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REDEVELOPMENT AGREEMENT FOR THE TOTEM LAKE MALL

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

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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, subscontractors 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 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 <u>Payment and Financing of Lease Transfer Amount.</u>

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 assign, 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 1 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, it 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, it 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 indemnittee'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) polychloninated 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: 1/27/06

Approved as to Form:

Rod Kaseguma

Special Legal Counsel

COVENTRY II DDR TOTEM LAKE, LLC

By: _____

Its: President

Date: March 6, 2006

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

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

DATED: January 27, 2006

Cynthia D. Cruz
(Signature of Notary)

Cynthia D. Cruz
(Legibly Print or Stamp Name of Notary)

CYNTHIA D. CRUZ
COMMISSION EXPIRES
NOTARY
PUBLIC
JUNE 22, 2009
STATE OF WASHINGTON

Notary public in and for the State of Washington, residing at King County
My appointment expires June 22, 2009

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

SERENA A CONROY
Notary Public - State of New York
NO. 01C06097480
Qualified in Nassau County
My Commission Expires

SERENA A CONROY
Notary Public - State of New York
NO. 01C06097480
Qualified in Nassau County
My Commission 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. 71O5100304, 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 are 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 or 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°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°50'44" east, along the southerly line of said parcel, 195.32 feet;
thence north 33°09'16" west, along the easterly line of said parcel, 128.00 feet;
thence south 56°50'44" west, 195.32 feet to the easterly margin of 120th avenue northeast;
thence north 33°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°00'00" an arc distance of 178.47 feet;
thence north 01°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°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°00'00"; a distance of 178.47 feet;
thence south 33°09'16" east a distance of 318.20 feet to the true point of beginning;
thence north 56°50'44" east a distance of 195.32 feet;
thence south 33°09'16" east a distance of 20.00 feet;
thence south 56°50'44" west a distance of 195.32 feet;
thence north 33°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: _____

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 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 _____