turn will determine the level of risk implied by the proposed City infrastructure investment.
 - **Redistributive effects of on-site retail spending.** The analysis assumes that all of the increased sales activity at Totem Lake Mall will be incremental to the City of Kirkland. This assumption overstates the potential net benefits to the City overall as there will be some transfer of spending from retail areas in the city to the expanded Totem Lake Mall. The magnitude of the redistributive effects will depend on the final tenant mix in the redevelopment project. To be conservative, a range of redistribution was assumed of between 25% and 50%, leading to a **reduction** in expected net sales tax revenues of between \$340,000 and \$680,000 at the steady state year.
 - **Cost of service impacts to City of Kirkland.** The analysis of cost-benefit in the study considers only the potential debt service costs for City improvements supporting the project as a cost of the project, while counting all potential tax and fee revenues as a benefit. The degree to which the redevelopment project has any other operational impacts, this will reduce revenues available for debt service. No service costs have been added, however the risk is noted.

**Exhibit 1:
Summary of BERK Review and Analysis**

CenterCal Analysis	Proposed Plan Phase I	Coventry (current)	Incremental Revenues
Annual Revenues			
Annual Sales Tax	\$1,359,575	\$420,858	\$938,717
Annual Admissions Tax	\$280,000	\$26,708	\$253,292
Property Tax	\$547,763	\$32,159	\$515,604
Head Tax / Business License	\$163,045	\$63,134	\$99,912
Utility Taxes	\$103,704	\$29,951	\$73,753
Total Annual Revenues	\$2,454,087	\$572,810	\$1,881,277
BERK Suggested Adjustments			
	High	Low	Mid
Sales Tax:			
Redistribution effects	(\$339,894)	(\$679,788)	(\$509,841)
Office & residential benefits	\$31,450	\$31,450	\$31,450
Property Tax:			
AV assumptions	(\$45,121)	(\$104,763)	(\$74,942)
Levy rate assumptions	(\$21,525)	(\$24,650)	(\$23,087)
Utility Tax:			
Excluded telephone, solid waste, surface water & cable	\$128,516	\$128,516	\$128,516
Total Adjustments	(\$246,574)	(\$649,234)	(\$447,904)
Total Annual Revenues			\$1,433,373
<i>Cost of Service impacts</i>		\$	-
Net Annual Revenue Impacts			\$1,433,373

After accounting for the various additions and subtractions summarized above, the revised net annual revenue impacts for the steady state year are estimated to be between \$1.2 million and \$1.6 million, with a midpoint value of \$1.4 million. This range of prospective incremental revenues is what would be available to fund debt service on the City's

proposed infrastructure investment in support of the redevelopment project plus any incremental service costs that may result from the activity on site.

It is important to note that this analysis is primarily focused on the fiscal implications of the redevelopment proposal. This is not an overall assessment of the appropriateness or level of public participation in a redevelopment proposal for the Totem Lake Mall. As such, this review did not consider factors which may enhance the potential value of the redevelopment project to the City such as the potential for beneficial impacts to surrounding properties or the potential value of the redevelopment project in terms of enhanced public amenities or community development goals.

Risk Assessment for City Financing of Totem Lake Infrastructure

While the previous analysis considered the implications of the redevelopment of Totem Lake in terms of the reasonable expectations for net fiscal benefits to the City, the major risk elements are related to the proposed infrastructure investments that are contemplated in the development agreement. Under the current agreement, the City would make an investment of up to \$15 million in supporting infrastructure with the expectation that the incremental revenues from the project would be sufficient to recover the investment. Exhibit 2 presents the financial implications related to the proposed City investment.

**Exhibit 2:
Implications for Debt Service Repayment**

CenterCal Analysis	Proposed Plan Phase I	Coventry (current)	Incremental Revenues
Total Annual Revenues	\$2,454,087	\$572,810	\$1,881,277
BERK Suggested Adjustments	High	Low	Mid
Total Adjustments	(\$246,574)	(\$649,234)	(\$447,904)
Total Annual Revenues			\$1,433,373
<i>Cost of Service impacts</i>			\$ -
Net Annual Revenue Impacts			\$1,433,373
Projected Annual Debt Service Payment:			
30-year Bond			(\$867,451)
20-year Bond			(\$1,103,726)
Excess Revenues above minimum DSCR (1.1)			
30-year Bond			\$479,177
20-year Bond			\$219,274

The analysis assumes that the City's \$15 million investment would be made by issuing LTGO bonds that would be repaid by the net revenues from the development. The analysis looks at two bond scenarios – a 20-year bond at 4% and a 30-year bond at 4% - resulting in annual debt service payments of \$1.1 million or \$867,451, respectively. The analysis further assumes that there is a requirement that the net revenues must provide a debt service coverage ratio (DSCR) of 1.1 (net revenues must be at least 10% more than the annual debt service). If the mid-point incremental revenues are achieved, then at the steady state year, the project would cover the debt service plus the coverage requirement and provide excess revenues of between \$219,000 (20-year bond) and \$479,000 (30-year bond).

One way to think of these excess revenues is that this is the margin available to the City to mitigate risks associated with the development. It is worth noting that in a scenario where the lower end of the range of prospective revenues were to materialize, then the City's margin would essentially go to zero in the case of the 20-year bond, leaving only the 10% debt service coverage to mitigate other risks. The following is a brief discussion of the more significant risk factors involved in the City's investment decision.

Redistributive effects of new retail development. The most significant financial risk related to the City’s investment in the Totem Lake redevelopment project is related to the redistributive effects of introducing new retail development in Kirkland. The CenterCal analysis estimates that the redeveloped mall will generate \$160 million in taxable retail sales, which is \$110 million more than the current production at this site. The increment of \$110 million is then used to estimate a sales tax benefit of almost \$1 million to the City of Kirkland. As discussed earlier, for the City to realize the full estimated tax benefit, the \$110 million increase in Totem Lake Mall sales would need to be added to the City’s current tax base without reducing sales anywhere else in the city.

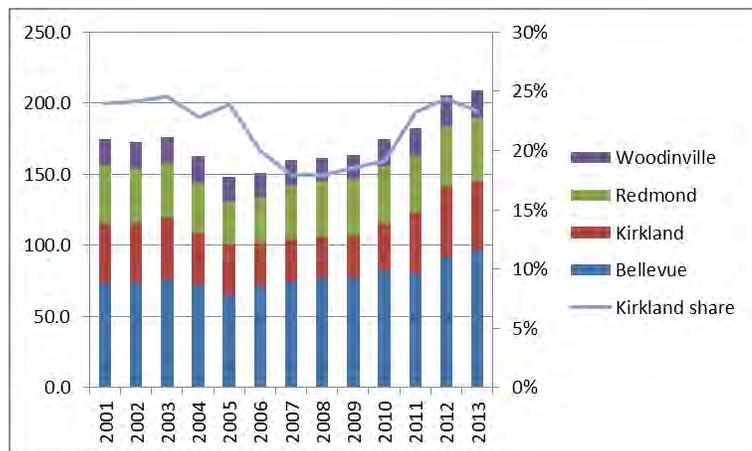
Accurately estimating the net impact on overall sales in the City of Kirkland resulting from the introduction of a redeveloped Totem Lake Mall would require some way of estimating the impact of the Mall on the distribution of spending. Distribution of retail spending is a function of a very dynamic set of factors, including distribution of population and income and competition among retailers and retail centers. Estimating the net impact of a change in one of these factors, namely adding a new retail shopping opportunity for consumers, is a complicated proposition.

Complexities notwithstanding, two controlling factors are clear:

1. Retailers in Kirkland compete in a mature retail market, which represents a finite pool of spending. As an inner-ring city, Kirkland is surrounded by geographic barriers and sources of developed or emerging retail competition (including retail centers in Bellevue, Woodinville, Redmond, Lynnwood, and Issaquah as shown in Attachment A).
2. With a relatively fixed pool of spending in the short term, most of the “new” retail dollars captured in a redeveloped Totem Lake will come from reductions in sales elsewhere within the Eastside retail market. The only situation where a new store can affect the total pool of market spending is (1) if its introduction shifts spending from other activities to retail purchases or (2) if it draws new spending from outside the broader eastside market.

Given these two factors, and given the nature of the contemplated redevelopment, it appears unrealistic to assume that none of the new sales at Totem Lake would come at the expense of lost sales in other retail or restaurant outlets in the City. This is particularly true given that the current tenant model assumes that one of the major anchor tenants will be a grocery store. The ultimate redistributive effects will depend on the final tenant mix as well as potential changes in retail offerings in the broader market place. The following are some of the key considerations related to the current proposal:

- **Grocery.** There are two grocery stores currently envisioned in the conceptual plan for the redeveloped mall. This is a segment that is already well represented in the City (see Attachment B for a map showing the distribution of major grocery sites in Kirkland and the broader market areas. Further, a look at the trend in taxable retail sales in the grocery category (graph on the right) shows that Kirkland’s share of the eastside market has bounced back up to about 25% after dropping in the mid-2000’s to about 20%. Given these market factors, the impact of a new anchor grocery will be difficult to estimate.



- **Restaurants.** As with most retail centers, there will likely be a restaurant component that will both add to the variety of offerings in the City and compete for sales with existing restaurants elsewhere in Kirkland. Typically, one would expect that the majority of restaurant patrons will be drawn from a relatively confined area (perhaps a radius of two to three miles). Within a three-mile radius of Totem Lake, most of the competing restaurants

fall within Kirkland’s city boundaries. The exceptions would be patrons drawn from a larger area, either for convenience (intercept trips on I-405) or because of the draw of the Totem Lake anchors. The net effect ultimately will depend on the magnitude of the anchor draw.

- **Cinema.** This is a key element of the redevelopment project that offers a real potential increase in admissions and retail sales tax. The current concept of a “dinner theater” with an integrated mix of cinema, bar and restaurant would offer the potential to draw from a large market as this is a relatively new niche in the theater marketplace. As a result, this element could be a major factor in mitigating some of the redistributive effects.
- **Health club.** The current concept envisions a sizable health club that is counted in the overall retail square footage. The health club will be an important factor in supporting the high rents that are assumed in the rental housing component and could be another anchor in terms of drawing spending into the City from surrounding areas. However, the sales tax production of this element is unlikely to match the overall average coming from the balance of the retail space.

It is important to note that the risks associated with the redistributive effects are highest in the early years of the redevelopment project. It is during the initial years of operation that the majority of the spending on-site will be coming from the redistribution of spending in the broader market area. The hope is that overall effect of this redistribution will be to significantly increase net taxable retail sales by drawing new retail spending to the City. This can take the form of “recapturing” local spending as Kirkland residents spend more of their money in the City as opposed to shopping in neighboring areas or by drawing in spending that is currently happening outside the City. Over time, as population and incomes grow within the overall market area, there will be net new spending available for the City to capture.

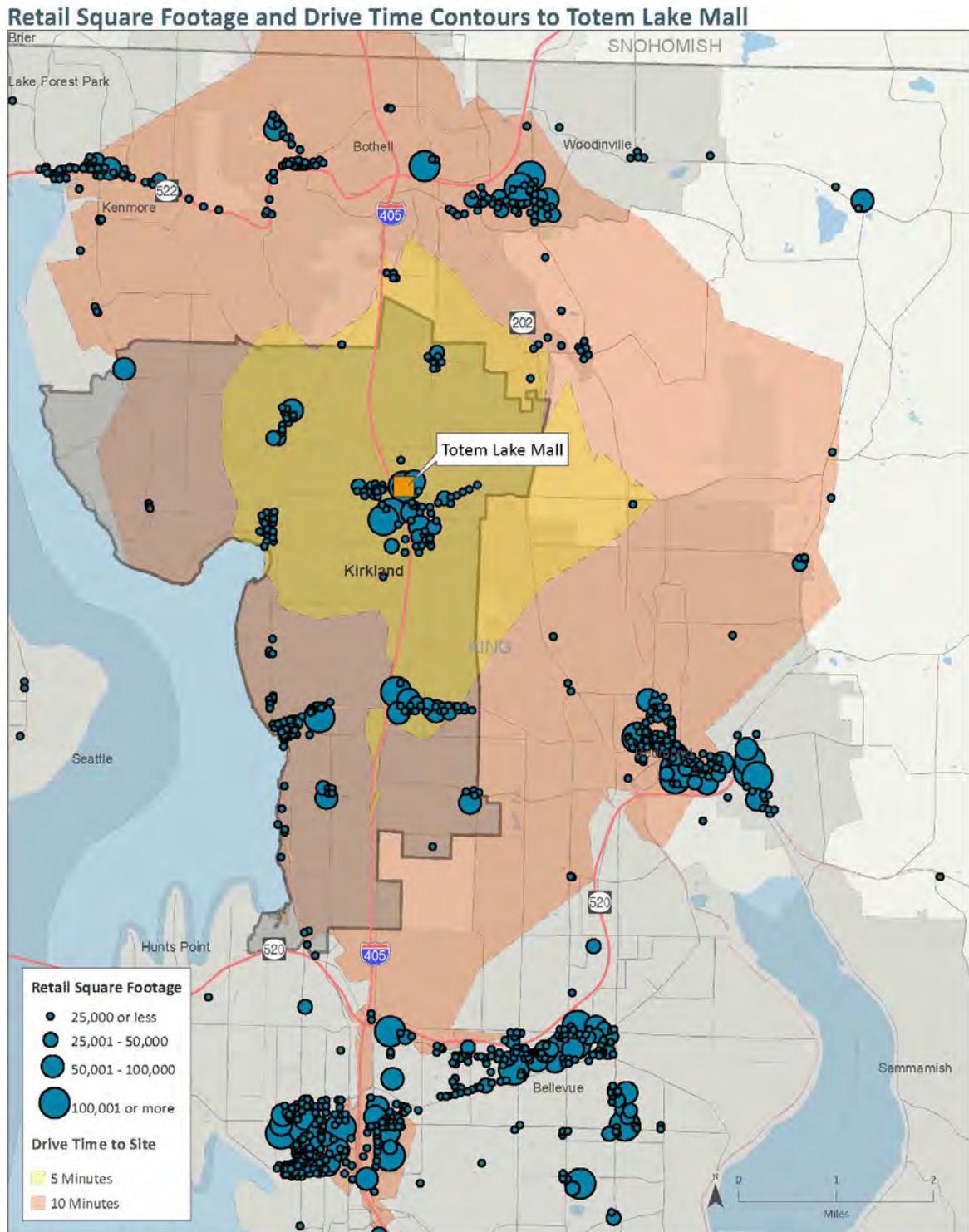
Cost of service implications. Another significant financial risk related to the City’s investment in the Totem Lake redevelopment project is the potential for the activity on-site to generate additional demand for City services, particularly public safety and emergency medical services. Currently, there is no assumed impact on the cost of City services, therefore, in the event there are new demands then the excess revenues from the site (beyond the debt service requirements) would be needed to support these services to avoid an impact on the City’s overall budget.

Risk associated with inaction. While there are clearly some risks involved in making the public investments necessary to support the redevelopment of Totem Lake Mall, there are also significant risks associated with inaction. The current reality is that the Totem Lake Mall site is a missed opportunity for the City to maximize its relative competitiveness in the eastside retail marketplace. Every year that this site continues to produce at a status quo level, is another year where the City’s retail base is losing ground to its neighbors.

This is the flip side of the redistributive risk discussion above where inaction results in new retail opportunities in other nearby areas, both within Kirkland and more importantly in other neighboring communities. In a scenario where the Totem Lake Mall might not be redeveloped for another decade, there will almost certainly be retail development occurring such that the level of leakage – City residents spending outside the City – will likely grow and Kirkland’s share of the eastside retail market will shrink.

As a result it may be equally valid to consider the City’s potential investment in the redevelopment of Totem Lake Mall as a risk mitigation strategy unto itself, putting the City in a much stronger position to maintain and potentially grow its retail base in the face of competition from neighboring communities. This is a particularly reasonable approach given that the commitment to the project was made many years ago and the current discussion is about finally getting the redevelopment project done.

ATTACHMENT A Retail Density Map

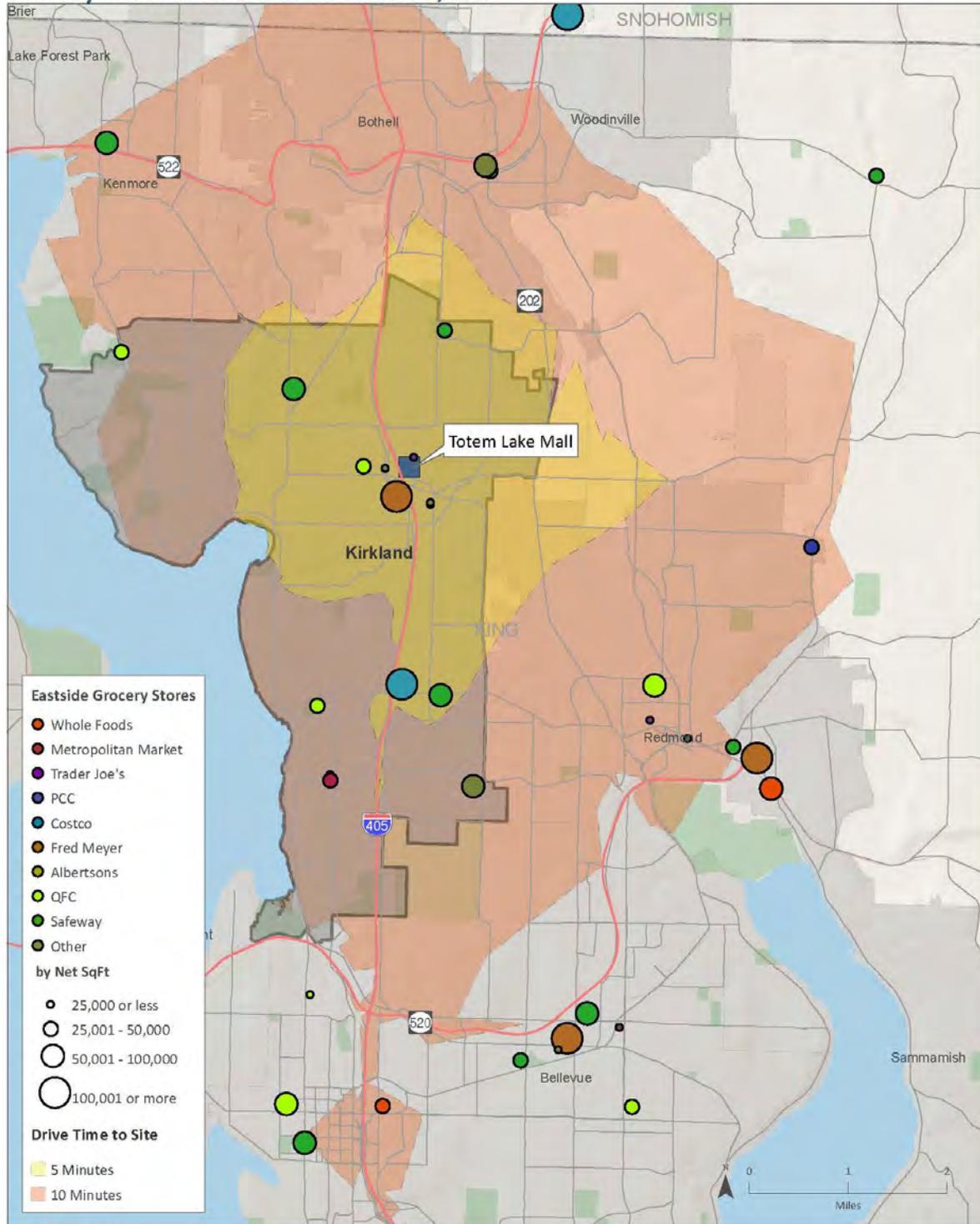


BERK Date: January 26, 2015
Source: King County, ESRI, BERK, 2015

ATTACHMENT B

Distribution of Eastside Grocery Stores

Grocery Stores in and around Kirkland, WA



BERK Date: January 23, 2015
Source: BERK, 2015

RESOLUTION R-5109

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING AN AGREEMENT TO EXTEND AND AMEND THE REDEVELOPMENT AGREEMENT FOR TOTEM LAKE MALL AND AUTHORIZING THE CITY MANAGER TO SIGN.

1 WHEREAS, the City of Kirkland and Coventry II DDR Totem Lake,
2 LLC ("Coventry") entered into a Redevelopment Agreement for Totem
3 Lake Mall, which was approved by the City Council with the passage of
4 Ordinance 4034 on January 17, 2006, (the "Redevelopment
5 Agreement"); and
6

7 WHEREAS, Village at Totem Lake, LLC ("Village at Totem Lake")
8 intends to acquire the Mall property subject to the Redevelopment
9 Agreement from Coventry and has requested that the City consent to
10 the assignment of Coventry's rights and obligations under the
11 Redevelopment Agreement to Village at Totem Lake; and
12

13 WHEREAS, the Redevelopment Agreement with Coventry was
14 subject to a term of ten years with an expiration date of March 6, 2016;
15 and
16

17 WHEREAS, Village at Totem Lake has also requested that the
18 City extend the term of the Redevelopment Agreement and affirm its
19 commitment of \$15,000,000 in public financial participation; and
20

21 WHEREAS, the proposed revisions to the plan for the
22 redevelopment required additional financial analysis by the City,
23 amendments to the Conceptual Master Plan which was approved by the
24 City Design Review Board on December 5, 2005, and an addendum to
25 the January 20, 2006, State Environmental Policy Act (SEPA)
26 determination; and
27

28 WHEREAS, the City received proposed amendments to the
29 Conceptual Master Plan and approved the amendments to the
30 Conceptual Master Plan on February 11, 2015, and issued an addendum
31 to the SEPA determination on February 26, 2015; and
32

33 WHEREAS, a third-party review of the fiscal analysis of Totem
34 Lake Mall redevelopment prepared by Village at Totem Lake concludes
35 that the projected tax revenues would be sufficient to pay the debt
36 service for the City's \$15,000,000 investment; and
37

38 WHEREAS, the City Council desires to assign the Redevelopment
39 Agreement to Village at Totem Lake, extend the term of the
40 Redevelopment Agreement and, subject to certain conditions, confirm
41 its commitment of \$15,000,000 in public financial participation;
42

43 NOW, THEREFORE, be it resolved by the City Council of the City
44 of Kirkland as follows:

45 Section 1. The Agreement to Extend and Amend Redevelopment
46 Agreement for Totem Lake Mall substantially in the form attached as
47 Exhibit 1 and incorporated by this reference is approved.

48
49 Section 2. The City Manager is authorized to sign the Agreement
50 to Extend and Amend Redevelopment Agreement for Totem Lake Mall.

51
52 Section 3. The City Manager is further authorized to sign the
53 Consent to Assignment and Estoppel Certificate attached as Exhibit C
54 and incorporated by this reference.

55
56 Passed by majority vote of the Kirkland City Council in open
57 meeting this ____ day of _____, 2015.

58
59 Signed in authentication thereof this ____ day of _____,
60 2015.

MAYOR

Attest:

City Clerk

**AGREEMENT TO EXTEND AND AMEND REDEVELOPMENT AGREEMENT
FOR TOTEM LAKE MALL**

THIS AGREEMENT TO EXTEND AND AMEND REDEVELOPMENT AGREEMENT FOR TOTEM LAKE MALL (the "Agreement") is made and entered into as of the ____ day of March, 2015 by and between the CITY OF KIRKLAND, a municipal corporation duly organized under the laws of the State of Washington (the "City") and VILLAGE AT TOTEM LAKE, LLC, a Delaware limited liability company ("Village at Totem Lake").

RECITALS

WHEREAS, the City and Coventry II DDR Totem Lake, LLC ("Coventry") entered into a certain Redevelopment Agreement for Totem Lake Mall, which was approved by the City on January 17, 2006 (the "Redevelopment Agreement"). A true and correct copy of the Redevelopment Agreement is attached hereto as Exhibit A and incorporated herein by reference.

WHEREAS, Village at Totem Lake intends to acquire the property subject to the Redevelopment Agreement from Coventry and has requested that the City consent to the assignment of Coventry's rights and obligations under the Redevelopment Agreement to Village at Totem Lake. The legal description of the Totem Lake Mall property subject to the Redevelopment Agreement is attached hereto as Exhibit B (the "Property").

WHEREAS, Village at Totem Lake has also requested that the City extend the term of the Redevelopment Agreement and make certain other amendments to the Redevelopment Agreement, including revisions to its proposed development of the Property.

WHEREAS, the proposed revisions to the plan for redevelopment required additional financial analysis by the City, amendments to the Conceptual Master Plan approved by the City Design Review Board on December 5, 2005 (the "Conceptual Master Plan"), and an addendum to the January 20, 2006 SEPA determination.

WHEREAS, the City received proposed amendments to the Conceptual Master Plan and approved the amendments to the Conceptual Master Plan on February 11, 2015, and issued an addendum to the January 20, 2006 SEPA determination on February 26, 2015.

WHEREAS, the City is willing to consent to the assignment of the Redevelopment Agreement, contingent upon Coventry assigning the Redevelopment Agreement to Village at Totem Lake; extend the term of the Redevelopment Agreement subject to certain conditions; confirm its financial obligations under the Redevelopment Agreement based upon review of the revised development plans of Village at Totem Lake; and make conforming amendments to the Redevelopment Agreement.

NOW, THEREFORE, in consideration of the foregoing, and for good and valuable consideration, the receipt and adequacy of which is hereby conclusively acknowledged, the City and Village at Totem Lake agree as follows:

I. Assignment of Redevelopment Agreement. The City agrees to assign the Redevelopment Agreement to Village at Totem Lake by executing the Consent to Assignment and Estoppel Certificate attached hereto as Exhibit C.

II. Extension of Redevelopment Agreement. The City agrees to extend the term of the Redevelopment Agreement by five (5) years from the date of execution of this Amendment (“Initial Extension”). In addition, the City agrees to further extend the term of the Redevelopment Agreement by an additional two (2) years (“Additional Extension”) if, prior to expiration of the Initial Extension, Village at Totem Lake has (a) obtained City DRB Design Approval associated with a private portion of the Project such that the combined square footage, including the buildings not demolished, but excluding the parking garage(s), totals at least 600,000 SF, of which at least 250,000 SF will be retail; and (b) obtained a building permit for construction of at least one building of the private portion of the Project.

III. Public Financial Participation. The City affirms its commitment pursuant to Article VIII of the Redevelopment Agreement to pay for or provide public financial participation in the Project in an amount equal to \$15,000,000 for Components of Financial Participation as defined therein; provided that the obligation to provide public financial participation will be subject to the following: (a) Village at Totem Lake shall have completed, or substantially completed, construction such that the private portion of the Project, including the buildings not demolished, but excluding parking garage(s), totals at least 600,000 SF, of which at least 250,000 SF will be retail; and (b) the value of the Components of Financial Participation as determined in accordance with Sections 4.6 (public plaza), 5.8 (garage unit), and 6.13 (120th Avenue NE) of the Redevelopment Agreement shall be not less than \$15,000,000. Notwithstanding anything in the Redevelopment Agreement to the contrary, the City’s public financial participation shall not exceed a total of \$15,000,000. The parties acknowledge that the configuration of types and uses may be changed so long as any revisions provide at least the same economic return to the City.

IV. The City confirms the provisions of Subsection 7.3.2 of the Redevelopment Agreement that the 1998 King County Surface Water Design Manual will continue to apply and that the project is vested to federal, state and local land use laws, regulations and resolutions existing as of March 8, 2006, the effective date of the Redevelopment Agreement.

V. Except as provided above in II and III, the provisions set forth in the Redevelopment Agreement will remain in full force and effect unless otherwise amended by mutual consent of the parties.

VI. Upon execution of this Agreement to Extend and Amend Redevelopment Agreement for Totem Lake Mall by both parties, Village at Totem Lake, at its expense, shall record the Redevelopment Agreement and this Agreement with the Real Property Records Division of the King County Recorder’s Office. Upon recording, Village at Totem Lake shall promptly provide a copy of the recorded documents to the City.

EXECUTED on the date set forth above.

CITY OF KIRKLAND

By _____
Its City Manager

VILLAGE AT TOTEM LAKE, LLC

By _____
Its _____

STATE OF CALIFORNIA____)
) ss
COUNTY OF LOS ANGELES)

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 as the _____ on behalf of Village at Totem Lake, LLC, a Delaware limited liability company, pursuant to the provisions of the Limited Liability Company Agreement of said company, and acknowledged it to be the free and voluntary act of said company for the uses and purposes mentioned in the instrument.

DATED: _____

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of California,
residing at _____

My appointment expires _____

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the City Manager of the City of Kirkland, Washington, a municipal corporation, to be the free and voluntary act of such municipal corporation for the uses and purposes mentioned in the instrument.

DATED: _____

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington,
residing at _____
My appointment expires _____

2006127

OFFICIAL FILE

January 17, 2006

EXHIBIT A

REDEVELOPMENT AGREEMENT FOR THE TOTEM LAKE MALL

**City of Kirkland, Washington
Coventry II DDR Totem Lake, LLC**

TABLE OF CONTENTS

	<i>Page</i>
ARTICLE I	DEFINITIONS.....3
ARTICLE II	GENERAL PROJECT DESCRIPTION; SCHEDULE.....6
ARTICLE III	DEVELOPMENT PLANNING.....7
	3.1 SEPA7
	3.2 Subsequent Land Use and Permit Approvals7
	3.3 Modifications to Project Plan8
	3.4 Phase Design Review8
	3.5 Modifications to Phase Design Review Approval.....8
	3.6 Binding Site Plan.....8
	3.7 Termination or Amendment of Existing Easements and/or Building Restrictions8
ARTICLE IV	PUBLIC PLAZA8
	4.1 Preparation of Public Plaza Plans and Specifications, Budget Constraints, and Approval8
	4.1.1 Public Plaza Plans and Specifications.....8
	4.1.2 Budget Constraints9
	4.1.3 Administrative Approval of Public Plaza Plans and Specifications.....9
	4.2 City Modifications to Public Plaza Plans and Specifications; Credit Toward City Financial Participation.....10
	4.3 Public Plaza Construction.....10
	4.3.1 Responsibilities of Developer10
	4.3.2 Compliance with Laws.....10
	4.3.3 Permits10
	4.3.4 Construction Warranty10
	4.3.5 Non-liability of the City11
	4.3.6 Construction Observation and Inspections11
	4.3.7 Substantial Completion of Public Plaza.....11
	4.3.8 Verification of Actual Costs.....11
	4.4 Transfer of Public Plaza and Other Property Interests12
	4.5 Leasing Dates12
	4.5.1 Leasing Date – Lower Mall Public Plaza Property Interests13
	4.5.2 Leasing Date – Upper Mall Public Plaza Property Interests13
	4.6 Lease Transfer Amount13
	4.6.1 Lease Transfer Amount – Lower Mall Public Plaza Property Interests.....13
	4.6.2 Lease Transfer Amount – Upper Mall Public Plaza Property Interests14
	4.7 Title to Public Plaza Property Interests14

	<u>Page</u>
4.8 Payment and Financing of Lease Transfer Amount	15
4.8.1 Conditions of Payment	15
4.8.2 Obligation to Make Payment	15
4.8.3 Tax Exempt Obligations.....	15
4.8.4 Alternative Conveyance	15
4.9 Closing.....	16
4.9.1 Delivery by the Developer	16
4.9.2 Delivery by the City	17
4.9.3 Other Instruments	18
4.9.4 Prorations	18
4.9.5 Closing Costs and Expenses.....	18
4.9.6 Close of Escrow; Recording.....	19
4.10 Maintenance of the Public Plaza.....	19
4.10.1 Maintenance by Developer.....	19
4.10.2 Maintenance by City.....	19
4.11 Maintenance Dispute Resolution.....	20
4.12 Use of Public Plaza.....	20
4.13 Transfer of Public Plaza Property Interests	20
ARTICLE V PARKING GARAGE	21
5.1 Preparation of Parking Garage Plans and Specifications and Approvals Associated with the Parking Garage.....	21
5.1.1 Parking Garage Plans and Specifications	21
5.1.2 Administrative Approval of Parking Garage Plans and Specifications.....	21
5.2 Parking Garage Construction.....	21
5.2.1 Responsibilities of the Developer	21
5.2.2 Compliance with Laws.....	22
5.2.3 Permits	22
5.2.4 Construction Warranty	22
5.2.5 Construction Observation and Inspections	22
5.2.6 Substantial Completion of Parking Garage	23
5.2.7 Verification of Actual Costs.....	23
5.3 Parking Garage Condominium	23
5.4 Operation of the Parking Garage Condominium	24
5.5 City Garage Unit.....	25
5.6 Transfer of City Garage Unit Property Interests.....	25
5.7 Leasing Date	26
5.8 Lease Transfer Amount	26
5.9 Title to City Garage Unit Property Interests.....	26
5.10 Payment and Financing of Lease Transfer Amount	27
5.11 Closing.....	28
5.11.1 Delivery by the Developer	28

	<u>Page</u>
5.11.2 Delivery by the City	30
5.11.3 Other Instruments	30
5.11.4 Prorations	30
5.11.5 Costs and Expenses	31
5.11.6 Close of Escrow; Recording.....	31
5.12 Maintenance of the Parking Garage	31
5.12.1 Maintenance Responsibility	31
5.12.2 Maintenance Standards.....	32
5.13 Transfer of City Garage Unit.....	32
ARTICLE VI 120th AVE. NE IMPROVEMENTS	33
6.1 Preparation and Approval of Plans and Specifications.....	33
6.1.1 Preparation of 120th Avenue NE Plans and Specifications	33
6.1.2 Budget Constraints	33
6.1.3 Administrative Approval.....	33
6.2 Modifications to 120th Avenue NE Plans and Specifications.....	34
6.3 Construction; Schedule.....	34
6.4 Selection of Contractors; Approval of Bids	34
6.5 Performance and Payment Bond	35
6.6 Insurance and Indemnification	35
6.6.1 Insurance.....	35
6.6.2 Indemnification of the City	35
6.6.3 Indemnification of the Developer	36
6.6.4 Limitation on Indemnification	36
6.7 Permits and Approvals.....	36
6.8 Prevailing Wages.....	36
6.9 Construction Observation and Inspections	36
6.10 Construction Warranty.....	36
6.11 Substantial Completion of 120th Avenue NE Improvements	37
6.12 Verification of Actual Costs	37
6.13 Purchase Price and Timing of Payment.....	38
6.14 Maintenance of 120th Avenue NE	38
6.15 Relocation of Utilities in 120th Avenue NE.....	38
6.16 Dedication of Right of Way for 120th Avenue NE.....	38
ARTICLE VII INFRASTRUCTURE TO SUPPORT REDEVELOPMENT.....	39
7.1 Transportation.....	39
7.2 Water and Sanitary Sewer	39
7.3 Stormwater.....	39
ARTICLE VIII CITY FINANCIAL PARTICIPATION	40
ARTICLE IX VESTING	40
9.1 General Vesting	40
9.2 Amendments.....	40

	<u>Page</u>
9.3 City Reservation of Rights.....	41
ARTICLE X PARTIES' REPRESENTATIVES	41
10.1 Designation of City's Representative	41
10.2 Designation of Developer's Representative	41
ARTICLE XI COMPLIANCE WITH LAWS AND ORDINANCES	41
ARTICLE XII INSURANCE.....	41
12.1 Insurance Requirements.....	41
12.1.2 Commercial General Liability.....	42
12.2 Insurance Policies.....	42
12.2.1 Qualifications.....	42
12.2.2 Attachments	42
12.2.3 Certificates of Insurance.....	43
12.2.4 Cancellation	43
12.3 Adjustments.....	43
ARTICLE XIII ENVIRONMENTAL INDEMNIFICATION.....	43
13.1 Indemnification.....	43
13.2 Third Parties	44
13.3 Existing Contaminants.....	44
ARTICLE XIV RIGHT TO ASSIGN OR OTHERWISE TRANSFER	44
14.1 Assignment Right	44
14.2 Succession	45
ARTICLE XV DEFAULT	45
15.1 Events of Default.....	45
15.2 Remedies in the Event of Default.....	45
ARTICLE XVI DISPUTE RESOLUTION.....	45
16.1 Disputes and Coordination Issues.....	45
16.2 Cooperative Discussions.....	46
16.3 Mediation.....	46
16.4 Arbitration	46
16.5 Litigation	47
16.6 Equitable Proceedings	47
ARTICLE XVII MISCELLANEOUS	48
17.1 No Third Party Rights.....	48
17.2 Severability	48
17.3 Construction.....	48
17.4 Fair Construction	48
17.5 Authority to Execute Agreement.....	48
17.6 Attorney's Fees.....	48
17.7 Survival.....	48
17.8 Governing Law.....	48

	<u>Page</u>
17.9 Amendment	48
17.10 Notices	49
17.11 Incorporation by Reference	49
17.12 No Joint Venture	49
17.13 Entire Agreement	49
17.14 Waiver	49
17.15 Exculpation	50
17.16 Recording	50
17.17 Binding Effect	50
17.18 Counterparts	50
17.19 Time is of the Essence	50
17.20 Term and Termination	50

- EXHIBIT A Legal Description of Property
- EXHIBIT B SEPA Based Mitigation Conditions
- EXHIBIT C Public Plaza and 120th Avenue NE Design Standards
- EXHIBIT D Easements, Covenants, Conditions and Restrictions Relating to the Public Plaza and the 120th Avenue NE Right-Of-Way
- EXHIBIT E Form of Public Plaza Lease
- EXHIBIT F Form of City Garage Unit Lease

REDEVELOPMENT AGREEMENT FOR THE TOTEM LAKE MALL

THIS REDEVELOPMENT AGREEMENT ("this Agreement") is made and entered into effective the ____ day of January, 2006, by and between the **CITY OF KIRKLAND**, a municipal corporation duly organized under the laws of the State of Washington ("City"), and **COVENTRY II DDR TOTEM LAKE, LLC**, a Delaware limited liability company ("Developer"). Collectively, the City and the Developer may be referred to herein as the "Parties" and individually as a "Party."

RECITALS

A. The Developer owns approximately 26 acres of real property, commonly known as the Totem Lake Mall ("Mall"), located in the City, as more fully described in **Exhibit A** attached. The Mall is at the heart of the Totem Lake Business District, an area that is designated as a regional "Urban Center" by the Kirkland Comprehensive Plan and King County Countywide Planning Policies. The Comprehensive Plan contains goals and policies that promote redevelopment of the Mall to strengthen its role as a retail center and community gathering place. Mixed use development of the Mall, with high density office and/or residential uses, is also encouraged.

B. The City has recognized the Mall as an under-performing property in need of redevelopment, and therefore has identified redevelopment of the Mall as a top economic development priority.

C. The Developer has prepared a redevelopment proposal for the Mall, which includes extensive demolition, reconfiguration and construction of buildings and improvements, with the completed Mall to be comprised of approximately 1,013,600 square feet of retail and office space, residential units, a cinema, and several parking structures. The redevelopment is contemplated to occur over ten (10) years in several phases, with anticipated completion of the retail components within five (5) years, and anticipated completion of the office and residential components within seven (7) years.

D. The City plans to improve and realign a segment of 120th Avenue NE, which runs generally north to south through the Mall, and is willing to coordinate such improvement and relocation with redevelopment of the Mall.

E. Public use and enjoyment of the Mall will be enhanced by creation of public spaces, consisting of a new east-west public plaza that will function as a public park, parkway or plaza ("Public Plaza"), and improvement of 120th Avenue NE consistent with the new Public Plaza. These improvements will create a regional public gathering place and will be the site of public events.

F. Use of the public spaces, and reduction of traffic congestion, will both be facilitated by City acquisition of parking facilities in the proposed parking structure in the upper portions of the Mall. The Developer is willing to construct and lease to the City, with an option to purchase, a condominium unit representing a portion of the parking structure ("City Garage Unit"). The precise dimensions of the City Garage Unit have yet to be determined, and will be

dependent upon the City's overall financial participation. The City is authorized by Chapter 35.86 RCW to provide off-street parking facilities.

G. The Mall redevelopment is expected to increase tax revenues, which will improve the financial stability and general economic vitality of the City. Furthermore, the creation of a public gathering place, new employment opportunities, and construction of housing at the Mall, adjacent to public transit and other public and private amenities, will materially assist the City in carrying out the goals and objectives of the Kirkland Comprehensive Plan and the Totem Lake Neighborhood Plan.

H. The Developer is willing to undertake significant responsibilities and risks associated with developing and constructing the parking structure and the public plaza, together with obligations regarding the maintenance of those facilities.

I. In view of the public benefits to be gained by the City through acquisition of the Public Plaza, the City Garage Unit, and construction of improvements to 120th Avenue NE, as well through participation in the Mall redevelopment, the City is willing to invest up to \$15,000,000.00 in the public elements associated with the Mall redevelopment. The City anticipates that tax and other revenue from the redeveloped Mall will be sufficient to pay the debt service of any Certificates of Participation or City bonds that are issued to fund a portion of the City's \$15,000,000.00 investment.

J. To memorialize the City's initial commitment to invest in the public elements of the Mall redevelopment, and to guide the terms and conditions of this Agreement, the City and the Developer entered into a Memorandum of Understanding, approved by the City Council on October 18, 2005.

K. Consistent with the Memorandum of Understanding, the Developer has obtained Design Review Board approval of a Project Plan for the Mall redevelopment. Both the Developer and the City are satisfied and accept the Project Plan as approved by the Design Review Board on November 7, 2005.

L. This Agreement is authorized by RCW 36.70B.170 through 36.70B.210, and the provisions regarding the Public Plaza and the City Garage Unit are authorized by Chapter 35.42 RCW. As required by RCW 36.70B.200, the City held a public hearing on this Agreement on December 13, 2005.

M. By this Agreement, the parties intend to set forth their mutual agreement and understandings as they relate to the Developer's redevelopment of the Mall and the City's acquisition of public improvements to be constructed in conjunction with the Mall redevelopment. As set forth in these Recitals, the City has determined that the terms and conditions set forth herein will serve a public use and will promote the health, safety, prosperity and general welfare of the citizens of the City.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I DEFINITIONS

1.1 "Actual Costs" mean the total costs, whether direct or indirect, including, but not limited to, building materials, supplies and improvements, infrastructure, labor and services; design; permits and other governmental approvals; general and subcontractor contracts, including, but not limited to, general contractor expenses associated with management, administration, overhead and profit; taxes paid or incurred; legal, testing, inspection and consulting fees and expenses (engineers, architects, construction, attorneys, traffic, survey, geotechnical, design professionals and planners, landscape, appraisal and others); financing and carrying expenses; insurance; performance and/or payment bonds; demolition; bid preparation and administration; equipment and other rental expenses; computer charges; temporary sanitation and site preparation; temporary weather protection; temporary structures; project safety; safety equipment; progress cleanup; barricades and temporary fences; temporary signage; field office equipment, supplies, furniture and other office expenses; telephone and postage; travel; and all other infrastructure, improvements, work or services attributable to the project. Actual Cost shall also include a fee equal to five percent (5%) of the Actual Costs (exclusive of this fee), which shall be payable to the Developer for its management and administration of the project.

1.2 "Agreement" means this Agreement as may be amended in accordance with the terms hereof.

1.3 "Association" means a condominium owners' association created in a Declaration.

1.4 "Certificates of Participation" mean certificates caused to be issued by the City representing interests in rental payments to be made by the City under the City Garage Unit Lease and the Public Plaza Lease pursuant to the provisions of Sections 4 and 5 of this Agreement.

1.5 "City" means the City of Kirkland, Washington.

1.6 "City Financial Participation" means the City's commitment of resources to lease, acquire and/or improve each of the three major public projects (the Public Plaza, the City Garage Unit and the 120th Ave. NE Improvements) pursuant to this Agreement.

1.7 "City Garage Unit" means a unit within the Parking Garage Condominium comprised of stalls for multi-passenger vehicles, to be leased to or otherwise acquired by the City consistent with this Agreement.

1.8 "City Garage Unit Lease" means a lease with a maximum term of twenty-five (25) years, substantially in the form of **Exhibit F** attached and incorporated herein by reference.

1.9 "City Council" means the City Council of the City.

1.10 "Declaration" means the condominium declaration for the Parking Garage Condominium, in form and content acceptable to both the City and the Developer.

1.11 "Design Guidelines" means the Design Guidelines for Pedestrian-Oriented Business Districts, KMC 3.30.040.

1.12 "Developer" means Coventry II DDR Totem Lake, LLC, a Delaware limited liability company, and its lawful successors and assigns.

1.13 "Development Regulations" means those portions of the Kirkland Municipal Code (KMC) and Kirkland Zoning Code (KZC) pertaining to zoning, land use, design, building, construction, landscape, signage, permitting, planning and other elements that govern real estate development within the TL2 Zone.

1.14 "Escrow Holder" means Transnation Title Insurance Company, d/b/a LandAmerica Commercial Services, Seattle Offices, or another nationally recognized title insurance company selected by the Developer and not objected to by the City which shall act as the escrow agent and provide the title insurance policies to be delivered in connection with the transfer of the City Garage Unit Lease and the Public Plaza Lease.

1.15 "Force Majeure" means any circumstances or acts beyond the reasonable control of the Developer or the City which do not arise from a default by or collusion of the Party seeking delay, including, but not limited to, a fire, storm, wind, flood, earthquake, epidemic, explosion, volcanic eruption, earth movement, radioactive contamination, earth slide, quarantine restriction, act of war (whether declared or undeclared), interference by civil or military authority, riot or public discord, civil disturbance, permitting delays, labor strike or other organized labor disruption, delay associated with shortage or unavailability of materials reasonably necessary for the Project, litigation adversely impacting the ability to proceed with all, or portions of, the Project, act of terrorism, sabotage, suspension of the national or State banking system due to financial crisis, or the closing of the New York Stock Exchange due to financial crisis or other such disruption in the financial markets which impair the ability of either Party to borrow funds.

1.16 "Franchise Utilities" means electricity, natural gas, telecommunications, and other utilities not provided by the City.

1.17 "Intersections" means the general areas where two or more streets or roadways join or cross, including the streets, roadways and roadside facilities for traffic movement within them.

1.18 "KMC" means the City of Kirkland Municipal Code.

1.19 "KZC" means the City of Kirkland Zoning Code.

1.20 "Lease Transfer Amount" means each of the amounts determined consistent with Section 4.6 and Section 5.7 of this Agreement (collectively, the "Lease Transfer Amounts").

1.21 "Leasing Date" means one or more business days designated by the Developer, which shall be (A) with regard to the City Garage Unit, no earlier than sixty (60) days following Substantial Completion of the Parking Garage; (B) with regard to the Lower Mall Public Plaza Improvements, no earlier than sixty (60) days after Substantial Completion of the Lower Mall

Public Plaza Improvements and issuance of a building permit for a building in the Upper Mall; and (C) with regard to the Upper Mall Public Plaza Improvements, no earlier than sixty (60) days after Substantial Completion of the Upper Mall Public Plaza Improvements.

1.22 "Lower Mall" means the portion of the Project west of 120th Avenue NE.

1.23 "Lower Mall Public Plaza Improvements" means the Public Plaza Improvements located within that portion of the Project west of 120th Avenue N.E.

1.24 "Parking Garage" means the main parking structure to be constructed on the Upper Mall at the end of the Public Plaza.

1.25 "Parking Garage Condominium" means a condominium to be created pursuant to Washington law, Chapter 64.34 RCW, for the Parking Garage.

1.26 "Phase Plan" means a proposed design plan for a phase of the Project Plan submitted for review to the City's Design Review Board.

1.27 "Project" means the Developer's proposed redevelopment of the Mall and associated facilities.

1.28 "Project Plan" means the "Totem Lake Mall Conceptual Master Plan" which was approved by the City's Design Review Board on November 7, 2005, as may be amended or revised from time-to-time, and which is incorporated by reference in this Agreement.

1.29 "Property" means the Mall, as legally described in **Exhibit A**.

1.30 "Public Plaza" means the land and improvements, which is located perpendicular to 120th Avenue NE and generally in the middle of the Mall. The Public Plaza does not include the right-of-way of 120th Avenue NE and the improvements therein. The Public Plaza, which shall consist of the Upper Mall Public Plaza Improvements and the Lower Mall Public Plaza Improvements, is described generally in the Project Plan and will be constructed by the Developer and leased or otherwise acquired by the City.

1.31 "Public Plaza Improvements" means the improvements constructed pursuant to this Agreement and located within the Public Plaza.

1.32 "Public Plaza Lease" means a lease with a maximum term of twenty-five (25) years, substantially in the form of **Exhibit E** attached and incorporated herein by reference.

1.33 "SEPA" means the Washington State Environmental Policy Act.

1.34 "Substantial Completion" means (A) with regard to the Public Plaza, Developer certification of Substantial Completion, subject to normal punch list items, and City administrative acceptance of the applicable segment of the Public Plaza; and (B) with regard to the Parking Garage, Developer certification of Substantial Completion, subject to normal punch list items, and City issuance of a certificate of occupancy for the Parking Garage.

1.35 "Survey Map and Plans" means the survey map and plans recorded in conjunction with creation of the Parking Garage Condominium, and any subsequent amendments, corrections and addenda thereto.

1.36 "Title Company" means Commonwealth Land Title Insurance Company.

1.37 "TL2 Zone" means the Totem Lake 2 Zone as designated in the Kirkland Comprehensive Plan and implemented through the Development Regulations.

1.38 "Totem Lake Neighborhood Plan" means the Totem Lake Neighborhood Plan approved by the City Council on January 15, 2002.

1.39 "Trust Agreement" means a trust agreement entered into on or before the Leasing Date, which is acceptable to both the City and the Developer governing the issuance of any Certificates of Participation by the City and/or any landlord/tenant or other matters related to the City Garage Unit Lease or the Public Plaza Lease.

1.40 "Trustee" means a trustee selected on or before the Leasing Date by the City, and acceptable to the Developer, to act as the trustee under a Trust Agreement and as successor to the Developer under the City Garage Unit Lease and/or the Public Plaza Lease.

1.41 "Upper Mall" means that portion of the Project east of 120th Avenue NE.

1.42 "Upper Mall Public Plaza Improvements" means the Public Plaza Improvements located within that portion of the Project east of 120th Avenue N.E.

1.43 "Utilities" means both City utilities and Franchise Utilities including, but not limited to, water, sewer, electricity, telecommunications, natural gas, and stormwater conveyance system improvements that serve, or will serve, the redeveloped Mall.

1.44 "120th Avenue NE" means that segment of the 120th Avenue NE right-of-way from, and including, the intersection of 128th Avenue NE to, and including, the intersection of Totem Lake Boulevard.

1.45 "120th Avenue NE Improvements" means the realignment and improvements to 120th Avenue NE as described in Section 6.1.

ARTICLE II GENERAL PROJECT DESCRIPTION; SCHEDULE

The Developer shall have the right, but not the obligation, to construct the Project. Notwithstanding anything to the contrary in this Agreement, and prior to City payment for a segment of the Public Plaza, the Developer may provide written notice to the City that the Developer elects not to proceed with redevelopment of the Mall in accordance with the Project Plan. In such case, either Party shall have the right and authority to terminate unilaterally this Agreement, and any and all rights and obligations relating thereto, at no cost to either Party. Otherwise, the Developer shall attempt to achieve substantial completion of the retail components of the Project within five (5) years after the effective date of this Agreement, and the

residential and office components of the Project within seven (7) years after the effective date of this Agreement, excluding time periods when the design, construction, or development of the Project is unavoidably delayed by disruptions caused by events of Force Majeure. Phase 1 of the Project generally consists of the partial demolition, reconstruction and new construction for redevelopment of the Lower Mall and ancillary infrastructure and improvements associated therewith, including construction of portions of the Public Plaza and the improvements to 120th Avenue NE as provided for in this Agreement; Phase 2 of the Project generally consists of all other portions of the Project, including construction of the Parking Garage. Phase 1 and Phase 2 may be pursued separately, simultaneously, in sub-phases, or otherwise without regard to completion or progress on any other Phase or sub-phase of the Project.

ARTICLE III DEVELOPMENT PLANNING

3.1 SEPA. The City has conducted extensive environmental review and prepared an environmental impact statement (entitled "Environmental Impact Statement for Kirkland Comprehensive Plan 10 Year Update" and dated October 15, 2004) in conjunction with adoption of its Comprehensive Plan and Development Regulations, which have included within their scope the anticipated level of redevelopment included within the Project. In conjunction with this Agreement, the Developer has submitted an environmental checklist for the entire Project, and the City has issued a State Environmental Policy Act ("SEPA") mitigated determination of nonsignificance for the Project. All SEPA-based conditions necessary to mitigate potential adverse impacts associated with the Project, with the exception of the limited mitigation contemplated for the office building component described below, are set forth in attached **Exhibit B**. The only remaining SEPA review will be in conjunction with construction of the proposed office building to be located above the Parking Garage, which is contemplated as a sub-phase of Phase 2. This limited SEPA review will not require preparation of an environmental impact statement, or any addenda or supplemental reports to the earlier environmental impact statement, and will address only the cumulative transportation impacts of the Project on the intersection of 120th Avenue NE and Totem Lake Boulevard; provided, however, that any mitigation measures for such impacts shall be limited to reduction or mitigation of the impact through implementation of a transportation management plan for the office building. The Parties understand and agree that the appeals period associated with the SEPA threshold determination might not expire prior to the effective date of this Agreement. In such event, the Developer shall have the right within thirty (30) days of receipt of the final SEPA mitigation conditions, to unilaterally terminate this Agreement, at no expense to either Party, in the event that the mitigation conditions set forth in **Exhibit B** are changed, modified or amended in a manner not satisfactory to the Developer, at its sole discretion.

3.2 Subsequent Land Use and Permit Approvals. The City will evaluate all subsequent development, demolition and/or construction permit applications for the Project based on consistency with this Agreement and the Project Plan. To the extent permitted by law, the City shall expedite and give priority status to the processing of City land use, permit applications, construction drawings, plans and specifications, and similar or related submissions by the Developer associated with the Project.

3.3 Modifications to Project Plan. Any modifications to the Project Plan shall be made in accordance with the conditions imposed by the Design Review Board and set forth in the Project Plan.

3.4 Phase Design Review.

3.4.1 Phase Design Review shall be required during the Project in accordance with the conditions imposed by the Design Review Board and set forth in the Project Plan. Because the Project contemplates building construction over the retail components of Phase 1, the Developer shall incorporate into the design elements for the ground floor retail structures in Phase 1 all of the necessary structural support, infrastructure, and related features that will be required to facilitate location of future buildings over the retail structures.

3.4.2 Phase Design Review approval shall be in accordance with the Development Regulations, and shall be based upon consistency with this Agreement and the Project Plan.

3.5 Modifications to Phase Design Review Approval. Any modifications to an approved Phase Plan shall be made in accordance with the conditions imposed by the Design Review Board and set forth in the approved Phase Plan.

3.6 Binding Site Plan. In order to transfer the Public Plaza and the City Garage Unit to the City, the Developer will require City approval of a binding site plan. The City agrees that the Mall is eligible for binding site plan approval. The City Council through approval of the Agreement, approves a binding site plan within the Mall as necessary to facilitate redevelopment of the Mall in accordance with the Project Plan and this Agreement, subject to a determination by the City Planning Director that the site plan satisfies the criteria of KMC 22.04.040(b) through (f).

3.7 Termination or Amendment of Existing Easements and/or Building Restrictions. In furtherance of the Project Plan, the City hereby approves removal of the restrictive covenant on Tract G of the Plat of Puget Sound Center, dated June, 1970, which required Tract G to remain as permanent open space, with no buildings or other structures allowed thereon. The City also hereby approves removal of the building restrictions imposed on the easterly twelve feet (12') of the Project by instrument recorded under King County Auditor's File No. 7701140502. In addition, to the extent there are additional easements, covenants, restrictions or other encumbrances of record in favor of the City within the Project, the City agrees to terminate or amend such encumbrances to the extent reasonably requested by the Developer in furtherance of the development of the Project and realignment of 120th Avenue NE.

**ARTICLE IV
PUBLIC PLAZA**

4.1 Preparation of Public Plaza Plans and Specifications, Budget Constraints, and Approval.

4.1.1 Public Plaza Plans and Specifications. The Public Plaza shall be designed to standards for pedestrian and vehicular access and circulation, safety, ease of maintenance, and

attractiveness, consistent with standards for similarly situated public plazas associated with regional open-air shopping centers in the Pacific Northwest. The Developer shall prepare plans and specifications for the Public Plaza, which shall be in accordance with this Agreement and generally consistent with the Public Plaza and 120th Avenue NE Design Standards attached as Exhibit C to this Agreement ("Public Plaza Plans and Specifications").

4.1.2 Budget Constraints.

(a) Unless otherwise mutually agreed between the City and the Developer, the Public Plaza Plans and Specifications shall be based upon a total design and construction budget of not greater than \$3,600,000.00.

(b) No traffic signals or traffic or mechanical devices are included in the design and construction budget for the Public Plaza Improvements, nor shall any be required by the City in conjunction with the Public Plaza Improvements, except to the extent requested by the City pursuant to Section 4.2. The budget also includes \$100,000.00 for artwork, murals, sculptures and similar features, such as free-standing objects or features incorporated into the Public Plaza Improvements within the Public Plaza ("Artwork"). The Developer agrees to use reasonable efforts to coordinate the selection of this artwork with the City and the Kirkland Arts Council and final selection of artwork for the Public Plaza shall be subject to the mutual agreement of the City and the Developer.

(c) The Developer shall construct the Public Plaza Improvements and 120th Avenue NE Improvements within a combined budget of \$7,300,000.00 (excluding the land value). The Developer shall be solely responsible for any cost overrun above the combined budget, except as provided in Section 4.2.

4.1.3 Administrative Approval of Public Plaza Plans and Specifications. The Developer shall use reasonable efforts to coordinate input from the City, and provide an opportunity for the City to review and comment on the proposed Public Plaza Plans and Specifications prior to formal submission for administrative approval. The Developer shall submit the proposed Public Plaza Plans and Specifications to the City for administrative review and approval by the City Planning Director. The administrative review shall be for the purpose of determining if the Public Plaza will function appropriately for the City's needs, will meet or exceed applicable City public works standards, and will be consistent with this Agreement and the Public Plaza Design Standards; provided, however, that City administrative approval of the Public Plaza Plans and Specifications shall not be construed to subject the City to any liability to the Developer or any third party for defects in design. The City Planning Director shall issue his administrative decision approving, denying or requesting modification to the Public Plaza Plans and Specifications within twenty-one (21) days after submission or the Public Plaza Plans and Specifications shall be conclusively deemed approved. In the event of administrative denial or request for modification, the City Planning Director shall specify the basis for the decision and the Parties shall timely, diligently, and in good faith, attempt to resolve the matter expeditiously. The Developer and the City must approve the Public Plaza Plans and Specifications and, in the event of a dispute, the Dispute Resolution procedures set forth in Article XVI shall apply.

4.2 City Modifications to Public Plaza Plans and Specifications; Credit Toward City Financial Participation. Prior to administrative approval of the Public Plaza Plans and Specifications, or subsequent thereto if mutually agreed in writing by the City and the Developer, the City may request changes and additions to the proposed Public Plaza Plans and Specifications. If the Actual Costs of the Public Plaza Improvements exceeds \$3,600,000.00, then the City shall pay for all of such changes and additions, and shall receive credit toward the City Financial Participation only for the construction budget amount of \$3,600,000.00.

4.3 Public Plaza Construction.

4.3.1 Responsibilities of Developer. Subject to the terms of this Agreement, the Developer shall design, finance and construct the Public Plaza at its sole cost and expense, including any loans that Developer may deem necessary to carry out construction. The Public Plaza Improvements shall be carried out by the Developer as part of a single work, construction and improvement comprising the Project, including both private portions (approximately 80% of the total outside area and 95% of the Project overall) and the Public Plaza Improvements to be leased or otherwise acquired by the City (approximately 20% of the total outside area and 5% of the Project overall). The Public Plaza shall be designed to include all Utilities that are necessary to serve the Public Plaza and adjacent private components of the Project; provided, however, that the costs and expenses associated with extensions of lateral water and sewer service lines from mains within the Public Plaza to serve the adjacent private components of the Project shall not be included in the Actual Costs of the Public Plaza and shall be the sole responsibility of the Developer.

4.3.2 Compliance with Laws. The Public Plaza shall be built in compliance with all applicable building code and other laws, rules and regulations, including but not limited to the applicable provisions of Title III of the Americans With Disabilities Act and the regulations issued thereunder by the United States Department of Justice concerning accessibility of places of public accommodation. The Parties recognize, however, that because the Public Plaza is being leased to the City pursuant to Chapter 35.42 RCW, construction of the Public Plaza is not a "public work" or otherwise subject to competitive or public bidding requirements, and that because the Public Plaza Improvements constitute less than 50% of the Project, these improvements are not subject to prevailing wage requirements. Accordingly, the Developer shall not be deemed in breach of this Agreement based upon non-compliance with any laws, rules or regulations relating thereto.

4.3.3 Permits. The Developer shall obtain all permits and authorizations from any federal, state or local government or departments or subdivisions thereof having jurisdiction in order to permit construction of the Public Plaza. The City will process applications for permits and approvals as if such applications were made without any City participation in such project.

4.3.4 Construction Warranty. The Developer's general contractor, pursuant to the construction contract(s) for the Public Plaza, or the Developer, at the Developer's option, shall for one (1) year after Substantial Completion of each segment of the Public Plaza, correct and repair any material defects appearing or developing in the workmanship or materials furnished in respect to the segment of the Public Plaza. If the Developer transfers a segment of

the Public Plaza to the City within the one (1) year period, and the Developer's general contractor is responsible for the one (1) year warranty, the Developer shall provide an assignment of the warranty in a form reasonably satisfactory to the City for the remainder of the one (1) year period.

4.3.5 Non-liability of the City. The City shall not be liable for any work performed or to be performed on the Public Plaza for the Developer or for any materials, supplies or equipment furnished or to be furnished to the Developer, and no construction or other liens for such labor, services, materials, supplies or equipment shall attach to any property owned by the City. No part of the cost of construction of the Public Plaza shall ever become an obligation of the City. The Developer will use its reasonable efforts to cause to be included in the general contractor construction contract(s), and shall post on the Property, a notice that the City is not liable for the payment of any costs associated with the construction of the Public Plaza.

4.3.6 Construction Observation and Inspections. Unless otherwise mutually agreed, the City, or its designee(s), and the Developer, or its designee(s), shall meet monthly during construction of the Public Plaza to discuss and inspect progress and tour the improvements. The City may request the Developer to give the City seven (7) days' advance notice of any construction activity involving underground improvements owned or to be owned by the City. The City shall be allowed to observe such construction activity during a mutually convenient time that will not unreasonably disrupt or interfere with on-going work on the Public Plaza. It is understood and agreed that the observation rights of the City prior to the Leasing Date is for the purpose of protecting the City's interest as tenant under the Public Plaza Lease on or after the Leasing Date.

4.3.7 Substantial Completion of Public Plaza. The Developer shall provide written certification of Substantial Completion to the City. The City shall have fourteen (14) days after receipt of the certification to notify the Developer that it accepts or rejects the segment of the Public Plaza completed by Developer or the segment of the Public Plaza shall be conclusively deemed accepted. In the event of rejection, the City shall specify the basis for the decision and the Parties shall timely, diligently, and in good faith, attempt to resolve the matter expeditiously. If the dispute cannot be resolved, then it shall be submitted to Dispute Resolution in accordance with Article XVI. In the event that the person or entity presiding over the last step in the Dispute Resolution process, whether by mediation, arbitration or litigation, determines that the Developer "substantially prevails" in the Dispute Resolution, then the Developer shall be entitled to recover its damages relating to any delay in acceptance by the City, together with its reasonable attorneys' fees and costs.

4.3.8 Verification of Actual Costs. The Developer shall deliver to the City at least thirty (30) days prior to the Leasing Dates an accounting of Actual Costs associated with the segment of the Public Plaza being transferred, in a form determined by the Developer in accordance with its standard cost accounting practices. The City shall have fourteen (14) days after receipt of the accounting to approve, deny or request modification of the accounting or the accounting shall be conclusively deemed approved. In the event of administrative denial or request for modification, the City shall specify the basis for the decision and the Parties shall timely, diligently, and in good faith, attempt to resolve the matter expeditiously. The accounting

verification by the City shall not delay the Leasing Dates or payment of the Lease Transfer Amount. In the event that on the Leasing Date there is yet unresolved any issues relating to Actual Costs, then the City shall pay to the Developer the Lease Transfer Amount, less the amounts unresolved, which shall be placed in an interest bearing escrow set aside account with the Escrow Holder. The amount in dispute shall then be submitted to Dispute Resolution in accordance with Article XVI; provided, however, that in the event that the person or entity presiding over the last step in the Dispute Resolution process, whether by mediation, arbitration or litigation, determines the Developer "substantially prevails" in the accounting dispute, the Developer shall be entitled to immediate disbursement of the escrow set aside, all interest accruing therein, and shall be entitled to recover its reasonable attorneys' fees and costs associated therewith.

4.4 Transfer of Public Plaza and Other Property Interests. On the Leasing Dates described in Section 4.5 below, and upon the payment of the applicable Lease Transfer Amount defined in Section 4.6 below and the delivery of all items to be delivered by the City under Section 4.7 of this Agreement, the Developer agrees to transfer or cause the transfer to the City, or its designee including any Trustee designated by the City, all of Developer's right, title and interest in and to the segment of the Public Plaza being transferred and all of its right, title and interest as landlord under the Leases on the applicable Leasing Date pursuant to a lease purchase agreement executed by and among the Developer as initial landlord, Trustee as successor landlord, and the City as tenant in accordance with the provisions of Chapter 35.42 RCW ("Public Plaza Leases") and this Agreement; provided, however, that the Developer shall have the right, and shall, reserve a perpetual non-exclusive easement and other rights for the benefit of the Property, the Developer, its successors and assigns, and those claiming rights by and through the Developer, its successors and assigns, over, under, through and across the Public Plaza for use, access, ingress, egress, utilities, maintenance, repair and improvement of the Public Plaza and the Property consistent with standards customarily associated with a plaza in a regional open-air shopping center as specified in **Exhibit D** ("Public Plaza Property Interests"). The Public Plaza Lease shall specifically provide that the City shall pay all Closing costs and expenses, including but not limited to, any real estate excise tax, title insurance, escrow and recording fees, associated with the City's subsequent exercise of its right to purchase the Public Plaza Property Interests. The Developer shall have no obligation to pay any Closing costs or expenses associated with the subsequent transaction.

4.5 Leasing Dates. The closing of the transfer of the Public Plaza Property Interests described in Section 4.4 above to the City or its designee including any Trustee ("Closing"), and delivery of all items to be delivered on the Leasing Date under the terms of this Agreement shall be made at the offices of Transnation Title Insurance Company, d/b/a LandAmerica Commercial Services, Seattle Offices, or other nationally recognized title insurance company selected by the Developer and not unreasonably objected to by the City ("Escrow Holder") which shall act as the escrow agent and issue the title insurance policies to be delivered in connection with the Closing. The transfer of the Public Plaza Property Interests shall occur in two separate transfer transactions, one in connection with transfer of the Public Plaza Improvements within the Lower Mall ("Lower Mall Public Plaza Improvements"), and one in connection with transfer of the Public Plaza Improvements within the Upper Mall ("Upper Mall Public Plaza Improvements").

4.5.1 Leasing Date – Lower Mall Public Plaza Property Interests. Closing of the transfer of the Lower Public Plaza Property Interests shall occur on any business day designated the Developer, which business day shall be no earlier than sixty (60) days after Substantial Completion of the Lower Mall Public Plaza Improvements and issuance of a building permit for a building in the Upper Mall. The business day chosen by the Developer shall be known as the Leasing Date. Such date may be extended by the Developer if additional time is needed to satisfy conditions to Closing.

4.5.2 Leasing Date – Upper Mall Public Plaza Property Interests. Subject to the provisions of Section 4.8.1, Closing of the transfer of the Upper Mall Public Plaza Property Interests shall occur on any business day designated by the Developer, which business day shall be no earlier than sixty (60) days after Substantial Completion of the Upper Mall Public Plaza Improvements. The business day chosen by the Developer shall be known as the Leasing Date. Such date may be extended by the Developer if additional time is needed to satisfy conditions to Closing. The Developer will give the City at least two (2) months prior written notice of the anticipated date of Substantial Completion of the Upper Mall Public Plaza Improvements and the proposed Leasing Date in order to allow the City sufficient time to arrange financing for the Lease Transfer Amount.

4.6 Lease Transfer Amount. The consideration to be paid for the transfer of the Public Plaza Property Interests to the City or its designee is referred to in this Agreement as the “Lease Transfer Amount.” Since substantial time is expected to have elapsed from the date of this Agreement until the Leasing Date, the parties recognize and agree that (a) the value of the Public Plaza Property Interests will increase between the date of this Agreement and the Leasing Date, (b) the time value of money should be recognized, (c) the exact date of the Leasing Date is not known at this time, and (e) it is in the best interests of both the Developer and the City to establish the parameters for determining the Lease Transfer Amount in advance in order to avoid future controversies. Accordingly, the Lease Transfer Amount shall be an amount equal to the sum of (i) thirty dollars (\$30.00) per square foot for all land included in the Public Plaza; and (ii) the Actual Costs of the Public Plaza Improvements (including, but not limited to, that portion of the Actual Costs of the Public Plaza Improvements associated with City modifications as set forth in Section 4.2, but not credited toward the City Financial Participation). As set forth in Section 4.5, transfer of the Public Plaza Property Interests shall occur in two separate transfer transactions involving the Lower Mall Public Plaza Property Interests and the Upper Mall Public Plaza Property Interests. Except as provided in Section 4.6.1 for a potential escrow holdback account, the Lease Transfer Amount shall be paid on the Leasing Date for the Lower Public Plaza Property Interests, and the balance of the Lease Transfer Amount shall be paid on the Leasing Date for the Upper Public Plaza Property Interests as follows:

4.6.1 Lease Transfer Amount – Lower Mall Public Plaza Property Interests. On the Leasing Date for the Lower Mall Public Plaza Property Interests designated by the Developer in accordance with Section 4.5.1, the City shall pay to the Developer thirty dollars (\$30.00) per square foot for all land included in the Lower Mall Public Plaza. Upon the Leasing Date for the Lower Mall Public Plaza Property Interest, the City also shall pay to the Developer a sum equal to one hundred percent (100%) of the Actual Costs of the Lower Mall Public Plaza Improvements; provided, however, that in the event the Developer has less than one hundred sixty thousand square feet (160,000 sq. ft.) of the Lower Mall leased and occupied prior to the

Leasing Date, then the City shall pay the Developer seventy-five percent (75%) of the Actual Costs of the Lower Mall Public Plaza Improvements (with the remaining twenty-five percent (25%) of Actual Costs of the Lower Mall Public Plaza Improvements set aside in an interest bearing escrow holdback account with the Escrow Holder for payment to the Developer on the Leasing Date for the Upper Mall Public Plaza Property Interests). Interest accruing on any escrow holdback account shall be for the benefit of the Developer and disbursed in conjunction with Closing of the Upper Mall Public Plaza Property Interests.

4.6.2 Lease Transfer Amount – Upper Mall Public Plaza Property Interests. On the Leasing Date for the Upper Mall Public Plaza Property Interests, the City shall pay to the Developer the entire balance of the Lease Transfer Amount.

4.7 Title to Public Plaza Property Interests. The Developer shall convey title to the Public Plaza to the City or its designee, including any Trustee, on the two Leasing Dates described in Section 4.5 above by executing and delivering the Public Plaza Lease or other form of conveyance which meets the requirements of this Agreement subject to (i) utility and other easements not inconsistent with the use of the Public Plaza for its intended purposes, (ii) all agreements, reservations, covenants, conditions and restrictions of record or which may be imposed on the Public Plaza during the course of construction as a result of permits or other conditions imposed by any governmental authority as a condition to issuing a use permit, building permit or any other license or approval, (iii) any zoning, building, development, land use, health, or other governmental regulations or restrictions contained within statutes, ordinances, laws or regulations applicable to the Public Plaza or general to the area; (iv) the reservation of rights in favor of the Developer and the Property specified in Section 4.11, and the use covenants and restrictions specified in Section 4.12, in the form attached hereto as **Exhibit D**; (v) General Exclusions contained within the title insurance policy to be issued and other matters of record that do not materially impact the use or marketability of the property being transferred; (vi) the Public Plaza Lease and this Agreement; and (vii) any liens, encumbrances, or defects created or incurred by the City after the date of this Agreement (collectively, "Permitted Exceptions"). The Developer shall cause any project lender holding a mortgage or deed of trust on the Property to execute and record a partial reconveyance of such mortgage or deed of trust as to the Public Plaza as of the Leasing Date. The Developer shall cause the Escrow Holder to deliver an irrevocable commitment for an ALTA form standard coverage owner's policy of title insurance with liability in the amount of that portion of the Lease Transfer Amount attributed to the Public Plaza purchase, insuring that upon the Leasing Date the Public Plaza will be vested in City or its designee, including any Trustee, subject only to the Permitted Exceptions, which title insurance policy shall, at the request of the City and at its sole cost and expense, contain an endorsement providing affirmative coverage against construction liens. Assignment of the Public Plaza Lease from the Developer to the Trustee, if applicable, shall be "without recourse" to the Developer, and the City shall agree to forever waive, discharge, and indemnify (including reasonable attorneys' fees and costs) the Developer from any and all claims, demands, liabilities, or causes of action arising out of, or relating to, the Public Plaza Lease after the Leasing Date. The Trust Agreement shall require the Trustee to state in any Certificates of Participation issued or executed by the Trustee that such certificates are issued or executed without recourse to the Developer.

4.8 Payment and Financing of Lease Transfer Amount.

4.8.1 Conditions of Payment. The City's obligations to pay the Lease Transfer Amount on the Leasing Date for the Lower Mall Public Plaza Property Interests and deliver the documents described in Section 4.9 are expressly conditioned on the Developer having obtained a building permit for a building in the Upper Mall. The City's obligations to pay the Lease Transfer Amount on the Leasing Date for the Upper Mall Public Plaza Property Interests and deliver the documents described in Section 4.9 are expressly conditioned on the Developer having 90,000 sq. ft. of the Upper Mall occupied, plus 60,000 sq. ft. of additional space in the Upper Mall under lease. In the event that on the Leasing Date for the Upper Mall Public Plaza Property Interests the conditions set forth in Section 4.8.1, as applicable to the transaction, have not been satisfied, then the Leasing Date shall be extended to a date which is seven (7) days after the satisfaction of this condition.

4.8.2 Obligation to Make Payment. The City's obligation to provide for payment of the Lease Transfer Amount on the Leasing Dates is not conditioned on the execution and delivery of Certificates of Participation or other tax exempt or taxable obligations regardless of interest rate, and in the event the City is unable to issue Certificates of Participation or is unable or elects not to issue other tax exempt obligations, the City shall nevertheless be obligated to pay, or cause to be paid to the Developer, the Lease Transfer Amount in cash or other immediately available funds on the Leasing Dates.

4.8.3 Tax Exempt Obligations. Not later than the Leasing Dates, the City intends to finance its acquisition of the Public Plaza Property Interests by causing the execution and delivery of tax exempt Certificates of Participation or the issuance of other tax exempt obligations in an amount sufficient to cause the payment to the Developer of the full Lease Transfer Amount. The City represents and warrants to the Developer that as of the effective date of this Agreement it has sufficient debt capacity under existing Washington law ("Debt Capacity") to permit the principal component of the Certificates of Participation or other obligations to equal the Lease Transfer Amount. The City agrees that it will not incur any indebtedness or lease obligations from and after the date of this Agreement which would cause it not to have sufficient Debt Capacity under Washington law to permit the principal component of the Certificates of Participation or other obligations to at least equal the Lease Transfer Amount the City has represented to the Developer that it intends to pay, or cause to be paid, the Lease Transfer Amount to the Developer in connection with the acquisition or transfer of the Public Plaza Property Interests on the Leasing Dates with the proceeds from the sale of Certificates of Participation in the Lease, and the Developer has relied on this representation in entering into this Agreement. In the event the City is unable to cause the execution and delivery of Certificates of Participation or the issuance of other obligations to finance the acquisition of the Public Plaza Property Interests, the City shall nevertheless be obligated to pay the Lease Transfer Amount on the Leasing Dates as provided in Section 4.6 of this Agreement. The City shall pay, or cause the payment of, any and all financing or other costs in connection with the issuance of the Certificates of Participation or other obligations.

4.8.4 Alternative Conveyance. In the event the City, consistent with its obligations under this Agreement, does not lease the Public Plaza through a lease purchase agreement or does not cause the execution and delivery of the Certificates of Participation, the

parties understand that all references to the Public Plaza Lease and the Certificates of Participation shall have no further force and effect and the Developer shall convey the Public Plaza Property Interests to the City pursuant to a special warranty deed which meets the requirements of this Agreement and the City shall pay the Developer the Lease Transfer Amount in cash or other immediately available funds on the Leasing Dates.

4.9 Closing. On or before the Leasing Dates, the Parties shall deposit with the Escrow Holder the following:

4.9.1 Delivery by the Developer. The Developer shall deliver, on each of the Leasing Dates, and as applicable to the contemplated transaction, the following documents:

(a) The applicable Public Plaza Lease, Memorandum of Lease for recording, and a special warranty deed to the land and fixture improvements constituting that portion of the Public Plaza being transferred, which meets the requirements of this Agreement, executed in recordable form and ready for recording on the Leasing Date, together with an executed real estate excise tax affidavit prepared by the Escrow Holder. In the event of a lease arrangement, only the Memorandum of Lease shall be recorded by the Escrow Holder. The special warranty deed shall be delivered to the City or the City's designee, as instructed by the City.

(b) The Declaration of Easements, Covenants, Conditions and Restrictions, containing the items set forth in **Exhibit D** to this Agreement, executed in recordable form and ready for recording on the Leasing Date.

(c) Evidence reasonably satisfactory to the City that the segment of the Public Plaza being transferred is free and clear of all liens arising by or through the actions of the Developer, its contractors, subcontractors or their respective agents and employees, other than Permitted Exceptions; provided, however, that if the title insurance policy to be issued in conjunction with Closing of the segment of the Public Plaza being transferred contains an endorsement protecting against said liens, then no further evidence shall be required.

(d) Certification that the Developer is not a 'foreign person' within the meaning of the Foreign Investment In Real Property Tax Act.

(e) Evidence reasonably satisfactory to City that the conditions precedent set forth in Section 4.8.1, as applicable, have been satisfied prior to transfer of the Lower Mall Public Plaza Property Interests or the Upper Mall Public Plaza Property Interests.

(f) Evidence that all original warranties which the Developer has received in connection with the construction of the Public Plaza (to the extent assignable and to the extent such warranties have not expired in accordance with their terms), together with a duly executed assignment of warranties in a form reasonably satisfactory to the City or its designee, as applicable, have been delivered and assigned, as applicable.

(g) Any partial reconveyance documents required to eliminate of record any existing mortgages or deeds of trust which are not Permitted Exceptions as hereinabove defined and, if applicable, any affidavit required in conjunction with the title

company endorsement providing affirmative coverage against construction liens and the rights of parties in possession.

(h) A copy of the "as built" plans and specifications for the segment of the Public Plaza being transferred.

(i) An irrevocable commitment from the Title Company to issue the City or its designee an ALTA owner's standard coverage title insurance policy in form and substance reasonably satisfactory to the City showing fee simple title to the segment of the Public Plaza being transferred vested in the City or its designee, including the Trustee if the City issues Certificates of Participation, subject only to the Permitted Exceptions, which title insurance policy, upon request of the City at its sole cost and expense, shall contain an endorsement providing affirmative coverage against construction liens. At the request of the City, all or any portion of the owner's policy of title insurance shall be reinsured under reinsurance agreements and with reinsurers reasonably satisfactory to City, and the cost of such reinsurance, if any, shall be paid by the City.

(j) In the event the Developer has transferred all or any portion of its interest under this Agreement, either voluntarily or involuntarily, an assumption agreement satisfactory in form and substance to the City under which such transferee shall assume such rights, duties and obligations under this Agreement as the Developer may have assigned, transferred, or delegated to such transferee.

(k) Such resolutions, certificates or other documents as shall be reasonably required by the Escrow Holder in connection with Closing the City's acquisition of the segment of the Public Plaza being transferred.

(l) Any other documents, instruments, data, records or other agreements called for herein which have not been previously delivered.

4.9.2 Delivery by the City. The City shall deliver, or cause to be delivered, on each of the Leasing Dates, and as applicable to the contemplated transaction, the following documents:

(a) The applicable Lease Transfer Amount, in cash or other immediately available funds, for the segment of the Public Plaza being transferred.

(b) The Public Plaza Lease and Memorandum of Lease, together with the real estate excise tax affidavit prepared by the Escrow Holder, duly executed and acknowledged by the City and Trustee.

(c) Copies of any Trust Agreement or other documentation executed by Trustee or others necessary to cause the execution and delivery of the Certificates of Participation and the Public Plaza Lease by the Trustee or the City's designee on or before the Leasing Date.

(d) Such ordinances, authorizations, certificates or other documents or agreements relating to the City, or the City's designee or Trustee, as shall be reasonably required

by the Escrow Holder in connection with closing the City's acquisition of the Public Plaza segment being transferred.

(e) Any other documents, instruments, data, records, or other agreements called for herein which have not been previously delivered.

4.9.3 Other Instruments. The Developer, the City, and the City's designee or Trustee, if applicable, shall each deposit such other instruments as may be reasonably required by Escrow Holder or as may be otherwise required to close the escrow and consummate the acquisition of the Public Plaza Property Interests in accordance with the terms hereof.

4.9.4 Prorations. All ownership, use, operation and maintenance expenses associated with the Public Plaza, including, but not limited to, real and personal property taxes, special and other assessments, annual permits and/or inspection fees (calculated on the basis of the respective periods covered thereby), and other expenses shall be prorated as of 12:01 a.m. on the Leasing Date so that the Developer bears all expenses of the transferred segment of the Public Plaza prior to the Leasing Date and City bears all expenses of the transferred segment of the Public Plaza on and after the Leasing Date. Under current Washington law, the City is exempt from payment of certain real and personal property taxes. In the event the City is exempt from payment of certain real and personal property taxes under Washington law on the Leasing Date, the City shall not be responsible for payment of the same on and after the Leasing Date. The Developer may seek reimbursement from the taxing authorities to whom the Developer may have paid any such real or personal property tax that is allocable to any period of time after the Leasing Date and the City shall cooperate with and make all reasonable efforts to assist the Developer in securing such reimbursement. If any revenue or expense amount cannot be ascertained with certainty as of the Leasing Date, it shall be prorated on the basis of the parties' reasonable estimates of such amounts, and shall be the subject of a final proration sixty (60) days after Closing or as soon thereafter as the precise amounts can be ascertained. Either Party owing the other Party a sum of money based on adjustments made to the prorations after the Leasing Date shall promptly pay that sum together with interest thereon at the rate of nine percent (9%) per annum from the date of demand therefor to the date of payment if payment is not made within thirty (30) days after the delivery of a statement therefor.

4.9.5 Closing Costs and Expenses. The City shall pay all costs and expenses associated with (1) any real estate excise tax associated with the Public Plaza Lease or other transfer of the Public Plaza Property Interests; (2) any extended title insurance policy or any requested reinsurance or endorsements (and survey or other costs associated therewith); and (3) execution and delivery of the Certificates of Participation or other City obligations incurred to finance the acquisition or transfer of the Public Plaza Property Interests pursuant to the City's financial arrangements. The Developer shall pay the cost and expense associated with the City's ALTA owner's standard coverage title insurance policy. The Developer and the City shall each pay one-half (1/2) of the standard costs and expenses associated with escrow and recording fees. In the event that Closing involves a Public Plaza Lease, the Parties understand and agree that the Developer shall not be obligated to pay any Closing or other costs and expenses associated with a subsequent transaction whereby the City exercises its right to purchase the Public Plaza Property Interests. In the event that the Actual Costs for the combined Public Plaza Improvements and 120th Avenue NE Improvements is less than \$7,300,000.00 (excluding land

value and the costs of any changes or additions requested by the City pursuant to Section 4.2 or Section 6.2), then the City shall receive credit toward the City's Financial Participation for all, or a portion of, the real estate excise tax paid in an amount up to, but not to exceed, the differential between the Actual Costs of these improvements as described above and \$7,300,000.00.

4.9.6 Close of Escrow; Recording. On the Leasing Dates, the Escrow Holder shall disburse the Lease Transfer Amount to the Developer and shall record the documents described in Sections 4.9.1(a), (g) and (j), as applicable, and 4.9.2(b) and (e), as applicable, in the real property records of King County, Washington, and deliver the other documents described in Sections 4.9.1, 4.9.2 and 4.9.3. The Escrow Holder shall deliver copies of all documents executed, delivered and/or recorded in connection with this transaction to the Developer, any project lender(s), the City, the City's designee or Trustee, if any, as applicable, together with closing statements in form customarily prepared by Escrow Holder within five (5) days following the Leasing Date.

4.10 Maintenance of the Public Plaza.

4.10.1 Maintenance by Developer. For a period of twenty-five (25) years from the Leasing Date of the Lower Mall Public Plaza Property Interests, the Developer shall, at its sole cost and expense, maintain the Public Plaza, except for the public streets and roadways therein as defined in Section 4.10.2, at the standards observed by owners of first-class urban regional open-air shopping malls for plazas within such facilities. All sidewalks, walkways, and other pedestrian surfaces shall be kept and maintained in a good, safe and clean condition. Snow, ice, surface water, debris, filth, and refuse shall be removed as soon as reasonably practicable. Street lights shall be promptly replaced when necessary. Routine maintenance and replacement shall be provided to all furnishings including benches, garbage receptacles, landscaping containers, fountains and artwork. Grass shall be periodically mowed. All areas shall be kept clean and free from graffiti, and any graffiti shall be removed and the surface restored to its condition prior to the application of the graffiti as part of routine maintenance. All landscaping shall be maintained, irrigated, and replaced, irrigation systems shall be kept in good repair and plantings shall be maintained. The maintenance responsibility of the Developer is limited to routine maintenance. In the event that the Developer conducts any public events on the Public Plaza, the Developer shall be responsible, at its sole cost and expense, for all maintenance and repairs, consistent with the requirements of this Section, associated therewith. In the event that the Developer obtains a Commercial General Liability insurance policy covering the Public Plaza, the Developer shall name the City as an "additional insured" to the extent of claims arising out of, or relating to, the Public Plaza maintenance obligations of the Developer.

4.10.2 Maintenance by City. The City shall maintain all public streets and roadways within the Public Plaza in accordance with its applicable standards for maintaining City streets and roadways in retail and commercial areas of the City. For purposes of this Section, the term "streets and roadways" shall mean all traffic and directional signalization and signage and the surface of and facilities beneath the pavement or traveling surface for motor vehicles, from curb to curb (including the curbs), and shall not include median areas. The City shall be solely responsible for all costs and expenses associated with maintenance of the public streets and roadways, and all non-routine costs of repairs, replacements and improvements to the

Public Plaza. In the event that the City authorizes, approves or conducts any public events on the Public Plaza, the City shall be responsible, at its sole cost and expense, for all maintenance and repairs, consistent with the requirements of this Section associated therewith.

4.11 Maintenance Dispute Resolution. In the event that either Party concludes that the other Party has failed to maintain, repair, replace or improve the Public Plaza in accordance with this Agreement, then the matter shall be submitted for resolution consistent with the Dispute Resolution provisions of Article XVI.

4.12 Use of Public Plaza. Consistent with acquisition as a public space, the City and the general public shall have use of the Public Plaza, subject to reasonable easements, use covenants, conditions and restrictions set forth in **Exhibit D** attached hereto. The Public Plaza will remain public property, available for the exercise of free speech rights of citizens. The City reserves the right to sponsor up to twelve (12) events on the Public Plaza each year, and the Developer reserves the right to sponsor up to twelve (12) events on the Public Plaza each year. Unless otherwise mutually agreed between the City and the Developer, no more than twenty-four (24) events will be held annually on the Public Plaza and no more than one event shall be held on any given day. Notwithstanding anything to the contrary, sidewalk sales, signage, displays and similar activities by the Developer, or its tenants, adjacent to retail spaces adjoining the Public Plaza and consistent with **Exhibit D** shall be permitted without regard to Chapters 19.24 and 19.04 KMC, and shall not be deemed events for purposes of this Section 4.12. City sponsored events shall conform generally to the requirements of Chapter 19.24 KMC, as may be amended, replaced or modified from time-to-time. However, the Developer sponsored events shall not be required to comply with the provisions of Chapter 19.24 KMC, as may be amended, replaced or modified from time-to-time. The City and the Developer shall each designate one representative from time-to-time to serve as the Party's liaison with regard to matters involving the Public Plaza. These liaisons shall meet as deemed necessary to address any issues associated with the Public Plaza, including, but not limited to, maintenance and coordination of events on the Public Plaza consistent with this Agreement. Event scheduling shall require the written concurrence of each Party's liaison to avoid any potential conflicts. Prior to the end of a calendar year, the liaisons shall endeavor to prepare a preliminary schedule of events for the next calendar year. As a general policy, events on the Public Plaza should be scheduled at least one hundred twenty (120) days before the event. The Developer shall have priority for scheduling events during November and December, and the City shall have priority for scheduling events during July and August. Any disputes between the Parties with regard to use of the Public Plaza shall be submitted for resolution consistent with the Dispute Resolution provisions of Article XVI.

4.13 Transfer of Public Plaza Property Interests. The Parties understand and agree that the Public Plaza is strategically located within the Mall, and, even though it will be owned, operated, and used as a public amenity, the Developer has an interest in ensuring that future use is consistent with this Agreement for as long as the Property is used as a shopping mall. The City, or any Trustee designated by the City, shall not convey, lease or otherwise transfer the Public Plaza Property Interests, in whole or in part, whether voluntarily or involuntarily, to any person, entity or municipality other than (1) a governmental entity or municipality for public plaza purposes consistent with this Agreement; or (2) the Developer, or its successors or assigns; or (3) to any other person or entity, subject to the prior written consent of the Developer, or its successors or assigns, which consent may be granted or withheld at the sole discretion of the

Developer, or its successors or assigns (collectively, the "Permitted Transferees"). The City shall ensure that any subsequent conveyance, lease or other transfer of the Public Plaza Property Interests, in whole or in part, require the assumption by the Permitted Transferee of all obligations of the City under this Agreement. The Developer shall have the right to impose upon the Public Plaza property Interests, when transferred to the Trustee or the City, a deed restriction that restricts use of the Public Plaza to public plaza and roadway purposes consistent with this Agreement for as long as the Property is used as a shopping mall, and that limits conveyance to the persons, entities or municipalities described in this Section 4.13.

ARTICLE V PARKING GARAGE

5.1 Preparation of Parking Garage Plans and Specifications and Approvals Associated with the Parking Garage.

5.1.1 Parking Garage Plans and Specifications. The Project Plan includes a Parking Garage to be built by the Developer in the Upper Mall, which is currently anticipated to include six (6) stories of parking with approximately one thousand nine hundred (1,900) parking spaces. The Parking Garage shall be designed to standards for vehicular access and circulation, lighting, safety, ease of maintenance, energy efficiency and attractiveness that are consistent with standards for similarly situated parking garages associated with regional open-air shopping centers in the Pacific Northwest. The Developer shall prepare plans and specifications for the Parking Garage in accordance with this Agreement ("Parking Garage Plans and Specifications").

5.1.2 Administrative Approval of Parking Garage Plans and Specifications. The Developer shall use reasonable efforts to coordinate input from the City, and provide an opportunity for the City to review and comment on the proposed Parking Garage Plans and Specifications prior to formal submission for administrative approval. The Developer shall submit the proposed Parking Garage Plans and Specifications to the City for administrative review and approval by the City Planning Director. The administrative review shall be for the purpose of determining if the Parking Garage will function appropriately for the City's public parking needs and will be consistent with this Agreement; provided, however, that City administrative approval of the Parking Garage Plans and Specifications shall not be construed to subject the City to any liability to the Developer or any third party for defects in design. The City Planning Director shall issue his administrative decision approving, denying or requesting modification to the Parking Garage Plans and Specifications within twenty-one (21) days after submission or the Parking Garage Plans and Specifications shall be conclusively deemed approved. In the event of administrative denial or request for modification, the City Planning Director shall specify the basis for the decision and the Parties shall timely, diligently, and in good faith, attempt to resolve the matter expeditiously. The Developer and the City must approve the Parking Garage Plans and Specifications and, in the event of a dispute, the Dispute Resolution procedures set forth in Article XVI shall apply.

5.2 Parking Garage Construction.

5.2.1 Responsibilities of the Developer. Subject to the terms of this Agreement, the Developer shall design, finance and construct the Parking Garage at its sole cost and expense,

including any loans that the Developer may deem necessary to carry out construction. Construction of the Parking Garage shall be carried out by the Developer as part of a single work, construction and improvement comprising the Project, including both private portions (approximately 90% of the Parking Garage and 95% of the Project overall) and the City Garage Unit (approximately 10% of the Parking Garage and 5% of the Project overall) to be leased or otherwise acquired by the City. No part of the cost of construction of the Parking Garage shall ever become an obligation of the City. The City shall not be liable for any work performed or to be performed on the Parking Garage for the Developer or for any materials, supplies or equipment furnished or to be furnished to the Developer, and no construction or other liens for such labor, services, materials, supplies or equipment shall attach to any property owned by the City. The Developer will use its reasonable best efforts to cause to be included in the general contractor construction contract(s), and shall post on the Property, a notice that the City is not liable for the payment of any costs associated with the construction of the Parking Garage.

5.2.2 Compliance with Laws. The Parking Garage shall be built in compliance with all applicable building code and other laws, rules and regulations, including but not limited to the applicable provisions of Title III of the Americans With Disabilities Act and the regulations issued thereunder by the United States Department of Justice concerning accessibility of places of public accommodation. The Parties recognize, however, that because the City Garage Unit is being leased to the City pursuant to Chapter 35.42 RCW, construction of the City Garage Unit is not a "public work" or otherwise subject to competitive or public bidding or payment of prevailing wages requirements, and that because the City Garage Unit constitutes less than 50% of the Project, these improvements are not subject to prevailing wage requirements. Accordingly, the Developer shall not be deemed in breach of this Agreement based upon non-compliance with any laws, rules or regulations relating thereto.

5.2.3 Permits. The Developer shall obtain all permits and authorizations from any federal, state or local government or departments or subdivisions thereof having jurisdiction in order to permit construction of the Parking Garage. The City will process applications for permits and approvals as if such applications were made without any City participation in such project.

5.2.4 Construction Warranty. The Developer's general contractor, pursuant to the construction contract(s) for the Parking Garage, or the Developer, at the option of the Developer, shall for one (1) year after Substantial Completion of the Parking Garage by the Developer, correct and repair any material defects appearing or developing in the workmanship or materials furnished in respect to the Parking Garage. If the Developer transfers the City Garage Unit to the City within the one (1) year period, and the Developer's general contractor is responsible for the one (1) year warranty, the Developer shall provide an assignment of the warranty with respect to the City Garage Unit in a form reasonably satisfactory to the City for the remainder of the one (1) year period.

5.2.5 Construction Observation and Inspections. Unless otherwise mutually agreed, in the event that the City wishes to inspect or conduct a site visit, the City shall contact the Developer, or its designee(s), to arrange a mutually convenient time that will not unreasonably disrupt or interfere with on-going work on the Parking Garage. The City shall have no other authority to supervise, oversee, or otherwise direct the design or the construction

of the Parking Garage. It is understood and agreed that any inspection of the Parking Garage by the City prior to the Leasing Date is for the sole purpose of protecting the City's interest as tenant under the Parking Garage Lease on or after the Leasing Date.

5.2.6 Substantial Completion of Parking Garage. The Developer shall provide written certification of Substantial Completion of the Parking Garage to the City. The City shall have fourteen (14) days after receipt of the certification to notify the Developer in writing that it approves issuance, or refuses to approve issuance, of a certificate of occupancy for the Parking Garage or the Parking Garage shall be conclusively deemed to have received a certificate of occupancy. In the event of administrative refusal to issue a certificate of occupancy for the Parking Garage, the City shall specify the basis for the decision and the Parties shall timely, diligently, and in good faith, attempt to resolve the matter expeditiously. If the dispute cannot be resolved, then it shall be submitted to Dispute Resolution in accordance with Article XVI. In the event that the person or entity presiding over the last step in the Dispute Resolution process, whether by mediation, arbitration or litigation, determines that the Developer "substantially prevails" in the Dispute Resolution, then the Developer shall be entitled to recover its damages relating to any delay in issuance of a temporary certificate of occupancy or certificate of use, together with its reasonable attorneys' fees and costs.

5.2.7 Verification of Actual Costs. The Developer shall deliver to the City at least thirty (30) days prior to the Leasing Date an accounting of Actual Costs associated with the Parking Garage, in a form determined by the Developer in accordance with its standard cost accounting practices. The City shall have fourteen (14) days after receipt of the accounting to approve, deny or request modification of the accounting or the accounting shall be conclusively deemed approved. In the event of City denial or request for modification, the City shall specify the basis for the decision and the Parties shall timely, diligently, and in good faith, attempt to resolve the matter expeditiously. The accounting verification by the City shall not delay the Leasing Date or payment of the Lease Transfer Amount. In the event that on the Leasing Date there is yet unresolved any issues relating to Actual Costs, then the City shall pay to the Developer the Lease Transfer Amount, less the amounts unresolved, which shall be placed in an interest bearing escrow set aside account with the Escrow Holder. The amount in dispute shall then be submitted to Dispute Resolution in accordance with Article XVI; provided, however, that in the event that the person or entity presiding over the last step in the Dispute Resolution process, whether by mediation, arbitration or litigation, determines that the Developer "substantially prevails" in the accounting dispute, the Developer shall be entitled to immediate disbursement of the escrow set aside, interest accrued therein, and shall be entitled to recover its reasonable attorneys' fees and costs associated therewith.

5.3 Parking Garage Condominium. Prior to, or upon Substantial Completion of the Parking Garage, the Developer shall cause the Parking Garage to be divided into two (2) or more condominium units, including the City Garage Unit. The form of the Declaration shall be mutually acceptable to the City and the Developer. The Declaration shall include all statutory requirements for creation of a Condominium under Washington law, Chapter 64.34 RCW. The Survey Map and Plans shall include, among other required elements, identification of the boundaries of each condominium unit, the common elements and the limited common elements assigned to each condominium unit. The Declaration shall contain all elements required by Washington law, including, but not limited to, the following: (1) such easements, covenants,

rights, restrictions, and other provisions as are customarily associated with a parking structure condominium including, but not limited to cross-easements for access, maintenance and structural support (including, but not limited to, cross-easements, maintenance and structural support for structures anticipated for the site, such as the office building, but not included within the Parking Garage Condominium); (2) allocation of condominium unit interests and a formula for establishing weighted voting rights, requirements and allocations based upon percentage ownership interests in the Parking Garage Condominium; (3) allocation of shared maintenance, repair and improvement costs and expenses; (4) a dispute resolution process; (5) Association governance provisions; (6) insurance requirements and responsibilities; and (7) other rights and responsibilities typically included in a parking structure condominium. The Developer shall ensure that the owners of condominium units within the Parking Garage have a non-exclusive access easement over, through and across those portions of the Property and the Parking Garage that are necessary for ingress and egress to the Parking Garage for its intended purpose. The City Garage Unit shall not include any fee or other title to the land under the Parking Garage (exclusive of improvements). The location of the City Garage Unit shall be selected by the Developer, at its discretion, but shall be located on the second floor of the Parking Garage and shall be designed, constructed, equipped and maintained to the same standards and level of quality as the other Parking Garage condominium unit(s). Elevator and stair service to the floor containing the City Garage Unit shall be equivalent to such service to the other floors of the Parking Garage.

5.4 Operation of the Parking Garage Condominium. The Developer shall cause the Parking Garage to be subject to the Declaration (including Survey Map and Plans). Formation and operation of the Parking Garage Condominium shall be in accordance with the Declaration. The rights and duties of the board, the owners of condominium units and of the Association shall be governed by the provisions of the Declaration. The Association shall be governed by a board as specified in the Declaration, which board shall have the number of members, or range of possible members, designated therein; provided, however, that the board shall include one (1) representative of the City as owner of the City Garage Unit, and one (1) representative for each owner of a condominium unit subject to the Declaration. The voting rights of each board member shall be weighted based upon the respective percentage ownership interest of each condominium unit in the Parking Garage Condominium. However, City consent shall be required for any board decision resulting in (1) any Association expenditure for non-routine maintenance, repair or improvement to the Parking Garage that would require a contribution of the City in excess of \$50,000, unless such non-routine maintenance, repair or improvement is necessitated by any requirement imposed by the City or other governmental agency, emergency or threat to the structural integrity of the Parking Garage; (2) any Association decision that would prohibit access by the general public to the City Garage Unit during any portion of a twenty-four (24) hour day; provided, however, that consent shall not be required if the limitation on access is due to maintenance, repair or improvement of the Parking Garage; and (3) any Association decision that would require the City or the Association to charge a fee for public parking in the City Garage Unit. The board shall at all times act on behalf of the Association and shall specifically have the power and authority, but not the obligation, to delegate by contract its rights and obligations under the Declaration to the Developer, its successors or assigns, or to an experienced parking garage management entity. Additional use restrictions and/or limitations shall be contained within the Declaration. The Declaration shall provide that the Parking Garage shall be operated and open for public parking twenty-four (24)

hours per day, unless otherwise decided by the board. The Declaration shall also provide that all parking within the Parking Garage shall be free of periodic (hourly, daily, monthly, etc.) parking charges or fees, unless and until such time as the board of the Association determines that all, or a certain portion, of available parking within the Parking Garage shall be available for paid parking. In the event, however, that the board determines that all, or a portion of, the Parking Garage will be made available for paid parking, the City Garage Unit shall be included in any portion of the Parking Garage where paid parking is permitted, unless the City refuses to grant consent for paid parking within the City Garage Unit. In the event of paid parking, all net parking revenues, after deduction of operating costs and expenses, shall accrue to the benefit of the condominium owners permitting paid parking. Each condominium owner shall be entitled to that portion of net parking revenues attributable to the use of its condominium unit; provided, however, that if the entire Parking Garage is available for paid parking, then the Association shall have the right to collect and apportion net parking revenues to the condominium owners in accordance with their respective percentage ownership in the Parking Garage Condominium.

5.5 City Garage Unit. The floor space comprising the City Garage Unit shall be equal to a percentage of the overall floor space in the Parking Garage. The percentage of floor space within the City Garage Unit shall be approximately equal to the percentage of the Actual Costs of the Parking Garage represented by the Lease Transfer Amount. For illustration purposes only, if the Lease Transfer Amount equals ten percent (10%) of the Actual Costs of the Parking Garage, then the City Garage Unit will include ten percent (10%) of the overall floor space in the Parking Garage and approximately ten percent (10%) of the parking stalls. The percentage of parking stalls comprising the City Garage Unit that are for disabled persons and compact vehicles shall be approximately the same percentage as in the other Parking Garage condominium unit(s). The City Garage Unit shall constitute a separate and distinct project from the private segments of the Project and from the Public Plaza and the 120th Avenue NE Improvements.

5.6 Transfer of City Garage Unit Property Interests. Except as may be otherwise provided in this Agreement, the Developer agrees to lease to the City and the City agrees to lease from the Developer the City Garage Unit on the Leasing Date pursuant to a twenty-five (25) year lease, in the form attached hereto as **Exhibit F**, executed by and among the Developer as the initial landlord, the Trustee as successor landlord, and the City as tenant, in accordance with the provisions of Chapter 35.42.010-.090 RCW ("City Garage Unit Lease"). On the Leasing Date described in Section 5.7, and upon payment of the Lease Transfer Amount defined in Section 5.8 and delivery of all items to be delivered by the City under Section 5.11, the Developer agrees to transfer or cause the transfer to the City, or its designee including any Trustee designated by the City, all of Developer's right, title and interest in and to the City Garage Unit, and any non-exclusive access easement(s) over, through and across those portions of the Property and the Parking Garage that are necessary for ingress and egress to the Parking Garage for its intended purpose, and all of its right, title and interest as landlord pursuant to the City Garage Unit Lease (collectively, the "City Garage Unit Property Interests"). The City Garage Unit Lease shall provide for rental payments in such amounts as shall be mutually acceptable to the Developer, the Trustee as the successor landlord under the City Garage Unit Lease, and the City as tenant, all acting reasonably. The City Garage Unit Lease shall also provide the City, as tenant, with an option to purchase the City Garage Unit and shall provide that all rental payments or other sums paid as rent up to the time of exercising the option shall be credited against the purchase price as

of the date of purchase. The City Garage Unit Lease shall not provide, nor shall it be construed to provide, that the City shall be under any obligation to purchase the Parking Garage Unit (although such provision shall not be construed to imply that the City is not obligated to provide for the payment of the Lease Transfer Amount as set forth in this Agreement). The City Garage Unit Lease shall specifically provide that the City shall pay all Closing costs and expenses, including but not limited to, any real estate excise tax, title insurance, escrow and recording fees, associated with the City's subsequent exercise of its right to purchase the City Garage Unit Property Interests. The Developer shall have no obligation to pay any Closing costs or expenses associated with the subsequent transaction.

5.7 Leasing Date. Subject to the provisions of Section 5.10.1, the closing of the transfer of the City Garage Unit Property Interests to the City, or its designee including any Trustee ("Closing"), and delivery of all items to be made on the Leasing Date under the terms of this Agreement shall be made at the offices of Transnation Title Insurance Company, d/b/a LandAmerica Commercial Services, Seattle Office, or other nationally recognized title insurance company selected by the Developer and not objected to by City ("Escrow Holder") which shall act as the escrow agent and issue the title insurance policies to be delivered in connection with the Closing on any business day designated the Developer, which business day shall be no earlier than sixty (60) days after Substantial Completion of the Parking Garage; provided, however, that the Leasing Date shall be the same date as the Leasing Date for the Upper Mall Property Interests as set forth in Section 4.5.2. The business day chosen by the Developer shall be known as the Leasing Date. Such date may be extended by the Developer if additional time is needed to satisfy conditions to Closing. The Developer will give the City at least two (2) months prior written notice of the anticipated date of Substantial Completion of the Parking Garage and the proposed Leasing Date in order to allow the City sufficient time to arrange financing for the Lease Transfer Amount. Consistent with 35.42.060 RCW, the City Garage Unit Lease, and the City's obligation to pay rent thereunder, shall not be effective until the Substantial Completion of the City Garage Unit.

5.8 Lease Transfer Amount. The consideration to be paid for the transfer of the City Garage Unit Property Interests to the City, or its designee, is referred to in this Agreement as the "Lease Transfer Amount." Since substantial time is expected to have elapsed from the date of this Agreement until the Leasing Date, the parties recognize and agree that (a) the value of the City Garage Property Interests will increase between the date of this Agreement and the Leasing Date, (b) the time value of money should be recognized, (c) the exact date of the Leasing Date is not known at this time, (e) the actual City Garage Property Interests has not been determined with specificity at the time of this Agreement; and (f) it is in the best interests of both the Developer and City to establish the parameters for determining the Lease Transfer Amount in advance in order to avoid future controversies. Accordingly, the Lease Transfer Amount shall be an amount equal to the residual balance of the City's Financial Participation of \$15,000,000.00 after deduction of all expenditures made by the City for other Components of City Financial Participation set forth in Article VIII herein.

5.9 Title to City Garage Unit Property Interests. The Developer shall convey title to the City Garage Unit to the City or its designee, including any Trustee, on the Leasing Date by executing and delivering the City Garage Unit Lease or other form of conveyance which meets the requirements of this Agreement subject to (i) this Agreement and the Declaration, Survey

Map and Plans, (ii) utility and other easements not inconsistent with the use of the Parking Garage for its intended purposes, (iii) all agreements, reservations, covenants, conditions and restrictions of record or which may be imposed on the Parking Garage during the course of construction as a result of permits or other conditions imposed by any governmental authority as a condition to issuance of a use permit, building permit or any other license or approval; (iv) any zoning, building, development, land use, health, or other governmental regulations or restrictions contained within statutes, ordinances, laws or regulations applicable to the Parking Garage or general to the area; (v) General Exclusions contained within the title insurance policy to be issued and other matters of record that do not materially impact the use or marketability of the property being transferred; (vi) any liens, encumbrances, or defects created or incurred by the City after the date of this Agreement; and (vii) the City Garage Unit Lease (collectively "Permitted Exceptions"). The Developer shall cause any project lender holding a mortgage or deed of trust on the Property to execute and record a partial reconveyance of such mortgage or deed of trust as to the City Garage Unit as of the Leasing Date. The Developer shall cause the Escrow Holder to deliver an irrevocable commitment for an ALTA form standard coverage owner's policy of title insurance with liability in the amount of the Lease Transfer Amount insuring that upon the Leasing Date the City Garage Unit will be vested in the City or its designee, including any Trustee, subject only to the Permitted Exceptions, and, if requested by the City at its sole cost and expense, containing an endorsement providing affirmative coverage against construction liens. Assignment of the City Garage Unit Lease from the Developer to the Trustee, if applicable, shall be "without recourse" to the Developer, and the City shall agree to forever waive, discharge, and indemnify (including reasonable attorneys' fees and costs) the Developer from any and all claims, demands, liabilities or causes of action arising out of, or relating to, the City Garage Unit Lease after the Leasing Date. The Trust Agreement shall require the Trustee to state in any Certificates of Participation issued or executed by the Trustee that such certificates are issued or executed without recourse to the Developer.

5.10 Payment and Financing of Lease Transfer Amount.

5.10.1 The City's obligations to pay the Lease Transfer Amount for the City Garage Unit on the Leasing Date, and deliver the documents described in Section 5.11, are expressly conditioned on the Developer having 90,000 sq. ft. of the Upper Mall occupied, plus 60,000 sq. ft. of additional space in the Upper Mall under lease. In the event that on the Leasing Date for the City Garage Unit this condition has not been satisfied, then the Leasing Date shall be extended to a date which is seven (7) days after the satisfaction of this condition.

5.10.2 The City's obligations to provide for payment of the Lease Transfer Amount on the Leasing Date is not conditioned on the execution and delivery of Certificates of Participation or other tax exempt or taxable obligations regardless of interest rate, and in the event City is unable to issue Certificates of Participation or is unable or elects not to issue other tax exempt obligations, City shall nevertheless be obligated to pay, or cause to be paid to the Developer, the Lease Transfer Amount in cash or other immediately available funds on the Leasing Date.

5.10.3 Not later than the Leasing Date, the City intends to finance its acquisition of the City Garage Unit Property Interests by causing the execution and delivery of tax exempt Certificates of Participation or the issuance of other tax exempt obligations in an amount

sufficient to cause the payment to the Developer of the full Lease Transfer Amount. The City represents and warrants to the Developer that as of the date hereof it has sufficient debt capacity under existing Washington law ("Debt Capacity") to permit the principal component of the Certificates of Participation or other obligations to equal the Lease Transfer Amount. The City agrees that it will not incur any indebtedness or lease obligations from and after the date of this Agreement which would cause it not to have sufficient Debt Capacity under Washington law to permit the principal component of the Certificates of Participation or other obligations to at least equal the Lease Transfer Amount the City has represented to the Developer that it intends to pay, or cause to be paid, the Lease Transfer Amount to the Developer in connection with the acquisition or transfer of the City Garage Unit Property Interests on the Leasing Date with the proceeds from the sale of Certificates of Participation in the Lease, and the Developer has relied on this representation in entering into this Agreement. The Developer understands that the City intends to provide for the payment of the Lease Transfer Amount with the proceeds from the sale of tax exempt Certificates of Participation or other tax exempt obligations. In the event the City is unable to cause the execution and delivery of Certificates of Participation or the issuance of other obligations to finance the acquisition of the City Garage Unit Property Interests, the City shall nevertheless be obligated to pay the Lease Transfer Amount on the Leasing Date as provided in Section 5.6 of this Agreement. The City shall pay, or cause the payment of, any and all financing costs or other expenses in connection with the issuance of the Certificates of Participation or other obligations.

5.10.4 In the event the City, consistent with its obligations under this Agreement, does not lease the City Garage Unit through a lease purchase agreement or does not cause the execution and delivery of the Certificates of Participation, the parties understand that all references to the City Garage Unit Lease and the Certificates of Participation shall have no further force and effect and the Developer shall convey the City Garage Unit to City pursuant to a special warranty deed which meets the requirements of this Agreement and the City shall pay the Developer the Lease Transfer Amount in cash or other immediately available funds on the Leasing Date.

5.11 Closing. On or before the Leasing Date, the Parties shall deposit with the Escrow Holder the following:

5.11.1 Delivery by the Developer. The Developer shall deliver on or before the Leasing Date the following documents:

(a) The City Garage Unit Lease, Memorandum of Lease for recording, and a special warranty deed to the City Garage Unit which meets the requirements of this Agreement, executed in recordable form and ready for recording on the Leasing Date, together with an executed real estate excise tax affidavit prepared by the Escrow Holder. Only the Memorandum of Lease shall be recorded by the Escrow Holder. The special warranty deed shall be delivered to the City or the City's designee, as instructed by the City.

(b) Evidence reasonably satisfactory to the City that the City Garage Unit is free and clear of all liens arising by or through the actions of the Developer, its contractors, subcontractors or their respective agents and employees, other than Permitted Exceptions; provided, however, that if the title insurance policy to be issued in conjunction with

Closing of the City Garage Unit contains an endorsement protecting against said liens, then no further evidence shall be required.

(c) Certification that the Developer is not a 'foreign person' within the meaning of the Foreign Investment In Real Property Tax Act.

(d) Evidence reasonably satisfactory to the City that the Parking Garage Condominium has been created in accordance with Washington law, Chapter 64.34 RCW, and that the appropriate condominium documents, including the Declaration, Survey Map and Plans have been recorded, or will be recorded simultaneously with Closing of this transaction, in the real property records of King County, Washington and that the City Garage Unit is insured by the Title Company accordingly.

(e) Copies of the Declaration, Survey Map and Plans, articles, bylaws, and current or initial operating budget of the Association.

(f) Evidence reasonably satisfactory to the City that the conditions precedent set forth in Section 5.10.1 have been satisfied prior to Closing.

(g) Evidence that all original warranties which the Developer has received in connection with the construction of the Parking Garage (to the extent assignable and applicable to the City Garage Unit and to the extent such warranties have not expired in accordance with their terms), together with a duly executed assignment of warranties in a form reasonably satisfactory to City, or its designee, have been delivered and assigned, as applicable, to the Association and/or the owners of condominium units.

(h) Any partial reconveyance documents required to eliminate of record any existing mortgages or deeds of trust which are not Permitted Exceptions as hereinabove defined and any affidavit required to eliminate the Title Company exception for construction liens and the rights of parties in possession.

(i) A copy of the as built plans and specifications for the Parking Garage.

(j) An irrevocable commitment from the Title Company to issue the City or its designee an ALTA owner's standard coverage title insurance policy in form and substance satisfactory to the City with liability in the amount of the Lease Transfer Amount showing fee simple title to the City Garage Unit vested in the City or its designee, including the Trustee if the City issues Certificates of Participation, subject only to this Agreement and the Permitted Exceptions, which title insurance policy shall contain, if requested by the City at its sole cost and expense, an endorsement providing affirmative coverage against construction liens. At the request of the City, all or any portion of the owner's policy of title insurance shall be reinsured under reinsurance agreements and with reinsurers reasonably satisfactory to the City, and the cost of such reinsurance, if any, shall be paid by the City.

(k) In the event the Developer has transferred all or any portion of its interest under this Agreement, either voluntarily or involuntarily, an assumption agreement satisfactory in form and substance to the City under which such transferee shall assume such

rights, duties and obligations under this Agreement as the Developer may have assigned, transferred, or delegated to such transferee.

(l) Such resolutions, certificates or other documents as shall be reasonably required by the Escrow Holder in connection with closing the City's acquisition of the City Garage Unit.

(m) Any other documents, instruments, data, records or other agreements called for herein which have not been previously delivered.

5.11.2 Delivery by the City. The City shall deliver on or before the Leasing Date the following:

(a) The Lease Transfer Amount in cash or other immediately available funds.

(b) The City Garage Unit Lease and Memorandum of Lease for recording, together with the real estate excise tax affidavit prepared by the Escrow Holder, duly executed and acknowledged by the City and Trustee.

(c) Copies of any Trust Agreement or other documentation executed by the Trustee or others necessary to cause the execution and delivery of the Certificates of Participation and the City Garage Unit Lease by the Trustee or the City's designee on or before the Leasing Date.

(d) Such ordinances, authorizations, certificates or other documents or agreements relating to the City, the City's designee or Trustee, as shall be reasonably required by the Escrow Holder in connection with Closing the City's acquisition of the City Garage Unit.

(e) Any other documents, instruments, data, records, or other agreements called for herein which have not been previously delivered.

5.11.3 Other Instruments. The Developer, the City, and the City's designee or Trustee, if applicable, shall each deposit such other instruments as may be reasonably required by Escrow Holder or as may be otherwise required to Close the escrow and consummate the acquisition of the City Garage Unit Property Interests in accordance with the terms hereof.

5.11.4 Prorations. All ownership, use, operation and maintenance expenses associated with the City Garage Unit, including, but not limited to, real and personal property taxes, special and other assessments, water, sewer and utility charges, amounts payable under contracts assumed by the City, annual permits and/or inspection fees (calculated on the basis of the respective periods covered thereby), and other expenses normal to the ownership, use, operation and maintenance of the City Garage Unit shall be prorated as of 12:01 a.m. on the Leasing Date so that the Developer bears all expenses of the City Garage Unit prior to the Leasing Date and City bears all expenses of the City Garage Unit on and after the Leasing Date. Under current Washington law, the City is exempt from payment of certain real and personal property taxes. In the event the City is exempt from payment of certain real and personal property taxes under Washington law on the Leasing Date, the City shall not be responsible for

payment of the same on and after the Leasing Date. The Developer may seek reimbursement from the taxing authorities to whom the Developer may have paid any such real or personal property tax that is allocable to any period of time after the Leasing Date and the City shall cooperate with and make all reasonable efforts to assist the Developer in securing such reimbursement. If any revenue or expense amount cannot be ascertained with certainty as of the Leasing Date, it shall be prorated on the basis of the parties' reasonable estimates of such amounts, and shall be the subject of a final proration sixty (60) days after Closing or as soon thereafter as the precise amounts can be ascertained. Either Party owing the other Party a sum of money based on adjustments made to the prorations after the Leasing Date shall promptly pay that sum together with interest thereon at the rate of nine percent (9%) per annum from the date of demand therefor to the date of payment if payment is not made within thirty (30) days after the delivery of a statement therefor.

5.11.5 Costs and Expenses. The City shall pay all costs and expenses associated with (1) any real estate excise tax associated with the City Garage Unit Lease or other transfer of the City Garage Unit Property Interests; (2) any extended title insurance policy or any requested reinsurance or endorsements (and survey or other costs associated therewith); (3) execution and delivery of the Certificates of Participation or other City obligations incurred to finance the acquisition or transfer of the City Garage Unit Property Interests pursuant to the City's financial arrangements. The Developer shall pay the cost and expense associated with the City's ALTA owner's standard coverage title insurance policy. The Developer and the City shall each pay one-half (1/2) of the standard costs and expenses associated with escrow and recording fees. In the event that Closing involves a City Garage Unit Lease, the Parties understand and agree that the Developer shall not be obligated to pay any Closing or other costs and expenses associated with a subsequent transaction whereby the City exercises its right to purchase the City Garage Unit Property Interests.

5.11.6 Close of Escrow; Recording. On the Leasing Date, the Escrow Holder shall disburse the Lease Transfer Amount to the Developer and shall record the documents described in Section 5.11.1(a) (Memorandum of Lease only) and (h), if applicable, in the real property records of King County, Washington, and deliver the other documents described in Sections 5.11.1, 5.11.2 and 5.11.3. Escrow Holder shall deliver copies of all documents executed, delivered and/or recorded in connection with this transaction to the Developer, any project lender(s), the City, the City's designee or Trustee, if any, as applicable, together with closing statements in form customarily prepared by Escrow Holder within five days following the Leasing Date.

5.12 Maintenance of the Parking Garage.

5.12.1 Maintenance Responsibility. The Declaration shall provide an arrangement whereby the Association shall cause to be maintained and repaired the Parking Garage, including the City's Garage Unit, in a first-class condition and state of repair in accordance with industry standards of operators of multi-level parking garages associated with first-class urban regional open-air shopping centers, including but not limited to, the items of maintenance, upkeep and operation described below. The City shall provide the Association, or its designee, with such access to the City's Garage Unit as may be reasonably necessary for the Association, or its designee, to carry out its obligations under this Section. The costs and

expenses of such maintenance and repair shall be an Association responsibility, with allocation thereof to the condominium units based upon their designated percentage interest in the Parking Garage.

5.12.2 Maintenance Standards. To ensure proper maintenance of the Parking Garage, the Declaration shall provide minimum maintenance standards for the Parking Garage, including all common area sidewalks, walkways, entrances and exits, stairways, elevators, roadways and parking surfaces inside the Parking Garage, which minimum maintenance standard shall include the following:

(a) All graphics, traffic and directional signs, pavement and striping shall be kept clean, distinct and legible, and replaced as necessary, including re-striping of parking space markings as deemed reasonably necessary by the Association.

(b) Adequate lighting is an important safety feature, and a strong maintenance program is necessary to preserve the lighting levels in the Parking Garage. Parking Garage lighting shall be repaired, replaced and renewed as may be necessary, including prompt replacement of burned out or defective bulbs or tubes with a color index of at least sixty-five (65) and the implementation of a group-relamping program in accordance with the manufacturer's recommendation.

(c) Ventilation equipment, traffic control equipment, lighting systems, electrical systems, sprinkler and life-safety systems and mechanical systems of the Parking Garage shall be repaired and replaced as necessary to keep them in first-class condition.

(d) Structural maintenance, treatment of concrete as required, and repair and replacement of expansion joints shall be performed as required.

(e) All areas of the Parking Garage shall be kept clean and free from graffiti, and any graffiti shall be promptly removed and the surface restored to its condition prior to the application of the graffiti as part of routine maintenance.

(f) Elevators in the Parking Garage shall be maintained in first-class condition including (1) checking elevators daily, and (2) contracting with a licensed elevator maintenance firm to maintain the elevators in first-class condition.

5.13 Transfer of City Garage Unit. The Parties understand and agree that the Parking Garage is an integral part of the Mall, and that the Developer has a need to ensure that the Parking Garage, including the City Garage Unit, will be owned, operated, maintained and used in a manner consistent with this Agreement and the needs of the Developer. Accordingly, the Developer shall have the right to impose upon the City a deed restriction in any conveyance of the City Garage Unit Property Interests, whether by City Garage Unit Lease, special warranty deed or otherwise, that restricts the use of the Parking Garage consistent with this Agreement, and that prohibits conveyance, lease or other transfer of the City Garage Unit Property Interests, in whole or in part, whether voluntary or involuntary, to any person, entity or municipality other than (1) a governmental entity or municipality, subject to the prior written consent of the Developer, or its successors or assigns, which consent shall not be unreasonably withheld; or (2) the Developer, or its successors or assigns; or (3) to any other person or entity, subject to the

prior written consent of the Developer, or its successors or assigns, which consent may be granted or withheld at the sole discretion of the Developer, or its successors or assigns ("Permitted Transferees"). The Developer shall also have the right to condition any conveyance, lease or other transfer of the City Garage Unit Property Interests, in whole or in part, upon assumption by the Permitted Transferee of all obligations of the City under this Agreement.

ARTICLE VI
120th AVE. NE IMPROVEMENTS

6.1 Preparation and Approval of Plans and Specifications.

6.1.1 Preparation of 120th Avenue NE Plans and Specifications. The Developer shall prepare plans and specifications for the improvement and realignment of 120th Avenue NE ("120th Avenue NE Improvements"), which plans and specifications shall be in accordance with this Agreement and generally consistent with the Public Plaza and 120th Avenue NE Design Standards attached as Exhibit C to this Agreement ("120th Avenue NE Plans and Specifications").

6.1.2 Budget Constraints.

(a) Unless otherwise mutually agreed between the City and the Developer, the 120th Avenue NE Improvements shall be based upon a total design and construction budget of not greater than \$3,700,000.00.

(b) The budget includes the Actual Costs of two traffic signals, one at the intersection of the Public Plaza and 120th Avenue NE and another at the intersection of Totem Lake Way and 120th Avenue NE. No other traffic signals or traffic or mechanical devices are included in the design and construction budget, nor shall be required by the City in conjunction with the 120th Avenue NE Improvements, except to the extent requested by the City pursuant to Section 6.2.

(c) The Developer shall construct the Public Plaza Improvements and 120th Avenue NE Improvements within a combined budget of \$7,300,000.00 (excluding the land value). The Developer shall be solely responsible for any cost overrun above the combined budget, except as provided in Section 6.2.

6.1.3 Administrative Approval. The Developer shall use reasonable efforts to coordinate input from the City, and to provide an opportunity for the City to review and comment on the 120th Avenue NE Plans and Specifications prior to formal submission for administrative approval. The Developer shall submit the proposed 120th Avenue NE Plans and Specifications to the City for administrative review and approval by the City Planning Director. The City Planning Director shall issue his administrative decision approving, denying or requesting modification to the 120th Avenue NE Plans and Specifications within twenty-one (21) days after submission or the 120th Avenue Improvement Plans and Specifications shall be conclusively deemed approved. In the event of administrative denial or request for modification, the City Planning Director shall specify precisely the basis for the decision and the Parties shall timely, diligently, and in good faith, attempt to resolve the matter expeditiously. The Developer

and the City must approve the 120th Avenue NE Plans and Specifications and, in the event of a dispute, the Dispute Resolution procedures set forth in Article XVI shall apply.

6.2 Modifications to 120th Avenue NE Plans and Specifications. Prior to administrative approval of the 120th Avenue NE Plans and Specifications, or subsequent thereto if mutually agreed in writing by the City and the Developer, the City may request changes or additions to the proposed 120th Avenue NE Plans and Specifications. If Actual Costs of the the 120th Avenue Improvements exceeds \$3,700,000.00, then the City shall pay for all of such changes and additions, and shall receive credit toward the City Financial Participation only for the construction budget amount of \$3,700,000.00.

6.3 Construction; Schedule. The 120th Avenue NE Improvements shall be constructed generally in conjunction with Phase I of the Project. The City shall cooperate with the Developer with regard to scheduling and construction of the 120th Avenue NE Improvements. The 120th Avenue NE Improvements shall constitute a separate and distinct project from the private and public portions of the Project.

6.4 Selection of Contractors; Approval of Bids. The Developer shall use its reasonable business judgment, as it deems appropriate in bidding, awarding and performing the work associated with the 120th Avenue NE Improvements. The Developer shall have the right, at its sole discretion, without competitive bidding to enter into contracts with an engineer for work performed on 120th Avenue NE, and a general contractor to manage the work performed on 120th Avenue NE, which may be the same engineer and/or general contractor retained by the Developer for the overall Project; provided, however, that if the general contractor selected to manage the work performed on 120th Avenue NE will also be providing any of the actual construction work, then the work to be performed by the general contractor shall also be subject to the competitive bidding if it will exceed \$20,000.00. All additional contractors associated with contracts for work performed on 120th Avenue NE Improvements in excess of \$20,000.00 shall be selected by the Developer, or the general contractor on the Developer's behalf, through a competitive bidding process with all qualified bids considered, which is similar to the process described in RCW 35.23.352, administered as follows: (1) All contracts shall be let at public bidding upon publication of notice calling for sealed bids upon the work; (2) the notice shall be published in the official newspaper, or a newspaper of general circulation most likely to bring responsive bids, at least thirteen (13) days prior to the last date upon which bids will be received; (3) the notice shall generally state the nature of the work to be done, that plans and specifications therefor shall then be available from the Developer for inspection, and will require that bids be sealed and filed with the Developer within the time specified therein; (4) the Developer, or its general contractor, may, in its sole discretion, include in the solicitation a requirement that bidders submit evidence of having successfully (in terms of schedule, quantity and cost) performed projects of comparable size and scope; (5) each bid shall be accompanied by a bid proposal deposit in the form of a cashier's check, postal money order, or surety bond to the Developer for a sum of not less than five percent (5%) of the amount of the bid; and (6) no bid shall be considered unless accompanied by such bid proposal deposit. The Developer shall give notice to the City at least ten (10) days prior to the date of publication of bid solicitations, provide the City with the text of the proposed solicitation, and will give due consideration to any concerns or suggestions raised by the City; provided, however, that the Developer, or its general contractor, at its sole discretion, shall make final decisions concerning selection of all qualified

bids. The Developer shall provide the City with details of all qualified, responsive and timely bids received. If no bids are received on the first call, the Developer may re-advertise and make a second call, or may enter into a contract without any further call.

Notwithstanding the above, The Developer, or its general contractor, at its sole discretion, may award subcontracts for amounts under \$200,000.00 by using the City's then-current small works roster in accordance with the following procedure: (1) The Developer shall obtain telephone, written or electronic quotations from contractors on the appropriate small works roster to assure that a competitive price is established; (2) a contract awarded from a small works roster need not be advertised, but invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished (detailed plans and specifications need not be included in the invitation); (3) quotations may be invited from all appropriate contractors on the appropriate small works roster; (4) as an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted; (5) if the estimated cost of the work is from \$100,000.00 to \$200,000.00, then the Developer may choose to solicit bids from less than all the appropriate contractors on the appropriate small works roster, but must also notify the remaining contractors on the appropriate small roster that quotations on the work are being sought. The Developer has the sole option of determining whether this notice to the remaining contractors is made by publishing notice in a legal newspaper in general circulation in the areas where the work is to be done; mailing a notice to these contractors; or sending a notice to these contractors by facsimile or other electronic means. The Developer shall give notice of the proposed small roster works bidding process to the City at least ten (10) days prior to commencement, and will give due consideration to any concerns or suggestions raised by the City; provided, however, that the Developer, or its general contractor, at its sole discretion, shall make final decisions concerning selection of all qualified bids. The Developer shall provide the City with details of all qualified, responsive and timely bids received.

6.5 Performance and Payment Bond. Because this is a private project, the Developer shall not be required to provide, nor be required to have the general contractor or any subcontractors provide, a performance and payment bond associated with the 120th Avenue NE Improvements.

6.6 Insurance and Indemnification.

6.6.1 Insurance. The Developer shall provide the insurance policies and coverages set forth in Section 12.1.

6.6.2 Indemnification of the City. To the maximum extent permitted by law, the Developer agrees to and shall indemnify and hold the City harmless from and against all liability, loss, damage, cost, or expenses (including reasonable attorneys' fees and court costs, amounts paid in settlements, and judgment) arising from or as a result of the death of any person or of any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person which shall occur on or adjacent to the 120th Avenue NE right-of-way and which shall be directly or indirectly caused by the acts, errors, or omissions of the Developer or its officials, servants, employees, officers, or contractors in conjunction with the work associated with the 120th Avenue NE Improvements. The Developer shall not be responsible for (and such

indemnity shall not apply to) the negligence of the City or its respective officials, servants, employees, or officers.

6.6.3 Indemnification of the Developer. To the maximum extent permitted by law, the City agrees to and shall indemnify and hold the Developer harmless from and against all liability, loss, damage, cost, or expenses (including reasonable attorneys' fees and court costs, amounts paid in settlements, and judgment) arising from or as a result of the death of any person or of any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person which shall occur on or adjacent to the 120th Avenue NE right-of-way and which shall be directly or indirectly caused by the acts, errors, or omissions of the City or its officials, servants, employees, officers, or contractors in conjunction with the work associated with the 120th Avenue NE Improvements. The City shall not be responsible for (and such indemnity shall not apply to) the negligence of the Developer or its respective officials, servants, employees, or officers or contractors.

6.6.4 Limitation on Indemnification. Notwithstanding the above, with respect to matters that are within the scope of RCW 4.24.115, relating to construction project indemnity, the Parties shall not be entitled to indemnification for damages arising out of bodily injury to persons or damage to property by reason of or caused by the concurrent negligence of the City or the Developer, or their agents respective officials, servants, employees, officers or contractors, to the extent of the indemnitee's negligence, and the Parties specifically waive immunity under Title 51 RCW, and application of the Public Duty Doctrine, to this extent.

6.7 Permits and Approvals. The Developer shall be responsible for providing, obtaining and paying for all required federal, state and local government permits and approvals for the 120th Avenue NE Improvements.

6.8 Prevailing Wages. The Developer shall pay or cause to be paid to all workers, laborers and mechanics employed to perform the construction, alteration, improvement, maintenance or repair of the 120th Avenue NE Improvements not less than the prevailing rates of wages, as may then be determined by the Washington State Department of Labor and Industries for the particular craft in the particular geographic area. Unless otherwise specifically provided in this Agreement, the requirement of this subsection shall apply only to the 120th Avenue NE Improvements, and shall not be deemed to require the Developer to pay or cause to be paid prevailing rates for work performed on any other portion of the Project.

6.9 Construction Observation and Inspections. Unless otherwise mutually agreed, the City, or its designee(s), and the Developer, or its designee(s), shall meet monthly during construction of the 120th Avenue NE Improvements to discuss and inspect progress and tour the 120th Avenue NE Improvements. The City may request the Developer to give the City seven (7) days' advance notice of any construction activity involving underground improvements owned or to be owned by the City. The City shall be allowed to inspect and observe such construction activity during a mutually convenient time that will not unreasonably disrupt or interfere with on-going work on the 120th Avenue NE Improvements.

6.10 Construction Warranty. The Developer's general contractor, pursuant to the construction contract(s) for the 120th Avenue NE Improvements, or the Developer, at the

Developer's option, shall for one (1) year after acceptance of the 120th Avenue NE Improvements by the City, correct and repair any material defects appearing or developing in the workmanship or materials furnished in respect to the 120th Avenue NE Improvements. Upon receiving written notice from the City of such defect or nonconforming work, the Developer or Developer's general contractor, as applicable, shall promptly, at its own cost and expense, correct, or cause to be corrected, any such defect or cause to be made such repairs or alterations as shall be necessary to conform the 120th Avenue NE Improvements to the approved 120th Avenue NE Plans and Specifications. The City shall cooperate with the Developer with regard to scheduling any corrective work associated with the 120th Avenue NE Improvements. If the Developer fails to proceed promptly, or after proceeding, fails to continue with reasonable diligence to cure such defect or repair such nonconforming work, then the matter shall be submitted for resolution consistent with the Dispute Resolution provisions of Article XVI.

6.11 Substantial Completion of 120th Avenue NE Improvements. The Developer shall provide written certification of Substantial Completion to the City. The City shall have fourteen (14) days after receipt of the certification to notify the Developer in writing that it accepts or rejects the 120th Avenue NE Improvements or the 120th Avenue NE Improvements shall be conclusively deemed accepted. In the event of rejection, the City shall specify the basis for the decision and the Parties shall timely, diligently, and in good faith, attempt to resolve the matter expeditiously. If the dispute cannot be resolved, then it shall be submitted to Dispute Resolution in accordance with Article XVI. In the event that the person or entity presiding over the last step in the Dispute Resolution process, whether by mediation, arbitration or litigation, determines that the Developer "substantially prevails" in the Dispute Resolution, then the Developer shall be entitled to recover its damages relating to any delay in acceptance by the City, together with its reasonable attorneys' fees and costs.

6.12 Verification of Actual Costs. Upon completion of the 120th Avenue NE Improvements, the Developer shall provide the City an accounting of the Actual Costs associated with the 120th Avenue NE Improvements, in a form determined by the Developer in accordance with its standard cost accounting practices. The City shall within thirty (30) days after receipt of the notification, to notify the Developer in writing whether the City accepts, denies or requests modification of the accounting; providing, however, that in the event the Developer does not receive a timely written response from the City, then the Actual Costs associated with the 120th Avenue NE Improvements shall be conclusively deemed accepted and approved. In the event the City refuses to accept the 120th Avenue NE Improvements, or denies or requests modification to the accounting, the City shall specify the basis for the decision and the Parties shall timely, diligently, and in good faith, attempt to resolve the matter expeditiously. The Parties shall resolve any dispute through the Dispute Resolution process set forth in Article XVI; provided, however, that a dispute involving accounting verification shall not delay payment or reimbursement to the Developer for the 120th Avenue NE Improvements. In the event that on the date designated for payment and reimbursement there is yet unresolved any issues relating to Actual Costs, then the City shall pay to the Developer the Actual Costs requested by the Developer for the 120th Avenue NE Improvements, less the amounts unresolved, which shall be placed in an interest bearing escrow set aside account designated by the Developer. The amount in dispute shall then be submitted to Dispute Resolution in accordance with Article XVI; provided, however, that in the event that the person or entity presiding over the last step in the Dispute Resolution process, whether by mediation, arbitration or litigation, determines that the

Developer "substantially prevails" in the accounting dispute, the Developer shall be entitled to immediate disbursement of the escrow set aside, interest accrued therein, and shall be entitled to recover its reasonable attorneys' fees and costs associated therewith. Upon acceptance by the City, and reimbursement to Developer of the Actual Costs associated with the 120th Avenue NE Improvements, the Developer shall deliver to the City two complete sets of as built drawings.

6.13 Purchase Price and Timing of Payment. On any business day designated by the Developer, which business day shall be no earlier than sixty (60) days after acceptance of the 120th Avenue NE Improvements, and subject to the provisions of Section 6.12 relating to verification of Actual Costs, the City shall reimburse the Developer for the Actual Costs of the 120th Avenue NE Improvements.

6.14 Maintenance of 120th Avenue NE. The City shall, at its sole cost and expense, maintain the streets and roadways of 120th Avenue NE, as defined in Section 4.10, in accordance with its applicable standards for maintaining and repairing City streets and roadways in retail and commercial areas of the City. For a period of twenty-five (25) years from the City's acceptance of the 120th Avenue NE Improvements, the Developer shall maintain the remaining portions of the 120th Avenue NE right-of-way, which is composed primarily of sidewalks and pedestrian areas, in accordance with the same maintenance standards as are applicable to the Public Plaza in Section 4.10. In the event that either Party concludes that the other Party has failed to maintain, repair, replace or improve 120th Avenue NE in accordance with this Agreement, then the matter shall be submitted for resolution consistent with the Dispute Resolution provisions of Article XVI. In the event that the Developer obtains a Commercial General Liability insurance policy covering portions of the 120th Avenue NE right-of-way subject to its maintenance obligations under this Agreement, then the Developer shall name the City as an "additional insured" to the extent of any claims arising out of, or relating to, the 120th Avenue NE maintenance obligations of the Developer.

6.15 Relocation of Utilities in 120th Avenue NE. The Actual Costs associated with the 120th Avenue NE Improvements will include the relocation of water, sewer, stormwater conveyance utilities and Franchise Utilities in accordance with the 120th Avenue NE Plans and Specifications. The City will assist with coordination and arrangements for temporary disruption, if any, and relocation of any utilities.

6.16 Dedication of Right of Way for 120th Avenue NE. Unless otherwise mutually agreed by the City and the Developer, simultaneously with the reimbursement of Actual Costs of the 120th Avenue NE Improvements, the Developer shall dedicate to the City marketable fee simple title to those portions of realigned 120th Avenue NE that the City does not own as right-of-way. Likewise, the City shall vacate to the Developer marketable fee simple title to those portions of realigned 120th Avenue NE that were, prior to realignment, part of the public right-of-way, but after realignment are no longer needed within the right-of-way. Simultaneously with the dedication and/or vacation of land, the City shall pay the Developer for any net increase in land at the rate of \$30.00 per square foot.

ARTICLE VII
INFRASTRUCTURE TO SUPPORT REDEVELOPMENT

7.1 Transportation.

7.1.1 The City has issued a Concurrency Test Notice for roads (traffic) for the entire Project. The Notice shall be valid for the term of this Agreement. The City will issue a Certificate of Concurrency for the Project upon issuance of the first building permit for Phase 1 of the Project. The Certificate of Concurrency shall remain valid for the term of the Agreement. If the Project Plan is amended, and the City Planning Director determines that the p.m. peak hour trips for the revised Project have increased over the number of such trips in the road (traffic) concurrency analysis for the original Project, the revised Project shall be retested for road (traffic) concurrency. The Certificate of Concurrency for any new Concurrency Test Notice for the revised Project shall be issued at the same time as the original Certificate of Concurrency (or if the first building permit for Phase 1 has already been issued, then upon issuance of the next building permit for the Project).

7.1.2 Except as otherwise included in the Public Plaza Improvements or the 120th Avenue NE Improvements, the Developer shall not be required to fund any off-site improvements, including, but not limited to, any transportation, roadway, intersection or gateway improvements associated with redevelopment of the Mall, including, but not limited to, streets, boulevards, intersections, traffic phasing or signalization, monuments, artwork, sculptures or signage. However, the Developer shall be responsible for payment of any transportation mitigation (impact) fees associated with the Project established by the KMC. Notwithstanding the above, there is a possibility that the cumulative transportation impacts associated with the entire Project could potentially exceed, but not significantly, the transportation level of service threshold associated with the intersection of 120th Avenue NE and Totem Lake Mall Boulevard at such time as the proposed office building is constructed. In conjunction with construction of the office building, the City shall perform SEPA review as provided for in Section 3.1.

7.1.3 The Developer shall not be required to fund any on-site transportation and/or intersection improvements associated with the Project. To the extent that any on-site transportation and/or intersection improvements are deemed necessary or advisable including, but not limited to, public street improvements, turn lanes, curbs, utilities, traffic signalization and/or signage, the City shall be solely responsible for all costs and expenses associated therewith.

7.2 Water and Sanitary Sewer. The City will assist the Developer in the coordination of water and sewer utility infrastructure issues involving Northshore Utility District.

7.3 Stormwater.

7.3.1 There is an off-site stormwater conveyance system, including capacity adequate to serve the Project. The Developer shall not be required to construct or fund any off-site stormwater conveyance system improvements associated with the Project.

7.3.2 The Developer shall provide, at its sole cost and expense, and in accordance with the 1998 King County Surface Water Design Manual ("1998 Design Manual"),

basic water quality treatment for all on-site pollution generating new impervious areas, and Level 2 flow control for all new impervious areas within the Project. The Developer shall not be required to provide any other stormwater conveyance system infrastructure or improvements within the Project, including, but not limited to, any additional detention for the existing impervious areas. Notwithstanding anything to the contrary in this Agreement, the 1998 Design Manual shall govern all stormwater conveyance system matters associated with the Project throughout the term of this Agreement. The parties shall develop a mutually acceptable utility plan to coordinate the tie-in of off-site and on-site stormwater conveyance infrastructure.

ARTICLE VIII CITY FINANCIAL PARTICIPATION

The City shall pay for or provide public financial participation in the Project in an amount equal to \$15,000,000.00. The City shall receive credit toward the City Financial Participation for (i) up to, but not to exceed, \$3,600,000.00 of the Actual Costs of the Public Plaza Improvements; (ii) up to, but not to exceed, \$3,700,000.00 of the Actual Costs of the 120th Avenue Improvements; (iii) the amount paid to the Developer for land within the Public Plaza; (iii) the Lease Transfer Amount paid by the City (or its Trustee) for the City Garage Unit; (v) all, or a portion of, any real estate excise tax associated with transfer of the Public Plaza Property Interests to be credited to the City's Financial Participation as set forth in Section 4.9.5; and (vi) the amount paid to the Developer for any net increases in land dedicated by the Developer for 120th Avenue NE ("Components of City Financial Participation"). The Parties understand and agree that the entire \$15,000,000.00 shall be expended by the City on the Components of City Financial Participation.

ARTICLE IX VESTING

9.1 General Vesting. The Project shall be vested to the federal, state and local laws, regulations and resolutions existing on the effective date of this Agreement ("Vested Laws"), including, but not limited to, the Comprehensive Plan, Zoning Use Tables, Totem Lake Neighborhood Sub-Area Plan, Development Regulations, Building Codes and Regulations, Design Guidelines, and provisions of the KMC and KZC applicable to the Project; provided, however, that to the extent any portion of the Project may be "grandfathered" or vested as a non-conforming use under any prior governmental Development Regulation, law, regulation, building or other code, policy or guideline, this provision shall not be deemed to inhibit or prevent the Developer from taking advantage thereof.

9.2 Amendments. During the vested period, should any of the Vested Laws be amended, modified or changed, the Developer, at its sole discretion, may elect to have a permit or approval for the Project considered under all of such amended Vested Laws in effect on the date of application for the permit or approval; provided, however, that in the event of amendments, changes or modifications to City ordinances, regulations, resolutions or policies, including, but not limited to, the Comprehensive Plan, Zoning Use Tables, TL 2 Zoning regulations, Development Regulations, Building Codes and Regulations, Design Guidelines, and provisions of the KMC and KZC applicable to the Project, the Developer may elect to have such

amended City ordinances, regulations, resolutions or policies apply to the permit or approval without adversely impacting its rights under other Vested Laws.

9.3 City Reservation of Rights. Notwithstanding the foregoing, the City reserves the authority under RCW 36.70B.170(4) to impose new or different regulations, to the extent required by the federal or state governments, or by a serious threat to public health and safety.

ARTICLE X PARTIES' REPRESENTATIVES

10.1 Designation of City's Representative. The City shall designate, in writing, a person (an Authorized Representative) who shall have the power, authority and right on behalf of the City to: review and accept or reject all documents, plans, applications, and requests required or allowed by the Developer to be submitted to the City pursuant to this Agreement; consent to all actions, events, and undertakings by the Developer for which consent is required by the City in this Agreement; and make all appointments of persons or entities required to be appointed or designated by the City in this Agreement. The City may change such Authorized Representative at any time upon written notice to the Developer.

10.2 Designation of Developer's Representative. The Developer shall designate, in writing, a person (an Authorized Representative) who shall have the power, authority, and right on behalf of the Developer to: review and accept or reject all documents, plans, applications, and requests required or allowed by the Developer to be submitted to the City pursuant to this Agreement; consent to all actions, events, and undertakings by the Developer for which consent is required by the Developer in this Agreement; and make all appointments of persons or entities required to be appointed or designated by the Developer in this Agreement. The Developer may change such Authorized Representative at any time upon written notice to the City.

ARTICLE XI COMPLIANCE WITH LAWS AND ORDINANCES

Throughout the term, and subject to the provisions, of this Agreement, the Developer, at the Developer's sole cost and expense, shall promptly comply with all applicable laws and ordinances, as they relate to the Property and the Project. To the extent that the Developer's compliance shall require the cooperation and participation of the City, the City agrees to use its best efforts to cooperate and participate.

ARTICLE XII INSURANCE

12.1 Insurance Requirements. Until the completion of the Public Plaza, City Garage Unit and 120th Avenue NE Improvements, the Developer shall maintain insurance covering these public aspects of the Project, including but not limited to the following requirements:

12.1.1 Builders All Risk Comprehensive Coverage. With regard to 120th Avenue NE Improvements, the Developer shall carry, or shall require the general contractor(s) to carry, Builders All Risk Comprehensive Coverage Insurance, including earthquake and flood, and to include amounts sufficient to prevent the City or the Developer from becoming a co-insurer

under the terms of the applicable policies but in any event in an amount not less than one-hundred percent (100%) of the then full "Replacement Cost," being the cost of replacing the 120th Avenue NE Improvements.

12.1.2 Commercial General Liability. The Developer shall carry, or shall require its general contractor(s) to carry, Commercial General Liability insurance providing coverage against claims for bodily injury, death, or property damage on the Property with broad form liability and property damage endorsement, such insurance to have combined single limits of liability of no less than \$5,000,000.00, per occurrence and aggregate.

12.2 Insurance Policies. Insurance policies required herein:

12.2.1 Qualifications. Shall be issued by companies authorized to do business in the State of Washington with the following qualifications:

(a) The companies must be rated no less than "A" as to general policy holders rating and no less than "X" as to financial category in accordance with the latest edition of Best's Key Rating Guide, published by A.M. Best Company, Incorporated; provided, however, for any insurance requirements imposed upon subcontractors, a financial category no less than "VIII" shall be acceptable.

(b) To the extent reasonably available for insurers, the policies shall name the City as an additional insured.

(c) The policies shall be issued as primary policies; provided, however, that the Developer, and general contractor(s) and subcontractors, may be insured under one (1) or more blanket insurance policies, which shall be permitted and acceptable.

12.2.2 Attachments. To the extent reasonably available from insurers, each such policy or certificate of insurance mentioned and required in this Article shall have attached thereto:

(a) An endorsement that such policy shall not be canceled or materially changed without at least thirty (30) days' prior written notice to the Parties; provided, however, that such policy may be an annual or periodic policy, renewed on an annual or periodic basis, and the City shall be provided a renewal certificate therefor within thirty (30) days before the expiration date.

(b) An endorsement to the effect that the insurance, as to anyone insured, shall not be invalidated by any act or neglect of any other additional insured.

(c) An endorsement pursuant to which the insurance carrier waives all rights of subrogation against the Parties.

(d) An endorsement pursuant to which this insurance is primary and noncontributory.

12.2.3 Certificates of Insurance. The certificates of insurance and insurance policies shall be furnished to the Parties prior to commencing construction on each of the public projects (Public Plaza, City Garage Unit and 120th Avenue NE Improvements) under this Agreement. The certificate(s) shall clearly indicate the insurance and the type, amount, and classification required.

12.2.4 Cancellation. Cancellation of any insurance or nonpayment by the Developer of any premium for any insurance policies required by this Agreement shall constitute an Event of Default of this Agreement.

12.3 Adjustments. The types of policies, risks insured, coverage amounts, deductibles and endorsements may be adjusted from time to time as the Parties may mutually determine in writing.

ARTICLE XIII ENVIRONMENTAL INDEMNIFICATION

13.1 Indemnification. Subject to the limitations of Sections 13.2 and 13.3, the Developer shall indemnify and hold the City harmless from and against any and all liability, loss, damage, cost, or expenses (including reasonable attorney's fees and court costs, amounts paid in settlements, and judgment) arising from or as a result of preexisting environmental contaminants on or beneath the Public Plaza, the portion of 120th Avenue NE dedicated to the City pursuant to this Agreement, and the Parking Garage, including any such liability, loss, damage, costs, or expenses resulting from the past or future migration of such environmental contaminants from the Property to any other property. As used in this section, "preexisting" means those environmental contaminants that were present on or beneath the Property prior to the date of execution of this Agreement. "Environmental contaminants" shall include without limitation:

13.1.1 Those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," or "solid waste" in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.)("CERCLA"), as amended by Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99 499 100 Stat. 1613)("SARA"), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.)("RCRA"), and the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq., and in the regulations promulgated pursuant to said laws, all as amended;

13.1.2 Those substances listed in the United States Department of Transportation Table (49 C.F.R. 172. 101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 C.F.R. Part 302 and amendments thereto);

13.1.3 Any material, waste, or substance which is (A) petroleum, (B) asbestos, (C) polychlorinated biphenyls, (D) designated as a "hazardous substance" pursuant to Section 3.11 of the Clean Water Act (33 U.S.C. § 1317); (E) flammable explosives, or (F) radioactive materials;

13.1.4 Those substances defined as "dangerous wastes," "hazardous wastes," or as "hazardous substances" under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., the Water Pollution Control Act, RCW 90.48.010 et seq., the Hazardous Waste

Management Statute, RCW 70.105.0 10 et seq., the Toxic Substance Control Act, RCW 70.105B.010 et seq., and the Model Toxics Control Act, RCW 70.105D.010 et seq., and in the regulations promulgated pursuant to said laws, all as amended;

13.1.5 Storm water discharge regulated under any federal, state or local law, ordinance or regulation relating to storm water drains, including, but not limited to Section 402(p) of the Clean Water Act, 33 U.S.C. Section 1342 and the regulations promulgated thereunder, all as amended; and

13.1.6 Such other substances, materials, and wastes which are regulated as dangerous, hazardous, or toxic under applicable local, state or federal law, or the United States government, or which are classified as dangerous, hazardous, or toxic under federal, state, or local laws or regulations.

13.2 Third Parties. This agreement by the Developer to indemnify and hold the City harmless applies to claims brought by any third party based upon state or federal statutory or common law, resulting from the release, threatened release, or migration of preexisting environmental contaminants and any property damage or damages for personal injury related thereto. As used in this section, "release" shall mean releasing, spilling, leaking, pumping, pouring, flooding, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping.

13.3 Existing Contaminants. This agreement to indemnify and hold harmless applies only to claims resulting from those environmental contaminants that were present on or beneath the Property prior to the date of execution of this Agreement. In addition, this agreement to indemnify and hold harmless does not apply to any release, threatened release, or migration of environmental contaminants from City rights-of-way, including, but not limited to public streets and roadways, or resulting from the actions of the City, its officers, agents, or employees.

ARTICLE XIV RIGHT TO ASSIGN OR OTHERWISE TRANSFER

14.1 Assignment Right. During the term of this Agreement, the Developer shall have the right and privilege to sell, assign, or otherwise transfer this Agreement to such other persons, firms, corporations, partnerships, joint ventures, and federal, state, or municipal government or agency thereof, as the Developer shall select ("Transferee"); provided, that:

14.1.1 Prior to transfer of the Public Plaza and City Garage Unit to the City, or its designated Trustee, the Developer must obtain the prior written consent of the City to the proposed Transferee, which consent shall not be unreasonably withheld (after transfer of the Public Plaza and City Garage Unit, consent of the City shall not be required);

14.1.2 Such sale, assignment, or transfer shall be made expressly subject to the terms, covenants, and conditions of this Agreement;

14.1.3 There shall be delivered to the City a duly executed and recordable copy of the document evidencing such transfer; and

14.1.4 Such transfer shall not be effective to bind the City until the Transferee has assumed all obligations of the Developer under this Agreement and notice thereof is given to the City, and such notice shall designate the name and address of the Transferee.

14.2 Succession. The Transferee (and all succeeding and successor Transferees) shall succeed to all rights and obligations of the Developer under this Agreement, including the right to mortgage, encumber, and otherwise assign, subject, however, to all duties and obligations of the Developer in and pertaining to the then unperformed provisions of this Agreement. Upon such transfer by the Developer, or by a successor in accordance with the requirements of this section, the Developer (and/or its successive Developer or Developers) as Transferor in such a transfer shall not be released and discharged from all of its duties and obligations hereunder which pertain to the then unperformed provisions of this Agreement, which are not then due and payable, without the written consent and release of the City.

ARTICLE XV DEFAULT

15.1 Events of Default. The following shall constitute events of default under this Agreement ("Events of Default"):

15.1.1 A default by a Party in keeping, observing or timely performing any of its duties and/or obligations under this Agreement;

15.1.2 The making by the Developer of an assignment for the benefit of creditors or filing a petition in bankruptcy or of reorganization under any bankruptcy or insolvency law or filing a petition to effect a composition or extension of time to pay its debts;

15.1.3 The appointment of a receiver or trustee of the Property, which appointment shall not be vacated or stayed within six (6) months; and

15.1.4 The filing of a petition in bankruptcy against the Developer or for its reorganization under any bankruptcy or insolvency law which shall not be dismissed or stayed by the court within six (6) months after such filing.

15.2 Remedies in the Event of Default. If an Event of Default shall occur, or in the event of a dispute, claim or controversy arising out of, or relating to this Agreement, then either Party shall have the rights and remedies, and shall be required to proceed in accordance with, the Dispute Resolution provisions in Article XVI; provided, however, that in the event Dispute Resolution is unsuccessful, the Parties shall have all rights, remedies and causes of action, at law or in equity, available under the laws of the State of Washington.

ARTICLE XVI DISPUTE RESOLUTION

16.1 Disputes and Coordination Issues. Whenever any dispute arises between the Parties under this Agreement ("Dispute"), including any default, controversy or claim arising out of, or relating to, this Agreement, or any breach thereof, which are not resolved by routine meetings or communications, the provisions of this Article XVI shall apply. Either Party shall

have the right to commence a resolution process by issuing a written request to the other Party, which request shall contain brief details of the Dispute ("Dispute Notice"), excepting only those disputes subject to Section 16.5, which shall not require a Dispute Notice.

16.2 Cooperative Discussions. The Authorized Representatives of the Parties shall seek in good faith to resolve any such dispute or concern within ten (10) days after the date of the Dispute Notice. The Authorized Representatives shall meet within five (5) days after the date of the Dispute Notice, and shall continue to meet thereafter, as reasonably requested by a Party, in an attempt to resolve the Dispute. If the Dispute is resolved by the Authorized Representatives, the resolution shall be recorded in writing and signed by the Authorized Representatives of each Party and that resolution shall be final and binding on both Parties. If the Parties are unable to resolve the Dispute through cooperative discussions within ten (10) days after the date of the Dispute Notice, then except as specifically provided in Section 16.4 for binding arbitration of monetary disputes less than \$50,000.00, the Parties may immediately pursue any remedies available under Washington law, and may commence litigation prior to, and without regard to, the provisions of Section 16.3 and 16.4, which shall be deemed entirely voluntary and discretionary.

16.3 Mediation. If the Parties are unable to resolve a Dispute in accordance with the provisions of Section 16.2, the Parties may consider the use of voluntary non-binding mediation. In the event that non-binding mediation is agreed upon, the site of the proceedings shall be Kirkland, Washington, unless otherwise agreed in writing by the Parties. The rules for mediation, the selection of the mediator, and the timetable and procedures for mediation, shall be determined by mutual agreement of the parties. The mediator shall be skilled in the legal and business aspects of the subject matter of this Agreement. The mediation shall be conducted without prejudice to either Party and in strict confidence. Each Party shall share equally in the costs of the mediation except that each Party shall bear its discretionary costs, including, but not limited to, its attorneys' fees and expenses. If the Dispute is settled through mediation, the terms of the settlement shall be recorded in writing and signed by the Authorized Representatives of the Parties. Unless otherwise mutually agreed by the Parties in writing, the mediator shall not be utilized in any subsequent proceeding to provide evidence in any way relating to the Dispute, nor shall the mediator be entitled to act as a fact or expert witness to either Party in any subsequent proceeding. If within forty-five (45) days after the date of the Dispute Notice, the mediation has not resulted in settlement of the Dispute, then the mediation shall, unless otherwise mutually agreed in writing by the Parties, be terminated. If either Party withdraws from mediation at any time, the mediation shall be terminated.

16.4 Arbitration. If the Parties are unable to resolve a Dispute in accordance with the provisions of Section 16.2, the Parties may consider the use of voluntary binding arbitration; provided, however, that binding arbitration shall be required for any strictly monetary Dispute, the value or potential financial impact of which is agreed by the Parties to be less than \$50,000.00. In the event that binding arbitration is required, or mutually agreed upon, and unless otherwise mutually agreed by the Parties in writing, the site of the proceedings shall be Kirkland, Washington, and Washington law shall govern the arbitration proceedings. Upon completion of the cooperative discussions set forth in Section 16.2, the arbitration process shall commence immediately. The Parties shall determine by mutual agreement the rules for arbitration, the selection of the arbitrator, and the timetable and procedures for arbitration, including, but not

limited to, (i) the extent, form and time limits applying to any documentary or oral evidence of the Parties to be submitted to arbitration; (ii) site visits or inspections; (iii) meetings with the Parties; and (iv) appointment of experts; provided, however, that in the event the Parties are unable to agree within twenty-five (25) days after the date of the Dispute Notice, then the Rules of the Judicial Arbitration and Mediation Service, Seattle office, shall apply. The arbitrator shall be skilled in the legal and business aspects of the subject matter of this Agreement. The arbitration shall be conducted without prejudice to either Party and in strict confidence. The arbitrator shall decide the Dispute acting impartially and in good faith. The arbitrator shall reach a decision and communicate the decision in writing to the Parties, providing the basis for the decision. The arbitrator's decision shall be final and binding on the Parties. The Parties shall implement the arbitrator's decision without delay. The arbitrator's fees and expenses, the other costs of arbitration, and the Parties' reasonable attorneys' fees and costs shall be borne by the Parties as the arbitrator shall specify in his decision; provided, however, that the "substantially prevailing" Party shall be entitled to recover its arbitration expenses and reasonable attorneys' fees and costs in preparation for, and during, the arbitration process. Unless otherwise mutually agreed by the Parties in writing, the arbitrator shall render a final decision on the Dispute within sixty (60) days after the date of the Dispute Notice. The arbitrator shall not be utilized in any subsequent proceeding to provide evidence in any way relating to the Dispute, nor shall the arbitrator be entitled to act as a fact or expert witness to either Party in any subsequent proceeding.

16.5 Litigation. If the Parties are not required, or do not mutually agree, to submit a Dispute to mediation under Section 6.3, or arbitration under Section 6.4, then after the time period set forth in Section 16.2 for cooperative discussions, either Party shall have the right and authority to commence litigation immediately, and primary jurisdiction for the resolution of any Dispute relating to, or arising out of, this Agreement shall reside in the Washington State Superior Court, King County, Washington. The Parties shall have all rights and remedies, whether at law or in equity, under Washington law, including, but not limited to, specific performance, damages and injunctive relief.

16.6 Equitable Proceedings.

16.6.1 In the event a Party desires to seek interim relief, whether affirmative or prohibitive, in the form of a temporary restraining order, preliminary injunction, or other interim equitable relief with respect to a Dispute either before or after the initiation of a dispute resolution proceeding, that Party may initiate the proceeding necessary to obtain such relief ("Equitable Proceeding"). Nothing in this Article XVI shall be construed to suspend or terminate the obligation of the Parties to comply with the provisions of Sections 16.2, 16.3 and 16.4 with respect to the Dispute that is the subject of such Equitable Proceeding while such Equitable Proceeding is pending, including any appeal or review.

16.6.2 Notwithstanding the decision of an arbitrator or mediator, as may be applicable, any interim relief granted by such Equitable Proceeding shall not be reversed or modified by the arbitrator's or mediator's determination, and any factual or legal determination made in such Equitable Proceeding shall be binding upon the Parties in the Dispute before any arbitrator or mediator.

**ARTICLE XVII
MISCELLANEOUS**

17.1 No Third Party Rights. Except as specifically set forth in this Agreement, the provisions of this Agreement are for the exclusive benefit of the City, the Developer and their respective permitted successors and assigns and not for the benefit of any third person. This Agreement shall not be deemed to have conferred any rights upon any third person.

17.2 Severability. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

17.3 Construction. The section headings throughout this Agreement are for convenience and reference only and the words contained in them shall not be held to expand, modify, amplify or aid in the interpretation, construction or meaning of this Agreement. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identification of the person or persons, firm or firms, corporation or corporations may require. The locative adverbs "herein", "hereunder", "hereto", "hereby", "hereinafter", etc., whenever the same appear herein, mean and refer to this Agreement in its entirety and not to any specific section or subsection hereof.

17.4 Fair Construction. The Parties acknowledge and agree that each was properly represented by counsel, and that this Agreement was negotiated and drafted at arm's length so that the judicial rule of construction to the effect that a legal document shall be construed against the draftsman shall be inapplicable to this Agreement.

17.5 Authority to Execute Agreement. The parties represent to each other that they possess sufficient and requisite jurisdiction and authority to enter into this Agreement.

17.6 Attorney's Fees. If either Party brings suit to enforce or declare the meaning of any provision of this Agreement, the prevailing Party, in addition to any other relief, shall be entitled to recover its reasonable attorneys' fees and costs, including any incurred on appeal.

17.7 Survival. The provisions of this Agreement shall survive the expiration of the term of this Agreement to the extent involving environmental indemnification, maintenance of the Public Plaza or 120th Avenue NE, or other matters involving rights or obligations extending beyond the expiration of the term of this Agreement.

17.8 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Washington. Venue for any legal action pertaining to this Agreement shall be in the State of Washington with jurisdiction in King County, Washington.

17.9 Amendment. No modification or amendment of this Agreement may be made except by written agreement signed by each of the Parties to this Agreement or as may be provided otherwise in this Agreement.

17.10 Notices. All notices which may be or are requested to be given, pursuant to this Agreement, shall be deemed given when hand delivered, delivered by facsimile, or when deposited in the United States Mail, postage prepaid, and marked registered or certified mail, return receipt requested, and addressed to the Parties at the following addresses unless otherwise provided for herein:

To The City: City of Kirkland
 Attention: Planning Director
 123 Fifth Avenue
 Kirkland, WA 98033-6189
 Facsimile (425) 803-2859

AND TO: City of Kirkland
 Attn: City Attorney
 123 Fifth Avenue
 Kirkland, WA 98033-6189
 Facsimile (425) 587-3025

To Developer: Coventry II DDR Totem Lake, LLC
 Attn: Charles Worsham
 3300 Enterprise Parkway
 Beachwood, OH 44122
 Facsimile (216) 755-1887

AND TO: Coventry II DDR Totem Lake LLC
 Attn: General Counsel
 3300 Enterprise Parkway
 Beachwood, OH 44122
 Facsimile (216) 755-1678

Either Party shall have the right to change the address or contact information for notice purposes at any time during the term of this Agreement upon prior written notification to the other Party.

17.11 Incorporation by Reference. All exhibits and appendices annexed hereto are hereby incorporated by reference herein.

17.12 No Joint Venture. This Agreement is not intended to, and nothing in this Agreement shall create, any partnership, joint venture or other arrangement between the Developer and the City.

17.13 Entire Agreement. This Agreement, together with the exhibits attached hereto, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings between the Parties relating to the subject matter hereof, including, but not limited to the Memorandum of Understanding.

17.14 Waiver. The waiver by one Party of the performance of any covenant, condition, or promise shall not invalidate this Agreement nor shall it be considered a waiver by such Party

of any other covenant, condition, or promise hereunder. The waiver by either or both Parties of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time. The exercise of any remedy provided by law or the provisions of this Agreement shall not exclude other consistent remedies unless they are expressly excluded.

17.15 Exculpation. Notwithstanding anything contained to the contrary in any provision of this Agreement, it is specifically agreed and understood that there shall be absolutely no personal liability on the part of any individual officers or directors of the City or the Developer with respect to any of the obligations, terms, covenants, and conditions of this Agreement; and each Party shall look solely to the other Party or any such assignee or successor in interest for the satisfaction of each and every remedy available to a Party in the event of any breach by the other Party or by any such assignee or successor in interest of any of the obligations, terms, covenants, and conditions of this Agreement to be performed by a Party, such exculpation of personal liability to be absolute and without any exception whatsoever.

17.16 Recording. Upon the mutual consent of the City and the Developer, a memorandum of this Agreement may be recorded by the Developer or the City with the Real Property Records Division of the King County Records and Elections Department; provided, however, that this Agreement shall not be recorded.

17.17 Binding Effect. The terms herein contained shall bind and inure to the benefit of the City, its successors and assigns, and of the Developer, its successors and assigns, except as may be otherwise provided herein.

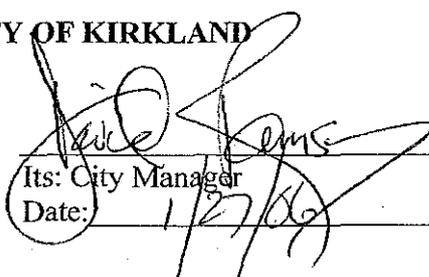
17.18 Counterparts. This Agreement may be executed in any number of counterparts and all counterparts shall be deemed to constitute a single agreement. The execution of one counterpart by a Party shall have the same force and effect as if that Party had signed all other counterparts. Executed copies of this Agreement delivered by facsimile transmission shall be deemed an original signed copy of this Agreement.

17.19 Time is of the Essence. For the purposes of this Agreement and all transactions contemplated thereunder, time is of the essence.

17.20 Term and Termination. Subject to the survival provisions set forth in Section 17.7, the term of this Agreement is ten (10) years from the date signed by all Parties.

CITY OF KIRKLAND

By:


Its: City Manager

Date: 1/27/09

STATE OF New York)
) ss
COUNTY OF New York)

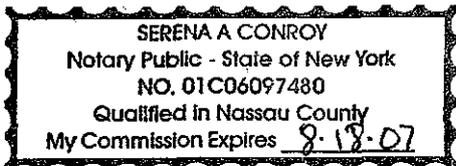
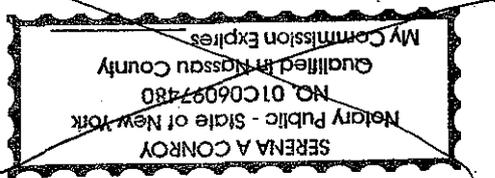
I certify that I know or have satisfactory evidence that Peter Henkel is the person who appeared before me, and said person acknowledged that he signed this instrument on oath stated that he was authorized to execute the instrument as the President on behalf of Coventry II DDR Totem Lake LLC, a Delaware limited liability company, pursuant to the provisions of the Limited Liability Company Agreement of said company, and acknowledged it to be the free and voluntary act of said company for the uses and purposes mentioned in the instrument.

DATED: March 6, 2006

Serena A Conroy
(Signature of Notary)

Serena A. CONROY
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of New York,
residing at New York, New York
My appointment expires 8-18-07



EXHIBITS TO REDEVELOPMENT AGREEMENT

- EXHIBIT A Legal Description of Property
- EXHIBIT B SEPA Based Mitigation Conditions
- EXHIBIT C Public Plaza and 120th Avenue NE Design Standards
- EXHIBIT D Easements, Covenants, Conditions and Restrictions Relating to the Public Plaza and the 120th Avenue NE Right-of-Way
- EXHIBIT E Form of Public Plaza Lease
- EXHIBIT F Form of City Garage Unit Lease

EXHIBIT A

Legal Description of Property

PARCEL A:

THAT PORTION OF TRACT B OF PUGET SOUND CENTER, AS PER PLAT RECORDED IN VOLUME 92 OF PLATS, PAGES 95 AND 96, RECORDS OF KING COUNTY, ACCORDING TO THE CORRECTION MAP THEREOF recorded under Recording No. 7105100304, LYING SOUTH OF THE SOUTH LINE AND SAID SOUTH LINE EXTENDED EASTERLY OF THAT TRACT OF LAND CONVEYED TO THE STATE OF WASHINGTON by DEED RECORDED UNDER KING COUNTY RECORDING NO. 4569596 AS SHOWN ON SAID PLOT OF PUGET SOUND CENTER;

EXCEPT MAT PORTION THEREOF CONVEYED TO THE CITY OF KIRKLAND UNDER KING COUNTY RECORDING NO. 8507250580;

AND EXCEPT THOSE PORTIONS THEREOF CONVEYED TO THE STATE OF WASHINGTON BY DEEDS recorded under Recording NOS. 8911150820 AND 9007022009;

AND EXCEPT THAT PORTION COMMENCING AT THE SOUTHWEST CORNER OF LOT "B" AS DEPICTED ON THAT SURVEY RECORDED IN VOLUME 5 OF SURVEYS AT PAGE 60 UNDER AUDITOR'S FILE NO. 7510220689, RECORDS OF KING COUNTY, WASHINGTON;
THENCE SOUTH 89°56'25" EAST ALONG THE SOUTH LINE OF SAID LOT "B" A DISTANCE OF 52.25 FEET TO THE POINT OF BEGINNING;
THENCE CONTINUING SOUTH 89°56'25" EAST ALONG SAID SOUTH LINE A DISTANCE OF 126.72 FEET;
THENCE SOUTH 80°29'33" WEST A DISTANCE OF 97.43 FEET;
THENCE SOUTH 84°12'39" WEST A DISTANCE OF 27.40 FEET;
THENCE NORTH 10°10'36" WEST A DISTANCE OF 19.02 FEET TO THE POINT OF BEGINNING;

being also described as follows:

beginning at the most westerly northwest corner of said tract b;
thence north 89°56'25" east a distance of 363.09 feet;
THENCE SOUTH 10°10'36" EAST A DISTANCE OF 19.02 FEET;
THENCE NORTH 84°12'39" EAST A DISTANCE OF 27.40 FEET;
THENCE NORTH 80°29'33" EAST A DISTANCE OF 97.43 FEET;
THENCE NORTH 89°56'25" EAST A DISTANCE OF 117.13 FEET;
thence along the arc of a 342.16 foot radius non-tangent curve to the left the center of which bears north 71°19'11" east through a central angle of 14°28'27", a distance of 86.44 feet;
thence south 33°09'16" east a distance of 606.00 feet;
thence along the arc of a 415.00 foot radius tangent curve to the right through a central angle of 50°58'49", a distance of 369.26 feet;
thence south 17°49'33" west a distance of 19.82 feet;
thence north 72°10'27" west a distance of 16.00 feet;

thence south 17°49'33" west a distance of 109.00 feet;
thence south 21°34'39" west a distance of 61.13 feet;
thence south 21°25'51" west a distance of 58.85 feet;
thence along the arc of a 49.00 foot radius non-tangent curve to the right the center of which bears north 65°34'46" west through a central angle of 83°03'31", a distance of 71.03 feet;
thence along the arc of a 1210.92 foot radius non-tangent curve to the right the center of which bears north 22°25'27" east through a central angle of 01°01'46", a distance of 21.76 feet;
thence along the arc of a 300.00 foot radius non-tangent Curve to the left the center of which bears south 47°10'08" west through a central angle of 28°22'36", a distance of 148.58 feet;
thence north 71°12'28" west a distance of 90.62 feet;
thence along the arc of a 1216.92 foot radius non-tangent curve to the right the center of which bears north 34°36'19" east through a central angle of 34°50'52", a distance of 740.14 feet;
thence north 20°32'49" west a distance of 535.94 feet to the point of beginning;

SITUATE IN THE CITY OF KIRKLAND, COUNTY OF KING, STATE OF WASHINGTON.

PARCEL B:

THAT PORTION OF TRACT C OF PUGET SOUND CENTER, AS PER PLAT RECORDED IN VOLUME 92 OF PLATS, PAGES 95 AND 96, RECORDS OF KING COUNTY, ACCORDING TO THE CORRECTION MAP THEREOF recorded under Recording No. 7105100304; AND LOTS G1 AND G2 OF CITY OF KIRKLAND'S SHORT PLAT NO. 76-9-9 AS FILED UNDER KING COUNTY RECORDING NO. 7612010652, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID TRACT G, SAID PLAT OF PUGET SOUND CENTER;

THENCE NORTH 89°56'25" EAST 576.34 FEET ALONG THE NORTHERLY LINE THEREOF;

THENCE SOUTH 07°30'00" EAST 157.00 FEET;

THENCE SOUTH 24°05'38" EAST 139.78 FEET;

THENCE SOUTH 40°43'34" EAST 199.25 FEET;

THENCE NORTH 88°51'15" EAST 100.02 FEET,

THENCE SOUTH 66°02'15" EAST 147.73 FEET;

THENCE SOUTH 76°38'19" EAST 122.95 FEET;

THENCE SOUTH 11°30'00" WEST 10.00 FEET TO THE SOUTHERLY LINE OF SAID TRACT G;

THENCE WESTERLY 122.60 FEET (CENTRAL ANGLE 46°49'44") along the arc of a circular curve, said curve having a radius of 150.00 feet which bears north 11°30'00" east from the curve enter to the curve beginning;

thence south 54°40'16" west 426.21 feet to the southwesterly corner of that parcel of land described in the deed recorded under Recording No. 7312200264;

thence north 33°09'16" west, along the easterly line of said parcel, 149.70 feet;

thence south 56°50'44" west, along the northerly line of said parcel, 192.24 feet to the easterly margin of 120th avenue northeast and the arc of a curve to the left having a radius of 465.00 feet whose center bears south 71°03'44" west;

thence northerly along said margin and curve through a central angle of 14°13'00" an arc

distance of 115.38 feet;
thence north $33^{\circ}09'16''$ west, along said margin, 159.80 feet to the southwesterly corner of that parcel of land described in the deed recorded under Recording NO. 7310010602;
thence north $56^{\circ}50'44''$ east, along the southerly line of said parcel, 195.32 feet;
thence north $33^{\circ}09'16''$ west, along the easterly line of said parcel, 128.00 feet;
thence south $56^{\circ}50'44''$ west, 195.32 feet to the easterly margin of 120th avenue northeast;
thence north $33^{\circ}09'16''$ west, along said margin, 318.20 feet to the beginning of a curve to the right having a radius of 292.16 feet;
thence northerly along said curve through a central angle Of $35^{\circ}00'00''$ an arc distance of 178.47 feet;
thence north $01^{\circ}50'44''$ east, along said margin, 0.83 feet to the POINT OF BEGINNING;
together with an easement for a covered walkway over that portion of tract c, Puget sound center, as recorded in volume 92 of plats, pages 95 and 96, records of king county Washington, and amended by the correction map thereof recorded under king county auditor's file no. 7105100304, the boundary of which is described as follows:

beginning at the northwest corner of tract g of said map;
thence south $01^{\circ}50'44''$ west a distance of 0.83 feet;
thence along the arc of a 292.16 foot radius tangent curve to the left through a central angle of $35^{\circ}00'00''$; a distance of 178.47 feet;
thence south $33^{\circ}09'16''$ east a distance of 318.20 feet to the true point of beginning;
thence north $56^{\circ}50'44''$ east a distance of 195.32 feet;
thence south $33^{\circ}09'16''$ east a distance of 20.00 feet;
thence south $56^{\circ}50'44''$ west a distance of 195.32 feet;
thence north $33^{\circ}09'16''$ west a distance of 20.00 feet to the true point of beginning;
TOGETHER WITH EASEMENTS FOR INGRESS, EGRESS AND UTILITIES, PARKING, RESTRICTIONS AND COVENANTS AND OTHER RECIPROCAL RIGHTS AS CONTAINED IN INSTRUMENTS RECORDED UNDER RECORDING NOS. 7310010602 AND 7312200264;

SITUATE IN THE CITY OF KIRKLAND, COUNTY OF KING, STATE OF WASHINGTON.

EXHIBIT B

SEPA Based Mitigation Conditions

The following mitigation measures shall be required at the building permit stage of the appropriate phase of the project:

1. Construct c-curbing in 120th Avenue NE to restrict traffic entering and exiting the driveway located on the west side of 120th Avenue NE approximately 120 feet north of Totem Lake Boulevard to right turn only.
2. Enter into an agreement not to contest the installation of c-curbing to restrict left-turns in and out of the south driveway off Totem Lake Boulevard.
3. Install traffic signals at the intersection of 120th Avenue NE/Totem Lake Way and 120th Avenue NE/central boulevard (new east-west street through the development).
4. Configure on-street parking stalls along the new central boulevard that ensures safety to pedestrians, cyclists, and other vehicles. The configuration and design of the on-street parking stalls shall be subject to review and approval by the City.
5. Provide a Transportation Management Program (TMP) applicable only to the proposed office building in Phase 2a. The TMP shall be reviewed and approved by the City prior to approval of a building permit for the proposed office building in Phase 2a. The TMP shall identify measures to reduce single-occupant vehicle trips and promote other forms of transportation.

EXHIBIT C

Public Plaza and 120th Avenue NE Design Standards

1. General standards

The Public Plaza Improvements and the 120th Avenue NE Improvements shall be constructed in accordance with the applicable provisions of the KMC and the KZC and the Public Works Department 2005 Pre-Approved Plans; provided, however, that (1) the City and the Developer may mutually agree otherwise; (2) the Design Review Board may approve plans and specifications that deviate from these standards; and (3) that the following standards shall prevail in the event of a conflict between such provisions and the following standards.

2. Paving

- a. Pedestrian Specialty Paving: Shall be colored concrete. Scoring and/or stamping shall divide pavement into sections. The size of sections may vary, but generally shall not be greater than 16 square feet.
- b. Vehicular Specialty Paving: Shall be colored concrete. Scoring and/or stamping shall divide pavement into sections. The size of sections may vary, but generally shall not be greater than 16 square feet.
- c. Accent pavers: Paving may be accented by decorative pavers or brick.

3. Amenities

- a. Benches: Shall be minimum 6' length, commercial grade, consisting of a rustproof frame and seat made of powder-coated steel, aluminum or cast iron.
- b. Seatwalls: Shall be 12-20" high and 12-24" wide consisting of architecturally finished concrete or other durable, permanent material. Seatwalls shall incorporate skateboard deterrents.
- c. Tree Grates: Shall be cast iron, aluminum or powder coated steel minimum 5'x5'. Grates shall have knockouts to allow for tree growth. Grates shall be installed flush with surrounding pavement.
- d. Flower Pots: Concrete, ceramic or composite material. Frost proof with drainage holes. Minimum 24" height and 24" diameter.
- e. Water Features:
 - i. East plaza vehicle turnaround: Shall be a feature with moving water located in the central island in the vehicle turnaround. The feature shall serve to visually terminate the east end of the plaza and be at a scale appropriate to its vehicular orientation.

- ii. 120th and plaza intersection: Shall be a feature with moving water integrated into the plaza development at the intersection. The feature shall incorporate seating and be at a pedestrian scale.
 - f. Bollards: Shall be removable, ornamental, rustproof cast iron, aluminum, or powder coated steel. Bollards shall incorporate lighting.
 - g. Lighting: Shall be decorative post lights located a maximum of 60' on center. Luminaries shall be cut-off type to avoid glare.
 - h. Public Art: Shall be incorporated into the Public Plaza Improvements and the 120th Avenue NE Improvements as a component of another element or as a freestanding object. The Developer shall consult periodically with the Kirkland Cultural Council to determine potential artists and art opportunities.
 - i. Trash Cans: Shall be ornamental and made of rustproof powder-coated steel, aluminum or cast iron.
 - j. Bike Racks: Shall be provided. The design of the bike racks shall compliment the design of other site amenities.
4. Landscape
- a. Trees: Shall be minimum 2 ½" caliper. Medium sized trees shall be selected for planting in tree grates and larger trees to accent intersections where space permits in in-ground planters.
 - b. Shrubs and Groundcover: In-ground planters shall be planted with a mix of deciduous and evergreen plants suitable to the climate and urban conditions.
 - c. Accent Plantings: Flower pots shall be planted with woody and herbaceous plants on a seasonal replacement schedule to provide year-round interest.
5. Irrigation: An automatic water-conserving irrigation system shall be installed to serve all new plantings.
6. Other
- a. Site amenities shall be designed and selected to form a coordinated family, by repetition of materials, colors and/or forms.
 - b. Alternative materials may be approved by the City Planning Director.

EXHIBIT D

Easements, Covenants, Conditions and Restrictions Relating to the Public Plaza and the 120th Avenue NE Right-Of-Way

The easements, covenants, conditions and restrictions contained herein and benefiting the Developer, shall control and supersede any inconsistent provisions of the Kirkland Municipal Code, including, but not limited to, the provisions of KMC Chapter 19.04, as may be subsequently amended, modified, changed or replaced, and shall be deemed to also accrue to the benefit of the Developer's tenants, licensees, invitees, successors and assigns, and shall be deemed perpetual and shall be construed to run with the land; provided, however, that whenever any "consent" is required, only the Developer, or its successors and assigns shall be required or entitled to provide such consent.

I. RESERVATION OF EASEMENTS.

1. The Developer reserves a perpetual non-exclusive easement, for the benefit of itself, its tenants, licensees, invitees, successors and assigns, over, under through and across the Public Plaza for ingress, egress and pedestrian access to and from the Public Plaza to the Property consistent with customary practices and operations of open-air shopping centers in the Pacific Northwest.

2. The Developer reserves a perpetual non-exclusive easement, for the benefit of itself, its tenants, licensees, invitees, successors and assigns, over, under through and across the Public Plaza for use, placement, maintenance, repair, replacement, relocation and/or removal of any utilities or drainage facilities within the Public Plaza that serve the Property.

3. The Developer reserves a perpetual non-exclusive easement, for the benefit of itself, its tenants, licensees, invitees, successors and assigns, over, under through and across the sidewalks within the Public Plaza and the sidewalks along 120th Avenue NE right-of-way that are adjacent to retail storefronts on the Property, for the purpose of sidewalk and outdoor sales, displays of merchandise and/or conduct of other business and uses consistent with customary practices and operations of open-air shopping centers in the Pacific Northwest, so long as the continuous width of unobstructed sidewalk along the curb is at least eight feet (8') in width.

4. The Developer reserves a perpetual non-exclusive easement, for the benefit of itself, its tenants, licensees, invitees, successors and assigns, over, under through and across those portions of the Public Plaza and the 120th Avenue NE right-of-way within ten feet (10') of any buildings or structures on the Property for installation, placement, use and maintenance of awnings, signage (in accordance with an approved Master Signage Plan), light fixtures for illumination of the storefronts and buildings within the Property, items attached to buildings or overhanging the Public Plaza, and other fixtures associated with the buildings on the Property, so long as pedestrian passage is not unreasonably obstructed.

5. The Developer reserves a perpetual non-exclusive easement, for the benefit of itself, its tenants, licensees, invitees, successors and assigns, over, under through and across the Public Plaza and the 120th Avenue NE right-of-way for ingress, egress and maintenance of the Public Plaza and 120th Avenue NE right-of-way consistent with the obligations and maintenance duties of the Developer set forth in the Development Agreement between the City and the Developer, dated January 17, 2006, a copy of which can be obtained from the City.

II. COVENANTS, CONDITIONS AND RESTRICTIONS.

1. Except as incident to the Developer's use of the adjoining Property: (A) the Public Plaza shall be used exclusively for public purposes and activities of a nature and in a manner consistent with customary practices and operations of open-air shopping centers in the Pacific Northwest; and (B) no business, retail, office or commercial uses shall be allowed within the Public Plaza without the advance prior written consent of the Developer, which consent may be withheld at the Developer's sole discretion, including, but not limited to, street vendors; retail kiosks; espresso or coffee carts or stands; taverns, bars, nightclubs, discotheques or any similar establishment; bowling alleys; theatres; health clubs or spas; service stations or automobile repair facilities; schools; public markets, open-air markets, farmer's markets or similar activities; car washes; dry cleaning or laundry facilities, adult type bookstores or other establishments selling, displaying or exhibiting pornographic materials or providing adult type entertainment or displays of a variety involving or depicting nudity or lewd acts; massage parlors; skating rinks; or mortuaries.

2. Except as incident to the Developer's use of the adjoining Property, no barriers, fences, grade changes or other obstructions or uses of the Public Plaza shall be erected so as to impede or interfere in any way with the free flow of vehicular and pedestrian traffic between the Public Plaza and the Property, or in any manner that will unreasonably restrict or interfere with the use and enjoyment of the Property by the Developer. The preceding sentence shall not prohibit the City from temporarily closing or blocking traffic on the Public Plaza for a reasonable period of time as necessary for (A) "events" contemplated in the Development Agreement between the City and the Developer, dated January 17, 2006 (a copy of which can be obtained from the City), provided that arrangements must be made for adequate and unobstructed pedestrian access to any businesses located adjacent to the Public Plaza, or (B) reasonable traffic regulation and control, or for maintenance, improvement or repair of roadways, streets, sidewalks or other improvements located within the Public Plaza.

3. All utilities installed and located within the Public Plaza shall be underground if reasonably possible, except for manhole and manhole covers, which shall be flush with the adjacent grade.

4. Hazardous materials shall not be used, or permitted to be used, on, about, under or in the Public Plaza except at all times in compliance with applicable federal, state and local environmental statutes, ordinances, rules and regulations.

5. After initial construction of the Public Plaza Improvements, no changes or alterations that will substantially change the appearance of the Public Plaza, and no buildings or

other structures, shall be made or constructed in the Public Plaza without the advance written consent of the Developer, which consent may be withheld at the Developer's sole discretion.

6. The streets and roadways within the Public Plaza shall not be changed or deleted without the advance written consent of the Developer, which consent shall not be unreasonably withheld.

7. Except in an emergency, no street, roadway or utility improvements, installation, maintenance or repairs that will interfere or obstruct the free flow of pedestrian and vehicular traffic over the streets, roadways or sidewalks within the Public Plaza or 120th Avenue NE right-of-way shall be commenced or maintained between November 30 and January 4, nor without thirty (30) days advance written notice to all businesses located on the Property affected by the same.

EXHIBIT E

Form of Public Plaza Lease

LEASE WITH OPTION TO PURCHASE AND PROPERTY TRANSFER AGREEMENT

by and among

COVENTRY II DDR TOTEM LAKE, LLC

and the

CITY OF KIRKLAND, WASHINGTON

THIS LEASE WITH OPTION TO PURCHASE AND PROPERTY TRANSFER AGREEMENT ("Lease") is made as of this ____ day of _____, 200__, by and among Coventry II DDR Totem Lake, LLC (the "Developer"), a Delaware limited liability company, as Lessor, and the City of Kirkland, a code city of the state of Washington (the "City"), as lessee.

WITNESSETH:

1. The Developer owns approximately 26 acres of real property, commonly known as the Totem Lake Mall (the "Mall"), located in the City, as more fully described in the Development Agreement.

2. The Mall has been recognized as an under-performing property in need of redevelopment. The City has identified the Mall as a regional "Urban Center" by the Kirkland Comprehensive Plan and King County Countywide Planning Policies. The City has recognized the Mall as an under-performing property in need of redevelopment, to strengthen its role as a retail center and community gathering place.

3. The Developer and the City have entered into a Redevelopment Agreement for Totem Lake Mall, dated January 17, 2006 (the "Agreement") under which the Developer has pursued the redevelopment of the Mall, which includes extensive demolition, reconfiguration and construction of buildings and improvements, with the completed Mall to be comprised of approximately 1,013,600 square feet of retail and office space, residential units, a cinema, and several parking structures. The redevelopment is contemplated to occur over ten years in several phases, with anticipated completion of the retail components within five years, and anticipated completion of the office and residential components within seven years.

4. Public use and enjoyment of the Mall is enhanced by creation of public spaces, consisting of a new east-west public plaza that will function as a public park, parkway or plaza ("Public Plaza"), improvement of 120th Avenue NE consistent with the new Public Plaza, and the development of public parking. These improvements help create a regional public gathering place and improve transportation and circulation.

5. Use of the public spaces and the reduction of traffic congestion is facilitated by City acquisition of parking facilities in the parking structure in the upper portions of the Mall.

The Developer has constructed and will now lease to the City, with an option to purchase, a condominium unit representing a portion of the parking structure ("City Garage Unit").

6. The Developer has undertaken significant responsibilities and risks associated with developing and constructing the parking structure and Public Plaza, together with obligations regarding the maintenance of those facilities.

7. The Agreement is authorized by RCW 36.70B.170 through 36.70B.210, and this lease of the Public Plaza is authorized by Chapter 35.42 RCW.

8. In consideration of the Developer designing and building the Public Plaza[, granting the easements,] and providing other valuable consideration, the City has deemed it to be in the best interest of the City to lease with an option to purchase the Public Plaza from the Developer.

9. The City determined that the value of the physical assets to be leased by the City significantly outweigh the amount to be invested by the City by leasing the improvements.

10. By Ordinance No. 4034, the City authorized the execution of this Lease.

11. The Public Plaza has been constructed at no cost to the City.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and conditions hereinafter contained, the parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

The following terms shall have the respective meanings set forth below for all purposes of this Agreement.

"Developer Contract" means any contract, agreement or license, written or oral, to which the Developer, its Contractor(s) or subcontractors or their respective agents and employees is a party in connection with the construction of the Public Plaza.

"Escrow Holder" means _____.

"Exercise Notice" means written notice, provided to the Lessor in accordance with Section 3.13(b), of the City's election to exercise the Option.

"Lease" means this Lease with Option to Purchase and Property Transfer Agreement.

"Lease Transfer Date" means _____.

"Leasing Date" means the date of this Lease.

"Option" means the irrevocable, exclusive option to purchase the Public Plaza granted to the City in Section 3.13 of this Lease.

"Option Term" has the meaning given in Section 3.13(a) of this Lease.

“Public Plaza means the land and improvements which are located perpendicular to 120th Avenue N.E. and which are more specifically described in Exhibit A, which is incorporated herein by reference.

“Purchase Price” means the price identified in Section 3.13(c) of this Lease.

All other capitalized terms used and not otherwise defined in this Lease shall have the meanings assigned them in the Agreement.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

2.1 The Developer represents and warrants as follows:

(a) *Authority.* The Developer is authorized to enter into this Lease and the lease created hereunder (the “Lease”) and to convey the Public Plaza, and the person executing this Lease on behalf of the Developer is authorized to do so.

(b) *Title.* The Developer owns the Public Plaza, as more particularly described in Exhibit A to this Lease and by this reference incorporated herein[, subject only to the exceptions set forth in Exhibit B, attached hereto and by this reference incorporated herein and subject to the terms and conditions of the Agreement, including the Easements, Covenants, Conditions and Restrictions Relating to the Public Plaza and 120th Avenue NE Improvements, attached as Exhibit D thereto.

(c) *Substantial Completion of Public Plaza.* The Public Plaza has reached Substantial Completion and is being maintained in accordance with the Agreement.

(d) *Notice.* the Developer has designated the Leasing Date consistent with the requirements of the Agreement.

(e) *Encumbrances.* As of the Leasing Date, the Public Plaza has been reconveyed from any lien created in connection with any of Developer’s loan documents, and all security interests in the Public Plaza under any such loan documents have been terminated and evidence thereof has been deposited with the Escrow Holder.

(f) *Claims.* Having conducted a reasonable investigation, as of the Leasing Date, the Developer certifies that the Public Plaza is free and clear of any mortgage, lien, demand, invoice, obligation, penalty, charge, expense, claim, or dispute that may ripen into a claim of any kind whatsoever (including without limitation claims regarding death, injury, sickness, or property damage) of which the Developer is or should be aware after such investigation, arising by or through the actions of the Developer, its Contractor(s) or subcontractors or their respective agents and employees[, except as disclosed in Exhibit C to this Lease].

(g) *Escrow.* The Developer has deposited with the Escrow Holder all documents and funds required to be so deposited by the Developer under the Agreement.

(h) *No Default.* The Developer is not in default under the Agreement or any loan documents. The Developer has complied with all provisions applicable to it under the Agreement and any such loan documents.

2.2 City Representations and Warranties: The City represents and warrants as follows:

(a) *Authority.* The City is authorized to enter into this Lease, and the person executing this Lease on behalf of the City is authorized to do so.

(b) *Escrow.* The City has deposited with the Escrow Holder all documents and funds required to be so deposited by the City under the Agreement.

(c) *No Default.* The City is not in default under the Agreement. As of the Leasing Date, the City has complied with all provisions applicable to it under the Agreement.

ARTICLE 3. LEASE

3.1 Creation of Lease. The Lessor hereby leases to the City the Public Plaza upon the terms and conditions set forth in this Lease. This Lease shall commence on the Leasing Date, and shall terminate on [not to exceed 25] years from Leasing Date unless earlier terminated in accordance with the terms and provisions of this Lease or the Agreement.

3.2 Possession. From and after the Leasing Date, the City may have possession and use of the Public Plaza for use as a public park, parkway or plaza open to the public and all uses incidental thereto; provided, however, that the City shall be subject to the terms and conditions of the Agreement, specifically including, but not limited to, the provisions of Exhibit D thereto concerning easements, covenants and restrictions relating to the Public Plaza.

3.3 Quiet Enjoyment. The City, upon fully complying with and promptly performing all of the terms, covenants and conditions of this Lease on its part to be performed, shall have and quietly enjoy the Public Plaza for the term of this Lease.

3.4 Rental Payments.

(a) *Components.* The principal component of the rental payments is set forth in Exhibit D-1 to this Lease and by this reference incorporated herein. The aggregate principal component of the rental payments shall equal the Lease Transfer Amount. The interest component of the rental payments, representing interest on the principal component of the rental payments, together with the amortization of the principal component, is set forth in Exhibit D-2 to this Lease and by this reference incorporated herein.

(b) *Pledge.* The City shall make all rental payments at the times and in the amounts set forth in Exhibit D-2. The obligation of the City to make rental payments constitutes a limited tax general obligation of the City. The City hereby pledges irrevocably to include in its budget and levy taxes annually, within the constitutional and statutory limitations provided by law without a note of the electors of the City, on all of the taxable property within the City in an amount sufficient, together with other money legally available and to be used therefor, to pay

when due the rental payments. The full faith, credit and resources of the City are irrevocably pledged for the annual levy and collection of such taxes and the prompt payment of the rental payments.

(c) *Tax Exemption.* The Lessor and the City intend that the interest component of the rental payments hereunder shall be excluded from gross income for federal income tax purposes. The Lessor and the City hereby each covenant that they will not make any use of the Public Plaza that would cause this Lease [or the Certificates of Participation] to be treated as an "arbitrage bond" within the meaning of Section 148(a) of the Code at the time of such use. The City shall comply with the applicable requirements of Section 148(a) of the Code and the applicable regulations thereunder throughout the term of the Lease. The Lessor and the City each covenant that they will not act or fail to act in a manner that will cause the Lease [or the Certificates of Participation] to be considered an obligation not described in Section 103(a) of the Code. The Lessor and the City each further covenant that they will take no actions that would cause the Lease or the Certificates of Participation to be treated as a "private activity bond" as defined in Section 141 of the Code then in effect.

(d) *Additional Rent.* During the term of this Lease, the City shall pay as additional rent [trustee's fees and expenses in connection with the issuance of Certificates of Participation] and all taxes and assessments on the Property Interests for which the City is liable. Due to the contingent nature of such additional rent, it shall not constitute debt of the City for purposes of debt limitations established by RCW 39.36.020.

(e) *Defeasance.* In the event that money and/or "Government Obligations," as now or hereafter be defined in Chapter 39.53 RCW, maturing at such time or times and bearing interest to be earned thereon in amounts sufficient to pay or prepay all rental payments due under this Lease in accordance with the terms of this Lease, are irrevocably set aside and pledged in a special account to effect such payment or prepayment, then no further payments need be made of any rental payments under this Lease, and the Lessor shall not be entitled to any lien, benefit or security in the Public Plaza, except the right to receive the funds so set aside and pledged.

(f) *Prepayment.* The City may prepay the principal component of the rental payments, in \$5,000 increments, in whole or in part, on any date. The City shall give notice of any such prepayment to the Lessor in writing not less than three (3) days in advance of the intended prepayment date [and not less than sixty (60) days if Certificates of Participation have been issued]. Upon such prepayment, the term of this Lease shall be deemed modified such that this Lease terminates on the payment date for the last outstanding rental payment not prepaid.

3.5 Absolute Net Lease. This Lease is an "absolute net lease." As between the City and the Lessor, the City assumes the sole responsibility, and the Lessor shall have no responsibility, for the condition, use, maintenance and repair of the Public Plaza after the Leasing Date. The City will, at its cost and expense, keep and maintain the Public Plaza in good repair and condition, reasonable wear and tear and ordinary use excepted. Nothing in this Section 3.6 shall diminish any of the City's rights under warranties received pursuant to the Agreement.

3.6 Lease Nonterminable. Except as otherwise expressly provided in this Lease, this Lease shall not terminate, nor shall the City have any right to terminate this Lease or to be released or discharged from any obligations or liabilities hereunder for any reason, including without limitation damage or destruction of the Public Plaza, it being the intention of the parties hereto that all rental payments payable by City hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. In that connection, City hereby waives, to the extent permitted by applicable law, any and all rights that it may now have or that may at any time hereafter be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease except in accordance with the express terms of this Lease and agrees that if, for any reason whatsoever, this Lease shall be terminated in whole or in part by operation of law or otherwise except as specifically provided in this Lease, the City nevertheless will pay to the Lessor an amount equal to each rental payment at the time such payment would have become due and payable in accordance with the terms hereof had such termination not occurred.

3.7 Default. In the event that (a) the City fails to make when due any rental payments or additional rent payments or (b) the City defaults in the performance or observance of any of the other terms, covenants, conditions or agreements of this Lease, which default is not cured within thirty (30) days after written notice and demand, or if such default shall be of such a nature that the same cannot practicably be cured within said thirty (30) day period and City shall not within said thirty (30) day period commence with due diligence and dispatch the curing and performance of such defaulted term, covenant, condition or agreement, or if City shall within said thirty (30) day period commence with due diligence and dispatch to cure and perform such defaulted term, covenant, condition or agreement and shall thereafter fail or neglect to prosecute and complete with due diligence and dispatch the curing and performance of such defaulted term, covenant, condition or agreement; then and in any such case, at the Lessor's option and in addition to all other rights or remedies the Lessor may, following the expiration of the cure period, if any, provided herein for such default, immediately declare the City's rights under this Lease terminated, and re-enter the Public Plaza, using such force as may be necessary, and repossesses itself thereof, as of its former estate, and remove all persons and property from the Public Plaza. Notwithstanding any such re-entry, the liability of the City for the rental payments at such times and in such amounts provided for herein by Exhibit D-1 and D-2 shall not be extinguished for the balance of the term of this Lease.

3.8 Compliance with Laws. The City shall at all times during the term of this Lease at the City's own cost and expense, perform and comply with all laws, rules, orders, ordinances, regulations and requirements, now or hereafter enacted or promulgated, of every government and municipality having jurisdiction over the Public Plaza and of any agency thereof, relating to the Public Plaza, whether or not such laws, rules, orders, ordinances, regulations or requirements so involved shall necessitate structural changes, improvements, interference with use and enjoyment of the Public Plaza, and the City shall so perform and comply, whether or not such laws, rules, orders, ordinances, regulations or requirements shall now exist or shall hereafter be enacted or promulgated, and whether or not such laws, rules, orders, ordinances, regulations or requirements can be said to be within the present contemplation of the parties hereto.

3.9 City's Right to Contest. The City shall have the right to contest, by appropriate legal proceedings, any tax, charge, levy, assessment, lien or other encumbrance, and/or any law,

rule, order, ordinance, regulation or other governmental requirement affecting the Public Plaza, and to postpone payment of or compliance with the same during the pendency of such contest, provided that: (a) the City shall not postpone the payment of any such tax, charge, levy, assessment, lien or other encumbrance for such length of time as shall permit the Public Plaza, or any lien thereon created by such item being contested, to be sold by any federal, state, county or municipal authority for the non-payment thereof, (b) the City shall not postpone compliance with any such law, rule, order, ordinance, regulation or other governmental requirement if the Lessor will thereby be subject to criminal prosecution, or if any municipal or other governmental authority shall commence a process according to applicable law to carry out any act to comply with the same or to foreclose or sell any lien affecting all or part of the Public Plaza which shall have arisen by reason of such postponement or failure of compliance; (c) the City shall proceed diligently and in good faith to resolve such contest; (d) such contest shall be in compliance with all laws, rules, orders, ordinances, regulations or other governmental requirements; and (e) the City shall not postpone compliance with any such laws, rules, orders, ordinances, regulations or other governmental requirements if the same shall invalidate any insurance required by this Lease.

3.10 Liability Insurance. During the term of this Lease, the City shall maintain, or cause to be maintained, in full force and effect, comprehensive public general liability insurance covering the Public Plaza in such amounts as may be established by the City from time to time. The City may provide all or a portion of any insurance by self insurance. It is understood that this insurance covers any and all liability of the City and its officers, employees and agents, and the procurement thereof does not constitute a waiver of the defense of governmental immunity.

3.11 Liens. The City shall not create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Public Plaza. The City shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. The City shall reimburse the Lessor for any expense incurred by Lessor (including reasonable attorneys' fees) to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim incurred by the City.

3.12 Option to Purchase. The Lessor hereby grants the City an irrevocable, exclusive option to purchase the Public Plaza ("Option") from the Lessor pursuant to the following terms.

(a) Term. The term of the Option ("Option Term") shall commence on the Leasing Date and terminate upon the termination of this Lease.

(b) Notice. The City may exercise the Option at any time during the Option Term by giving Exercise Notice to the Lessor at least sixty (60) days prior to the City's chosen closing date. The Exercise Notice shall specify the City's chosen closing date. The Lessor may in writing waive or reduce the length of the Exercise Notice.

(c) Purchase Price. The Purchase Price for the Public Plaza upon exercise of the Option, including the consideration for all Property Interests to be received by the City, shall be _____; provided, that all rental payments and other sums, including the Lease Transfer Amount, paid as rent to the Lessor up to the time of exercising the Option shall

be credited toward the payment of the Purchase Price as of the date of payment. Payment of any portion of the Purchase Price by any person or entity other than the City shall be of no effect under this Lease.

(d) *Closing.* The closing shall occur on the date specified by the City in the Exercise Notice. At the closing, the Lessor shall convey the Public Plaza to the City by statutory warranty deed in the form attached as Exhibit B, and this Lease shall terminate.

(e) *Option Not Exercised.* If the City does not exercise the Option upon termination of this Lease, then, after giving the City ninety (90) days' written notice, Lessor may sell the Public Plaza to a third party, but only to a third party permitted under the Agreement. The Lessor shall remit to the City the proceeds from such sale, less the Lessor's costs in connection with the sale.

This Lease is not intended nor shall it be construed to provide that the City is under any obligation to purchase the Public Plaza.

3.13 Eminent Domain.

(a) *Total Taking.* If all of the Public Plaza is taken by eminent domain, then the City shall defease its rental payment obligations, the parties shall have no further obligations to each other, and this Lease shall terminate.

(b) *Partial Taking.* If there is a partial taking of the Public Plaza by eminent domain, this Lease shall not terminate and there shall be no abatement of rental payments otherwise payable by the City hereunder. The City may either retain any condemnation proceeds or apply them to replace all or any portion of the rental payments.

(c) *Insufficiency of Award.* If the condemnation award is insufficient to pay in full the cost of any rental payments or any repair, restoration, modification or improvement of any component of the Public Plaza, the City may, subject to appropriation of sufficient funds, complete the work and pay any cost in excess of the amount of the condemnation award. The City shall not be entitled to any reimbursement therefor from the Lessor, nor shall the City be entitled to any abatement of any rental payments or additional rent otherwise payable hereunder.

(d) *Cooperation of the Lessor.* The Lessor shall cooperate fully with the City at the expense of the City in filing any proof of loss with respect to any insurance policy and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Public Plaza and to the extent it may lawfully do so, authorizes the City to litigate in any proceeding resulting therefrom in the name of and on behalf of the Lessor. In no event will Lessor voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim or any prospective or pending condemnation proceeding with respect to the Public Plaza without the written consent of the City.

3.14 Destruction of the Public Plaza. In the event the Public Plaza is damaged or destroyed by casualty during the term of this Lease, this Lease shall not terminate nor shall there be any abatement of the rental payments or additional rent otherwise payable by City hereunder. The City may elect to defease or prepay the rental payments in accordance with this Lease.

3.15 Surrender. The City shall promptly yield and deliver to Lessor possession of the Public Plaza upon the termination of this Lease in accordance with its terms, unless the City purchases the Public Plaza.

3.16 Assignment.

(a) *Lessor*. The Lessor's right, title and interest in and obligations and duties under this Lease, including the right to receive and enforce payment of the rental payments to be made by the City under this Lease, may be assigned and reassigned in accordance with the terms of the Agreement, and to third parties permitted by the Agreement, subject to prior written consent of the City; provided, however, that Lessor's assignment to a trustee in connection with the Certificates of Participation in the form set forth on Exhibit E attached hereto and incorporated herein by this reference is hereby permitted and consented to by the City. Such assignment shall occur immediately upon execution of this lease by the Developer and the City, and all rights and obligations of the Developer under this lease shall be immediately transferred to Trustee. The City hereby expressly acknowledges and consents to the execution and delivery of the Certificates of Participation. Assignment of this Lease by the Lessor shall be "without recourse" to the Lessor, and the City shall forever waive, discharge, and indemnify (including reasonable attorneys' fees and costs) the Developer from any and all claims, demands, liabilities, or causes of action arising out of, or relating to, the Public Plaza Lease after the Leasing Date. Any Trust Agreement shall require the Trustee to state in any Certificates of Participation issued or executed by the Trustee that such certificates are issued or executed without recourse to the Lessor.

(b) *City*. This Lease may be assigned by the City consistent with Section ___ of the Agreement; provided, however, that the City shall remain obligated to make the rental payments and additional rent payments hereunder notwithstanding any obligation that an assignee may assume; and provided further that the City shall first obtain an opinion from bond counsel that such assignment will not have an adverse effect on the tax-exempt status of the interest component of the rental payments.

ARTICLE 4. MISCELLANEOUS

4.1 Notices. Any notices required in accordance with any of the provisions herein shall be sent by registered or certified mail or hand delivered, addressed as follows:

To the City:	City of Kirkland 123 5th Avenue Kirkland, Washington 98033-6189 Attn: City Manager
To the Developer:	Coventry II DDR Totem Lake LLC 3300 Enterprise Parkway Beachwood, OH 44122 Attn: General Counsel

or at such other place as the parties may in writing direct. All notices shall be deemed effective upon receipt, refusal of delivery or attempted delivery.

4.2 No Joint Venture. It is not intended by this Lease to, and nothing contained in this Lease shall, create any partnership, joint venture or other arrangement between Lessor and the City.

4.3 No Merger. In no event shall the interest, estate or rights of Lessor hereunder merge with any interest, estate or rights of the City as lessee under this Lease, it being understood that such interest, estate and rights of Lessor shall be deemed to be separate and distinct from the City's interest, estate or rights as lessee under this Lease, notwithstanding that any such interests, estates or rights shall at any time or times be held by or vested in the same person, corporation or other entity.

4.4 Amendment. This Lease may not be amended except by written instrument executed by the Lessor and the City and approved by the City Council and the Developer. The Lessor's and Developer's approval of such amendments, if required by the Agreement, shall not be unreasonably withheld.

4.5 Entire Agreement. The Agreement, this Lease and any exhibits or attachments thereto or hereto and forming a part thereof or hereof, set forth the entire agreement of the Lessor and the City concerning the Property Interests, and there are no other agreements or understandings, oral or written, between the Lessor and the City with regard to the Property Interests. In the event of a conflict between any other agreement and this Lease, the provisions of this Lease shall prevail.

4.6 Partial Invalidity. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

4.7 Recording. Any party may record this Lease in its entirety or in the form of a memorandum. Said memorandum or short form shall describe the parties, the Property Interests and this Lease.

4.8 Costs. Except as otherwise provided in the Agreement, the City shall be responsible for and provide for the payment of all costs and expenses related to the execution of this lease, [the execution and delivery of Certificates of Participation in this Lease,] the transfer of title or the transfer of other interests in this Lease, and the exercise of the Option, including without limitation insurance, recording fees, escrow fees and any applicable real estate excise taxes.

4.9 Governing Law; Venue. This Lease and the rights of the parties hereto shall be governed and construed in accordance with the laws of the State of Washington. Venue for any action brought under this Lease shall be in the Superior Court for the State of Washington in King County.

4.10 Time. Time is of the essence in this Lease.

4.11 Successors and Assigns. This Lease may not be assigned except in accordance with Section 3.17 and the Agreement. All of the terms, provisions, and conditions of this Lease shall inure to the benefit of and be enforceable by the respective permitted successors and assigns of the parties to this Lease.

4.12 No Third-Party Beneficiaries. Except as expressly set forth herein, the provisions of this Lease are for the exclusive benefit of the parties to this Lease and their respective permitted successors and assigns, and are not for the benefit of any third person. This Lease shall not be deemed to have conferred any rights upon any third person.

4.13 No Waiver of Rights. No course of dealing between the parties or any delay in exercising any rights hereunder shall operate as a waiver of any rights of any party.

4.14 Survivability. Notwithstanding any provision in this Lease to the contrary, Article 11 (Representations and Warranties) shall remain operative and in full force and effect, regardless of the termination of this Lease in accordance with its terms.

4.15 Counterparts. This Lease may be executed in several counterparts, which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the day and year first set forth above.

CITY OF KIRKLAND, WASHINGTON, a
municipal corporation

By: _____
City Manager

COVENTRY II DDR TOTEM LAKE, LLC

By: _____

Title: _____

EXHIBIT F

Form of City Garage Unit Lease

LEASE WITH OPTION TO PURCHASE AND PROPERTY TRANSFER AGREEMENT

by and among

COVENTRY II DDR TOTEM LAKE, LLC

and the

CITY OF KIRKLAND, WASHINGTON

THIS LEASE WITH OPTION TO PURCHASE AND PROPERTY TRANSFER AGREEMENT ("Lease") is made as of this ____ day of _____, 200__, by and among Coventry II DDR Totem Lake, LLC (the "Developer"), a Delaware limited liability company, as Lessor, and the City of Kirkland, a code city of the state of Washington (the "City"), as lessee.

WITNESSETH:

1. The Developer owns approximately 26 acres of real property, commonly known as the Totem Lake Mall (the "Mall"), located in the City, as more fully described in the Development Agreement.

2. The Mall has been recognized as an under-performing property in need of redevelopment. The City has identified the Mall as a regional "Urban Center" by the Kirkland Comprehensive Plan and King County Countywide Planning Policies. The City has recognized the Mall as an under-performing property in need of redevelopment, to strengthen its role as a retail center and community gathering place.

3. The Developer and the City have entered into a Redevelopment Agreement for Totem Lake Mall, dated January 17, 2006 (the "Agreement") under which the Developer has pursued the redevelopment of the Mall, which includes extensive demolition, reconfiguration and construction of buildings and improvements, with the completed Mall to be comprised of approximately 1,013,600 square feet of retail and office space, residential units, a cinema, and several parking structures. The redevelopment is contemplated to occur over ten years in several phases, with anticipated completion of the retail components within five years, and anticipated completion of the office and residential components within seven years.

4. Public use and enjoyment of the Mall is enhanced by creation of public spaces, consisting of a new east-west public plaza that will function as a public park, parkway or plaza ("Public Plaza"), improvement of 120th Avenue NE consistent with the new Public Plaza, and the development of public parking. These improvements help create a regional public gathering place and improve transportation and circulation.

5. Use of the public spaces and the reduction of traffic congestion is facilitated by City acquisition of parking facilities in the parking structure in the upper portions of the Mall.

The Developer has constructed and will now lease to the City, with an option to purchase, a condominium unit representing a portion of the parking structure ("City Garage Unit").

6. The Developer has undertaken significant responsibilities and risks associated with developing and constructing the parking structure and Public Plaza, together with obligations regarding the maintenance of those facilities.

7. The Agreement is authorized by RCW 36.70B.170 through 36.70B.210, and this lease of the City Garage Unit is authorized by Chapter 35.42 RCW.

8. In consideration of the Developer designing and building the City Garage Unit [, granting the easements,] and providing other valuable consideration, the City has deemed it to be in the best interest of the City to lease with an option to purchase the City Garage Unit from the Developer.

9. The City determined that the value of the physical assets to be leased by the City significantly outweigh the amount to be invested by the City by leasing the improvements.

10. By Ordinance No. 4034, the City authorized the execution of this Lease.

11. The City Garage Unit has been constructed at no cost to the City.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and conditions hereinafter contained, the parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

The following terms shall have the respective meanings set forth below for all purposes of this Agreement.

"City Garage Unit" means that certain condominium unit more particularly described in Exhibit A, which is by this reference incorporated herein.

"Developer Contract" means any contract, agreement or license, written or oral, to which the Developer, its Contractor(s) or subcontractors or their respective agents and employees is a party in connection with the construction of the City Garage Unit.

"Escrow Holder" means _____.

"Exercise Notice" means written notice, provided to the Lessor in accordance with Section 3.13(b), of the City's election to exercise the Option.

"Lease" means this Lease with Option to Purchase and Property Transfer Agreement.

"Lease Transfer Date" means _____.

"Leasing Date" means the date of this Lease.

“Option” means the irrevocable, exclusive option to purchase the City Garage Unit granted to the City in Section 3.13 of this Lease.

“Option Term” has the meaning given in Section 3.13(a) of this Lease.

“Purchase Price” means the price identified in Section 3.13(c) of this Lease.

All other capitalized terms used and not otherwise defined in this Lease shall have the meanings assigned them in the Agreement.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

2.1 The Developer represents and warrants as follows:

(a) *Authority.* The Developer is authorized to enter into this Lease and the lease created hereunder (the “Lease”) and to convey the City Garage Unit, and the person executing this Lease on behalf of the Developer is authorized to do so.

(b) *Title.* The Developer owns the City Garage Unit, as more particularly described in Exhibit A to this Lease and by this reference incorporated herein[, subject only to the exceptions set forth in Exhibit B, attached hereto and by this reference incorporated herein].

(c) *Substantial Completion of City Garage Unit.* The City Garage Unit has reached Substantial Completion and has been maintained in accordance with the Agreement.

(d) *Notice.* The Developer has designated the Leasing Date consistent with the requirements of the Agreement.

(e) *Encumbrances.* As of the Leasing Date, the City Garage Unit has been reconveyed from any lien created in connection with any of Developer’s loan documents, and all security interests in the City Garage Unit under any such loan documents have been terminated and evidence thereof has been deposited with the Escrow Holder.

(f) *Claims.* Having conducted a reasonable investigation, as of the Leasing Date, the Developer certifies that the City Garage Unit is free and clear of any mortgage, lien, demand, invoice, obligation, penalty, charge, expense, claim, or dispute that may ripen into a claim of any kind whatsoever (including without limitation claims regarding death, injury, sickness, or property damage) of which the Developer is or should be aware after such investigation, arising by or through the actions of the Developer, its Contractor(s) or subcontractors or their respective agents and employees[, except as disclosed in Exhibit C to this Lease].

(g) *Escrow.* The Developer has deposited with the Escrow Holder all documents and funds required to be so deposited by the Developer under the Agreement.

(h) *No Default.* The Developer is not in default under the Agreement or any loan documents. The Developer has complied with all provisions applicable to it under the Agreement and any such loan documents.

2.2 City Representations and Warranties: The City represents and warrants as follows:

(a) *Authority*. The City is authorized to enter into this Lease, and the person executing this Lease on behalf of the City is authorized to do so.

(b) *Escrow*. The City has deposited with the Escrow Holder all documents and funds required to be so deposited by the City under the Agreement.

(c) *No Default*. The City is not in default under the Agreement. As of the Leasing Date, the City has complied with all provisions applicable to it under the Agreement.

ARTICLE 3. LEASE

3.1 Creation of Lease. The Lessor hereby leases to the City the City Garage Unit upon the terms and conditions set forth in this Lease. This Lease shall commence on the Leasing Date, and shall terminate on [not to exceed 25] years from Leasing Date unless earlier terminated in accordance with the terms and provisions of this Lease or the Agreement.

3.2 Possession. From and after the Leasing Date, the City may have possession and use of the City Garage Unit for use as a public parking facility open to the public and all uses incidental thereto; subject to the terms and conditions set forth in the Agreement, and the rights, restrictions, obligations, covenants and conditions set forth in the Condominium Declaration for the Totem Lake Mall Parking Garage, including, but not limited to, the obligation to share in the maintenance, repair and improvements thereof.

3.3 Quiet Enjoyment. The City, upon fully complying with and promptly performing all of the terms, covenants and conditions of this Lease on its part to be performed, shall have and quietly enjoy the City Garage Unit for the term of this Lease.

3.4 Rental Payments.

(a) *Components*. The principal component of the rental payments is set forth in Exhibit D-1 to this Lease and by this reference incorporated herein. The aggregate principal component of the rental payments shall equal the Lease Transfer Amount. The interest component of the rental payments, representing interest on the principal component of the rental payments, together with the amortization of the principal component, is set forth in Exhibit D-2 to this Lease and by this reference incorporated herein.

(b) *Pledge*. The City shall make all rental payments at the times and in the amounts set forth in Exhibit D-2. The obligation of the City to make rental payments constitutes a limited tax general obligation of the City. The City hereby pledges irrevocably to include in its budget and levy taxes annually, within the constitutional and statutory limitations provided by law without a note of the electors of the City, on all of the taxable property within the City in an amount sufficient, together with other money legally available and to be used therefor, to pay when due the rental payments. The full faith, credit and resources of the City are irrevocably pledged for the annual levy and collection of such taxes and the prompt payment of the rental payments.

(c) *Tax Exemption.* The Lessor and the City intend that the interest component of the rental payments hereunder shall be excluded from gross income for federal income tax purposes. The Lessor and the City hereby each covenant that they will not make any use of the City Garage Unit that would cause this Lease [or the Certificates of Participation] to be treated as an "arbitrage bond" within the meaning of Section 148(a) of the Code at the time of such use. The City shall comply with the applicable requirements of Section 148(a) of the Code and the applicable regulations thereunder throughout the term of the Lease. The Lessor and the City each covenant that they will not act or fail to act in a manner that will cause the Lease [or the Certificates of Participation] to be considered an obligation not described in Section 103(a) of the Code. The Lessor and the City each further covenant that they will take no actions that would cause the Lease or the Certificates of Participation to be treated as a "private activity bond" as defined in Section 141 of the Code then in effect.

(d) *Additional Rent.* During the term of this Lease, the City shall pay as additional rent [trustee's fees and expenses in connection with the issuance of Certificates of Participation] and all taxes and assessments on the Property Interests for which the City is liable. Due to the contingent nature of such additional rent, it shall not constitute debt of the City for purposes of debt limitations established by RCW 39.36.020. [Include any financial obligations of City Garage Unit pursuant to the Condominium Declaration].

(e) *Defeasance.* In the event that money and/or "Government Obligations," as now or hereafter be defined in Chapter 39.53 RCW, maturing at such time or times and bearing interest to be earned thereon in amounts sufficient to pay or prepay all rental payments due under this Lease in accordance with the terms of this Lease, are irrevocably set aside and pledged in a special account to effect such payment or prepayment, then no further payments need be made of any rental payments under this Lease, and the Lessor shall not be entitled to any lien, benefit or security in the City Garage Unit, except the right to receive the funds so set aside and pledged.

(f) *Prepayment.* The City may prepay the principal component of the rental payments, in \$5,000 increments, in whole or in part, on any date. The City shall give notice of any such prepayment to the Lessor in writing not less than three (3) days in advance of the intended prepayment date [and not less than sixty (60) days if Certificates of Participation have been issued]. Upon such prepayment, the term of this Lease shall be deemed modified such that this Lease terminates on the payment date for the last outstanding rental payment not prepaid.

3.5 Absolute Net Lease. This Lease is an "absolute net lease." As between the City and the Lessor, the City assumes the sole responsibility, and the Lessor shall have no responsibility, for the condition, use, maintenance and repair of the City Garage Unit after the Leasing Date. The City will, at its cost and expense, fulfill all of the obligations under the Condominium Declaration that are required of the owner of the City Garage Unit. Nothing in this Section 3.6 shall diminish any of the City's rights under warranties received pursuant to the Agreement.

3.6 Lease Nonterminable. Except as otherwise expressly provided in this Lease, this Lease shall not terminate, nor shall the City have any right to terminate this Lease or to be released or discharged from any obligations or liabilities hereunder for any reason, including without limitation damage or destruction of the City Garage Unit, it being the intention of the

parties hereto that all rental payments payable by City hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. In that connection, City hereby waives, to the extent permitted by applicable law, any and all rights that it may now have or that may at any time hereafter be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease except in accordance with the express terms of this Lease and agrees that if, for any reason whatsoever, this Lease shall be terminated in whole or in part by operation of law or otherwise except as specifically provided in this Lease, the City nevertheless will pay to the Lessor an amount equal to each rental payment at the time such payment would have become due and payable in accordance with the terms hereof had such termination not occurred.

3.7 Default. In the event that (a) the City fails to make when due any rental payments or additional rent payments or (b) the City defaults in the performance or observance of any of the other terms, covenants, conditions or agreements of this Lease, which default is not cured within thirty (30) days after written notice and demand, or if such default shall be of such a nature that the same cannot practicably be cured within said thirty (30) day period and City shall not within said thirty (30) day period commence with due diligence and dispatch the curing and performance of such defaulted term, covenant, condition or agreement, or if City shall within said thirty (30) day period commence with due diligence and dispatch to cure and perform such defaulted term, covenant, condition or agreement and shall thereafter fail or neglect to prosecute and complete with due diligence and dispatch the curing and performance of such defaulted term, covenant, condition or agreement; then and in any such case, at the Lessor's option and in addition to all other rights or remedies the Lessor may, following the expiration of the cure period, if any, provided herein for such default, immediately declare the City's rights under this Lease terminated, and re-enter the City Garage Unit, using such force as may be necessary, and repossesses itself thereof, as of its former estate, and remove all persons and property from the City Garage Unit. Notwithstanding any such re-entry, the liability of the City for the rental payments at such times and in such amounts provided for herein by Exhibit D-1 and D-2 shall not be extinguished for the balance of the term of this Lease.

3.8 Compliance with Laws. The City shall at all times during the term of this Lease at the City's own cost and expense, perform and comply with all laws, rules, orders, ordinances, regulations and requirements, now or hereafter enacted or promulgated, of every government and municipality having jurisdiction over the City Garage Unit and of any agency thereof, relating to the City Garage Unit, whether or not such laws, rules, orders, ordinances, regulations or requirements so involved shall necessitate structural changes, improvements, interference with use and enjoyment of the City Garage Unit, and the City shall so perform and comply, whether or not such laws, rules, orders, ordinances, regulations or requirements shall now exist or shall hereafter be enacted or promulgated, and whether or not such laws, rules, orders, ordinances, regulations or requirements can be said to be within the present contemplation of the parties hereto.

3.9 City's Right to Contest. The City shall have the right to contest, by appropriate legal proceedings, any tax, charge, levy, assessment, lien or other encumbrance, and/or any law, rule, order, ordinance, regulation or other governmental requirement affecting the City Garage Unit, and to postpone payment of or compliance with the same during the pendency of such

contest, provided that: (a) the City shall not postpone the payment of any such tax, charge, levy, assessment, lien or other encumbrance for such length of time as shall permit the City Garage Unit, or any lien thereon created by such item being contested, to be sold by any federal, state, county or municipal authority for the non-payment thereof, (b) the City shall not postpone compliance with any such law, rule, order, ordinance, regulation or other governmental requirement if the Lessor will thereby be subject to criminal prosecution, or if any municipal or other governmental authority shall commence a process according to applicable law to carry out any act to comply with the same or to foreclose or sell any lien affecting all or part of the City Garage Unit which shall have arisen by reason of such postponement or failure of compliance; (c) the City shall proceed diligently and in good faith to resolve such contest; (d) such contest shall be in compliance with all laws, rules, orders, ordinances, regulations or other governmental requirements; and (e) the City shall not postpone compliance with any such laws, rules, orders, ordinances, regulations or other governmental requirements if the same shall invalidate any insurance required by this Lease.

3.10 Liability Insurance. During the term of this Lease, the City shall maintain, or cause to be maintained, in full force and effect, comprehensive public general liability insurance covering the City Garage Unit in such amounts as may be established by the City from time to time. The City may provide all or a portion of any insurance by self insurance. It is understood that this insurance covers any and all liability of the City and its officers, employees and agents, and the procurement thereof does not constitute a waiver of the defense of governmental immunity.

3.11 Liens. The City shall not create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the City Garage Unit. The City shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. The City shall reimburse the Lessor for any expense incurred by Lessor (including reasonable attorneys' fees) to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim incurred by the City.

3.12 Option to Purchase. The Lessor hereby grants the City an irrevocable, exclusive option to purchase the City Garage Unit ("Option") from the Lessor pursuant to the following terms.

(a) Term. The term of the Option ("Option Term") shall commence on the Leasing Date and terminate upon the termination of this Lease.

(b) Notice. The City may exercise the Option at any time during the Option Term by giving Exercise Notice to the Lessor at least sixty (60) days prior to the City's chosen closing date. The Exercise Notice shall specify the City's chosen closing date. The Lessor may in writing waive or reduce the length of the Exercise Notice.

(c) Purchase Price. The Purchase Price for the City Garage Unit upon exercise of the Option, including the consideration for all Property Interests to be received by the City, shall be _____; provided, that all rental payments and other sums, including the Lease Transfer Amount, paid as rent to the Lessor up to the time of exercising the Option shall

be credited toward the payment of the Purchase Price as of the date of payment. Payment of any portion of the Purchase Price by any person or entity other than the City shall be of no effect under this Lease.

(d) *Closing.* The closing shall occur on the date specified by the City in the Exercise Notice. At the closing, the Lessor shall convey the City Garage Unit to the City by statutory warranty deed in the form attached as Exhibit B, and this Lease shall terminate.

(e) *Option Not Exercised.* If the City does not exercise the Option upon termination of this Lease, then, after giving the City ninety (90) days' written notice, Lessor may sell the City Garage Unit to a third party, but only to a third party permitted by the Agreement. The Lessor shall remit to the City the proceeds from such sale, less the Lessor's costs in connection with the sale.

This Lease is not intended nor shall it be construed to provide that the City is under any obligation to purchase the City Garage Unit.

3.13 Eminent Domain.

(a) *Total Taking.* If all of the City Garage Unit is taken by eminent domain, then the City shall defease its rental payment obligations, the parties shall have no further obligations to each other, and this Lease shall terminate.

(b) *Partial Taking.* If there is a partial taking of the City Garage Unit by eminent domain, this Lease shall not terminate and there shall be no abatement of rental payments otherwise payable by the City hereunder. The City may either retain any condemnation proceeds or apply them to replace all or any portion of the rental payments.

(c) *Insufficiency of Award.* If the condemnation award is insufficient to pay in full the cost of any rental payments or any repair, restoration, modification or improvement of any component of the City Garage Unit, the City may, subject to appropriation of sufficient funds, complete the work and pay any cost in excess of the amount of the condemnation award. The City shall not be entitled to any reimbursement therefor from the Lessor, nor shall the City be entitled to any abatement of any rental payments or additional rent otherwise payable hereunder.

(d) *Cooperation of the Lessor.* The Lessor shall cooperate fully with the City at the expense of the City in filing any proof of loss with respect to any insurance policy and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the City Garage Unit and to the extent it may lawfully do so, authorizes the City to litigate in any proceeding resulting therefrom in the name of and on behalf of the Lessor. In no event will Lessor voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim or any prospective or pending condemnation proceeding with respect to the City Garage Unit without the written consent of the City.

3.14 Destruction of the City Garage Unit. In the event the City Garage Unit is damaged or destroyed by casualty during the term of this Lease, this Lease shall not terminate nor shall there be any abatement of the rental payments or additional rent otherwise payable by

City hereunder. The City may elect to defease or prepay the rental payments in accordance with this Lease.

3.15 Surrender. The City shall promptly yield and deliver to Lessor possession of the City Garage Unit upon the termination of this Lease in accordance with its terms, unless the City purchases the City Garage Unit.

3.16 Assignment.

(a) *Lessor*. The Lessor's right, title and interest in and obligations and duties under this Lease, including the right to receive and enforce payment of the rental payments to be made by the City under this Lease, may be assigned and reassigned in accordance with the terms of the Agreement, and to third parties permitted by the Agreement, subject to prior written consent of the City; provided, however, that Lessor's assignment to a trustee in connection with the Certificates of Participation in the form set forth on Exhibit E attached hereto and incorporated herein by this reference is hereby permitted and consented to by the City. Such assignment shall occur immediately upon execution of this lease by the Developer and the City, and all rights and obligations of the Developer under this lease shall be immediately transferred to Trustee. The City hereby expressly acknowledges and consents to the execution and delivery of the Certificates of Participation. Assignment of this Lease by the Lessor shall be "without recourse" to the Lessor, and the City shall forever waive, discharge, and indemnify (including reasonable attorneys' fees and costs) the Developer from any and all claims, demands, liabilities, or causes of action arising out of, or relating to, the City Garage Unit Lease after the Leasing Date. Any Trust Agreement shall require the Trustee to state in any Certificates of Participation issued or executed by the Trustee that such certificates are issued or executed without recourse to the Lessor.

(b) *City*. This Lease may be assigned by the City consistent with Section ___ of the Agreement; provided, however, that the City shall remain obligated to make the rental payments and additional rent payments hereunder notwithstanding any obligation that an assignee may assume; and provided further that the City shall first obtain an opinion from bond counsel that such assignment will not have an adverse effect on the tax-exempt status of the interest component of the rental payments.

ARTICLE 4. MISCELLANEOUS

4.1 Notices. Any notices required in accordance with any of the provisions herein shall be sent by registered or certified mail or hand delivered, addressed as follows:

To the City:	City of Kirkland 123 5th Avenue Kirkland, Washington 98033-6189 Attn: City Manager
--------------	---

To the Developer: Coventry II DDR Totem Lake LLC
 3300 Enterprise Parkway
 Beachwood, OH 44122
 Attn: General Counsel

or at such other place as the parties may in writing direct. All notices shall be deemed effective upon receipt, refusal of delivery or attempted delivery.

4.2 No Joint Venture. It is not intended by this Lease to, and nothing contained in this Lease shall, create any partnership, joint venture or other arrangement between Lessor and the City.

4.3 No Merger. In no event shall the interest, estate or rights of Lessor hereunder merge with any interest, estate or rights of the City as lessee under this Lease, it being understood that such interest, estate and rights of Lessor shall be deemed to be separate and distinct from the City's interest, estate or rights as lessee under this Lease, notwithstanding that any such interests, estates or rights shall at any time or times be held by or vested in the same person, corporation or other entity.

4.4 Amendment. This Lease may not be amended except by written instrument executed by the Lessor and the City and approved by the City Council and the Developer. The Lessor's and Developer's approval of such amendments, if required by the Agreement, shall not be unreasonably withheld.

4.5 Entire Agreement. The Agreement, this Lease and any exhibits or attachments thereto or hereto and forming a part thereof or hereof, set forth the entire agreement of the Lessor and the City concerning the Property Interests, and there are no other agreements or understandings, oral or written, between the Lessor and the City with regard to the Property Interests. In the event of a conflict between any other agreement and this Lease, the provisions of this Lease shall prevail.

4.6 Partial Invalidity. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

4.7 Recording. Any party may record this Lease in its entirety or in the form of a memorandum. Said memorandum or short form shall describe the parties, the Property Interests and this Lease.

4.8 Costs. Except as otherwise provided in the Agreement, the City shall be responsible for and provide for the payment of all costs and expenses related to the execution of this lease, [the execution and delivery of Certificates of Participation in this Lease,] the transfer of title or the transfer of other interests in this Lease, and the exercise of the Option, including

without limitation insurance, recording fees, escrow fees and any applicable real estate excise taxes.

4.9 Governing Law; Venue. This Lease and the rights of the parties hereto shall be governed and construed in accordance with the laws of the State of Washington. Venue for any action brought under this Lease shall be in the Superior Court for the State of Washington in King County.

4.10 Time. Time is of the essence in this Lease.

4.11 Successors and Assigns. This Lease may not be assigned except in accordance with Section 3.17 and the Agreement. All of the terms, provisions, and conditions of this Lease shall inure to the benefit of and be enforceable by the respective permitted successors and assigns of the parties to this Lease.

4.12 No Third-Party Beneficiaries. Except as expressly set forth herein, the provisions of this Lease are for the exclusive benefit of the parties to this Lease and their respective permitted successors and assigns, and are not for the benefit of any third person. This Lease shall not be deemed to have conferred any rights upon any third person.

4.13 No Waiver of Rights. No course of dealing between the parties or any delay in exercising any rights hereunder shall operate as a waiver of any rights of any party.

4.14 Survivability. Notwithstanding any provision in this Lease to the contrary, Article 11 (Representations and Warranties) shall remain operative and in full force and effect, regardless of the termination of this Lease in accordance with its terms.

4.15 Counterparts. This Lease may be executed in several counterparts, which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the day and year first set forth above.

CITY OF KIRKLAND, WASHINGTON, a
municipal corporation

By: _____
City Manager

COVENTRY II DDR TOTEM LAKE, LLC

By: _____
Title: _____

STATE OF _____)
) ss
COUNTY OF _____)

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 as the _____ on behalf of Coventry II DDR Totem Lake LLC, a Delaware limited liability company, pursuant to the provisions of the Limited Liability Company Agreement of said company, and acknowledged it to be the free and voluntary act of said company for the uses and purposes mentioned in the instrument.

DATED: _____

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of _____,
residing at _____
My appointment expires _____

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the City Manager of the City of Kirkland, Washington, a municipal corporation, to be the free and voluntary act of such municipal corporation for the uses and purposes mentioned in the instrument.

DATED: _____

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington,
residing at _____
My appointment expires _____

EXHIBIT B

Legal Description of Property

PARCEL A:

THAT PORTION OF TRACT B OF PUGET SOUND CENTER, AS PER PLAT RECORDED IN VOLUME 92 OF PLATS, PAGES 95 AND 96, RECORDS OF KING COUNTY, ACCORDING TO THE CORRECTION MAP THEREOF recorded under Recording No. 7105100304, LYING SOUTH OF THE SOUTH LINE AND SAID SOUTH LINE EXTENDED EASTERLY OF THAT TRACT OF LAND CONVEYED TO THE STATE OF WASHINGTON by DEED RECORDED UNDER KING COUNTY RECORDING NO. 4569596 AS SHOWN ON SAID PLOT OF PUGET SOUND CENTER;

EXCEPT MAT PORTION THEREOF CONVEYED TO THE CITY OF KIRKLAND UNDER KING COUNTY RECORDING NO. 8507250580;

AND EXCEPT THOSE PORTIONS THEREOF CONVEYED TO THE STATE OF WASHINGTON BY DEEDS recorded under Recording NOS. 8911150820 AND 9007022009;

AND EXCEPT THAT PORTION COMMENCING AT THE SOUTHWEST CORNER OF LOT "B" AS DEPICTED ON THAT SURVEY RECORDED IN VOLUME 5 OF SURVEYS AT PAGE 60 UNDER AUDITOR'S FILE NO. 7510220689, RECORDS OF KING COUNTY, WASHINGTON;
THENCE SOUTH 89°56'25" EAST ALONG THE SOUTH LINE OF SAID LOT "B" A DISTANCE OF 52.25 FEET TO THE POINT OF BEGINNING;
THENCE CONTINUING SOUTH 89°56'25" EAST ALONG SAID SOUTH LINE A DISTANCE OF 126.72 FEET;
THENCE SOUTH 80°29'33" WEST A DISTANCE OF 97.43 FEET;
THENCE SOUTH 84°12'39" WEST A DISTANCE OF 27.40 FEET;
THENCE NORTH 10°10'36" WEST A DISTANCE OF 19.02 FEET TO THE POINT OF BEGINNING;

being also described as follows:

beginning at the most westerly northwest corner of said tract b;
thence north 89°56'25" east a distance of 363.09 feet;
THENCE SOUTH 10°10'36" EAST A DISTANCE OF 19.02 FEET;
THENCE NORTH 84°12'39" EAST A DISTANCE OF 27.40 FEET;
THENCE NORTH 80°29'33" EAST A DISTANCE OF 97.43 FEET;
THENCE NORTH 89°56'25" EAST A DISTANCE OF 117.13 FEET;
thence along the arc of a 342.16 foot radius non-tangent curve to the left the center of which bears north 71°19'11" east through a central angle of 14°28'27", a distance of 86.44 feet;
thence south 33°09'16" east a distance of 606.00 feet;
thence along the arc of a 415.00 foot radius tangent curve to the right through a central angle of 50°58'49", a distance of 369.26 feet;
thence south 17°49'33" west a distance of 19.82 feet;
thence north 72°10'27" west a distance of 16.00 feet;

thence south 17°49'33" west a distance of 109.00 feet;
thence south 21°34'39" west a distance of 61.13 feet;
thence south 21°25'51" west a distance of 58.85 feet;
thence along the arc of a 49.00 foot radius non-tangent curve to the right the center of which bears north 65°34'46" west through a central angle of 83°03'31", a distance of 71.03 feet;
thence along the arc of a 1210.92 foot radius non-tangent curve to the right the center of which bears north 22°25'27" east through a central angle of 01°01'46", a distance of 21.76 feet;
thence along the arc of a 300.00 foot radius non-tangent Curve to the left the center of which bears south 47°10'08" west through a central angle of 28°22'36", a distance of 148.58 feet;
thence north 71°12'28" west a distance of 90.62 feet;
thence along the arc of a 1216.92 foot radius non-tangent curve to the right the center of which bears north 34°36'19" east through a central angle of 34°50'52", a distance of 740.14 feet;
thence north 20°32'49" west a distance of 535.94 feet to the point of beginning;

SITUATE IN THE CITY OF KIRKLAND, COUNTY OF KING, STATE OF WASHINGTON.

PARCEL B:

THAT PORTION OF TRACT C OF PUGET SOUND CENTER, AS PER PLAT RECORDED IN VOLUME 92 OF PLATS, PAGES 95 AND 96, RECORDS OF KING COUNTY, ACCORDING TO THE CORRECTION MAP THEREOF recorded under Recording No. 7105100304; AND LOTS G1 AND G2 OF CITY OF KIRKLAND'S SHORT PLAT NO. 76-9-9 AS FILED UNDER KING COUNTY RECORDING NO. 7612010652, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID TRACT G, SAID PLAT OF PUGET SOUND CENTER;
THENCE NORTH 89°56'25" EAST 576.34 FEET ALONG THE NORTHERLY LINE THEREOF;
THENCE SOUTH 07°30'00" EAST 157.00 FEET;
THENCE SOUTH 24°05'38" EAST 139.78 FEET;
THENCE SOUTH 40°43'34" EAST 199.25 FEET;
THENCE NORTH 88°51'15" EAST 100.02 FEET,
THENCE SOUTH 66°02'15" EAST 147.73 FEET;
THENCE SOUTH 76°38'19" EAST 122.95 FEET;
THENCE SOUTH 11°30'00" WEST 10.00 FEET TO THE SOUTHERLY LINE OF SAID TRACT G;
THENCE WESTERLY 122.60 FEET (CENTRAL ANGLE 46°49'44") along the arc of a circular curve, said curve having a radius of 150.00 feet which bears north 11°30'00" east from the curve enter to the curve beginning;
thence south 54°40'16" west 426.21 feet to the southwesterly corner of that parcel of land described in the deed recorded under Recording No. 7312200264;
thence north 33°09'16" west, along the easterly line of said parcel, 149.70 feet;
thence south 56°50'44" west, along the northerly line of said parcel, 192.24 feet to the easterly margin of 120th avenue northeast and the arc of a curve to the left having a radius of 465.00 feet whose center bears south 71°03'44" west;
thence northerly along said margin and curve through a central angle of 14°13'00" an arc

distance of 115.38 feet;
thence north $33^{\circ}09'16''$ west, along said margin, 159.80 feet to the southwesterly corner of that parcel of land described in the deed recorded under Recording NO. 7310010602;
thence north $56^{\circ}50'44''$ east, along the southerly line of said parcel, 195.32 feet;
thence north $33^{\circ}09'16''$ west, along the easterly line of said parcel, 128.00 feet;
thence south $56^{\circ}50'44''$ west, 195.32 feet to the easterly margin of 120th avenue northeast;
thence north $33^{\circ}09'16''$ west, along said margin, 318.20 feet to the beginning of a curve to the right having a radius of 292.16 feet;
thence northerly along said curve through a central angle Of $35^{\circ}00'00''$ an arc distance of 178.47 feet;
thence north $01^{\circ}50'44''$ east, along said margin, 0.83 feet to the POINT OF BEGINNING;
together with an easement for a covered walkway over that portion of tract c, Puget sound center, as recorded in volume 92 of plats, pages 95 and 96, records of king county Washington, and amended by the correction map thereof recorded under king county auditor's file no. 7105100304, the boundary of which is described as follows:

beginning at the northwest corner of tract g of said map;
thence south $01^{\circ}50'44''$ west a distance of 0.83 feet;
thence along the arc of a 292.16 foot radius tangent curve to the left through a central angle of $35^{\circ}00'00''$; a distance of 178.47 feet;
thence south $33^{\circ}09'16''$ east a distance of 318.20 feet to the true point of beginning;
thence north $56^{\circ}50'44''$ east a distance of 195.32 feet;
thence south $33^{\circ}09'16''$ east a distance of 20.00 feet;
thence south $56^{\circ}50'44''$ west a distance of 195.32 feet;
thence north $33^{\circ}09'16''$ west a distance of 20.00 feet to the true point of beginning;
TOGETHER WITH EASEMENTS FOR INGRESS, EGRESS AND UTILITIES, PARKING, RESTRICTIONS AND COVENANTS AND OTHER RECIPROCAL RIGHTS AS CONTAINED IN INSTRUMENTS RECORDED UNDER RECORDING NOS. 7310010602 AND 7312200264;

SITUATE IN THE CITY OF KIRKLAND, COUNTY OF KING, STATE OF WASHINGTON.

Exhibit C

**CONSENT TO ASSIGNMENT
AND
ESTOPPEL CERTIFICATE**

THIS CONSENT TO ASSIGNMENT AND ESTOPPEL CERTIFICATE (this “Consent”) is issued as of March __, 2015, by the **CITY OF KIRKLAND**, a municipal corporation duly organized and existing under the laws of the State of Washington (the “City”) at the request of **COVENTRY II DDR TOTEM LAKE, LLC**, a Delaware limited liability company (“Assignor”) and **VILLAGE AT TOTEM LAKE, LLC**, a Delaware limited liability company (“Assignee”).

RECITALS

WHEREAS, the City and Assignor are parties to that certain Redevelopment Agreement for the Totem Lake Mall, which was approved by the City on January 17, 2006 (“Redevelopment Agreement”). A true and correct copy of the Redevelopment Agreement is attached hereto as **Exhibit A** and incorporated herein by reference.

WHEREAS, Assignor and Assignee have represented that they are involved in a purchase and sale transaction for certain property, located in the City of Kirkland, Washington, commonly known as the Totem Lake Mall, and legally described in **Exhibit B**, attached hereto and incorporated herein by reference (“Property”).

WHEREAS, Assignor and Assignee have represented that in conjunction with the purchase and sale transaction, Assignor has agreed to transfer to Assignee all development rights, or evidences of such rights, and all other rights, privileges, entitlements, governmental authorizations and approvals that have been issued and that are specifically attributable to the Property including, without limitation, the City Design Review Board approval of the Totem Lake Mall Conceptual Master Plan (“CMP”), issued on December 5, 2005, together with the City Administrative amendment to the CMP, approved on February 11, 2015; and Redevelopment Agreement, together with the Agreement to Extend and Amend Redevelopment Agreement For Totem Lake Mall, approved by the City on March 3, 2015.

WHEREAS, pursuant to the Redevelopment Agreement, Section 14.1, Assignor has the right and privilege to sell, assign, or otherwise transfer the Redevelopment Agreement to such other persons, firms, corporations, partnerships, joint ventures, and federal, state, or municipal government or agency thereof, as Assignor shall select. However, prior to conveyance of certain designated assets described in the Redevelopment Agreement to the City, which conveyance has not occurred to date, Assignor must (a) obtain the prior written consent of the City to the proposed transferee, which consent will not be unreasonably withheld; (b) such sale, assignment, or transfer shall be made expressly subject to the terms, covenants, and conditions of the Redevelopment Agreement; (c) the City must receive a duly executed and recordable copy of the document evidencing the transfer; and (d) the transfer is not effective to bind the City until the transferee has assumed all obligations of Assignor under the Redevelopment Agreement and notice thereof is given to the City, designating the name and address of the transferee.

WHEREAS, Assignor and Assignee have requested that the City (1) provide written consent to the assignment of the Redevelopment Agreement from Assignor to Assignee; and (2) provide an estoppel certificate. The City has agreed to such requests in accordance with the terms and conditions set forth in this Consent.

NOW, THEREFORE, in consideration of the foregoing, and for good and valuable consideration, the receipt and adequacy of which is hereby conclusively acknowledged, the City hereby agrees and certifies as follows:

1. **CONSENT TO ASSIGNMENT.**

The City acknowledges that, as of the date of this Agreement, with the prior written consent of the City, Assignor has the right to sell, assign or transfer its right, title and interest in the Redevelopment Agreement. The City hereby gives its irrevocable written consent to assignment of the Redevelopment Agreement from Assignor to Assignee, subject to the following: (a) such sale, assignment or transfer must be expressly subject to the terms, covenants, and conditions of the Redevelopment Agreement; (b) the City must be provided a duly executed and recordable copy of the document evidencing the transfer; and (c) the transfer shall not be effective to bind the City until Assignee has assumed all obligations of Assignor under the Redevelopment Agreement and notice thereof is delivered to the City.

2. **CITY ESTOPPEL CERTIFICATE.**

THE CITY REPRESENTS, WARRANTS AND CERTIFIES THAT:

A. The City and Assignor are the only Parties to the Redevelopment Agreement.

B. The Redevelopment Agreement has not been modified, changed, altered, assigned, supplemented or amended in any respect except as follows: On March 3, 2015, the City approved an Agreement to Extend And Amend Redevelopment Agreement For Totem Lake ("Amendment"). The Amendment is valid and in full force and effect on the date of this Agreement. The termination date of the Redevelopment Agreement is five (5) years from the date of execution of the Amendment, subject to an additional two (2) year extension in accordance with the terms and conditions of the Amendment. The Redevelopment Agreement, as modified by the Amendment, represents the entire agreement between the City and Assignor with respect to redevelopment of the Property as of the date of this Consent.

C. Except with regard to Assignee, Assignor has not requested that the City provide written consent to any sale, assignment or transfer of the Redevelopment Agreement to any potential transferee from the effective date of the Redevelopment Agreement through the date of this Agreement.

D. Except with regard to deferred SEPA review fees in the sum of \$27,980 (“Deferred SEPA Fees”), all fees, costs and other financial obligations of Assignor to the City have been paid in full as of the date of this Agreement. Closing arrangements between Assignor and Assignee will include disbursement of the Deferred SEPA Fees to the City promptly after Closing.

E. The City is not involved in any action, suit, proceeding or investigation pending or threatened against Assignor before any court, administrative agency, arbitrator or governmental body relating to the Property or Redevelopment Agreement. There are no uncured defaults on the part of Assignor under the Redevelopment Agreement, and there are no events that have occurred prior to the date of this Agreement, which, with the giving of notice or passage of time or both, would constitute a default by Assignor. The City has sent no notice of termination of the Redevelopment Agreement to Assignor, and has received no notice of termination of the Redevelopment Agreement from Assignor, nor does the City intend to seek termination of the Redevelopment Agreement as of the date of this Agreement.

F. The undersigned is authorized to execute this Agreement on behalf of the City. This Estoppel Certificate is binding upon the undersigned and its successors and assigns and may be relied upon by Assignor and Assignee and their respective successors and assigns.

CITY OF KIRKLAND, WASHINGTON
a municipal corporation

By: _____
Kurt Triplett
City Manager

STATE OF WASHINGTON)
Consent to Assignment
And Estoppel Certificate - 3

