CITY OF KIRKLAND
City Manager's Office
123 Fifth Avenue, Kirkland, WA 98033 425.587.3001
www. kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Lorrie McKay, Intergovernmental Relations and Economic Development Manager
Martha Chaudry, Neon Cloud, LLC (Contract)
Jim Lopez, Assistant City Manager

Date: October 24, 2019

Subject: VILLAGE AT TOTEM LAKE PUBLIC ART PROPOSAL: "DANDELIONS" BY MIREK STRUZIK

RECOMMENDATION:

City Council receive a presentation from Elizabeth Clipp Martin, Development Associate with CenterCal Properties LLC on the public art proposal for the Public Plaza at The Village at Totem Lake and, provide approval for CenterCal to commission this public art as soon as possible.

BACKGROUND DISCUSSION:

The redevelopment of the Totem Lake Mall has a long history dating back to at least 2006, when the City entered into an initial redevelopment agreement related to the mall with Coventry II DDR Totem Lake, LLC (Ordinance 4034). On March 3, 2015, the City passed Resolution R-5109, assigning Coventry's rights and obligations under the Redevelopment Agreement to The Village at Totem Lake. On April 22, 2015, CenterCal Properties (Village at Totem Lake, LLC), a Los Angeles County-based developer became the new owner of Totem Lake Mall and entered into an agreement with the City, which extended the term of the Redevelopment Agreement, pending submittal of revised plans for redevelopment of the Mall to the City. The Village at Totem Lake (VTL) subsequently proposed extensive revisions to the original design plan, including increased retail space, additional residential units, and additional improvements that provide substantial public benefits. On November 21, 2017, Council passed Resolution R-5285, approving an Amended and Restated Redevelopment Agreement with Village at Totem Lake LLC (Attachment A).

Throughout this period, VTL has consistently engaged with the City's Design Review Board and environmental review and permitting processes. VTL obtained Design Review Board approval of Phase I of the development plan (lower Mall) in April of 2016 and of Phase II of the development plan (upper Mall) in March 2017. Both phases are expected to be completed in 2022.

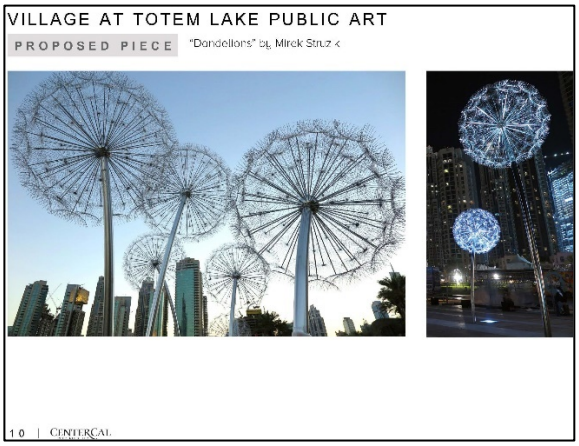
Phase I (Lower Mall), the area of the Mall property between Totem Lake Boulevard and 120th Avenue NE is experiencing a palpable sea-change in vibrancy and economic activity. The lower mall's anchor stores - Whole Foods, Trader Joe's, Nordstrom Rack, and Ross - are all open for business today, as are MOD Pizza, Chipotle, 203° Fahrenheit Coffee and more. Other retail outlets and residential units will be opening soon.

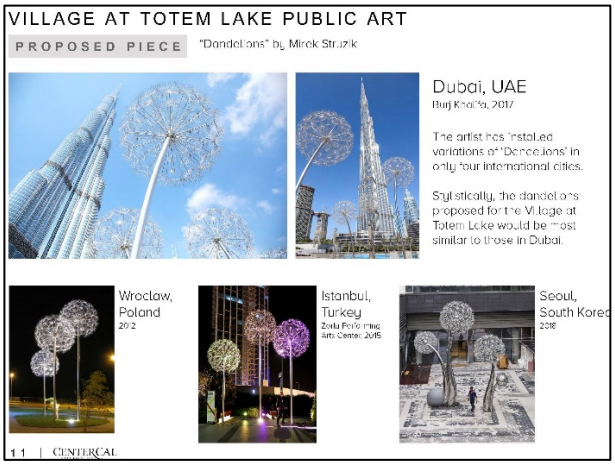
Phase II (Upper Mall) is the area of the Mall property east of 120th Avenue NE. In addition to approximately 605 residential units, the upper mall will include ground floor retail, a movie theatre, restaurant space, and a public plaza with public art. It is the proposed public art for the plaza that is the subject of Council's Special Presentation at its November 6 meeting.

Public Plaza Improvements and Public Plaza Artwork

Article IV of the 2017 Amended and Restated Redevelopment Agreement for the Totem Lake Mall, addresses the Public Plaza and the Public Artwork. Section 4.1.1 addresses its construction phases and processes for proposed modifications. Section 4.1.2 addresses the City's $100,000 financial participation toward artwork within the Public Plaza, the Developer's agreement to reasonably coordinate the selection of this artwork with the City and the Kirkland Cultural Arts Commission, as well as final selection of artwork for the Public Plaza being subject to the mutual agreement of the City and the Developer.

There is a significant public component to the Public Plaza project, including a public park that is intended to resemble a European plaza and emulate an outdoor, public "living room." The park is flanked by buildings on all sides, positioned directly in front of the movie theater, and is designed to be vibrant and bustling with pedestrian areas and places for people to sit and meet. The proposed Public Plaza Artwork is comprised of three, 14 and 16-foot tall stainless-steel dandelions fabricated by world-renowned artist Mirek Struzik.





Struzik's dandelions are installed in only four other cities in the world: Seoul, South Korea; Istanbul, Turkey; Wroclaw, Poland (Struzik is Polish); and the latest and grandest installation of 14 dandelion forms is in the plaza in Dubai, UAE, in front of the Burj Khalifa -- the tallest building in the world.

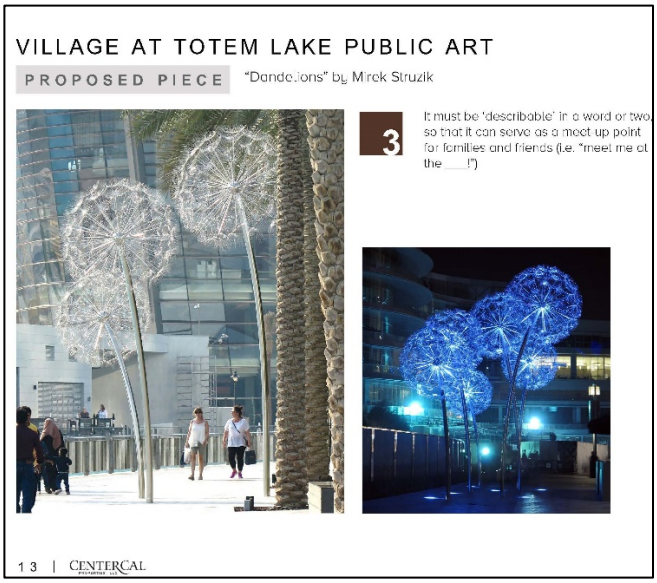
The installation of Struzik's dandelions at The Village at Totem Lake adds a striking and contemporary work to Kirkland's public art collection and puts Kirkland on the map with other grand cities that play host to Struzik's work. Struzik's dandelions are globally beloved as graceful, natural forms in the built environment, made whimsical and delightful by their unexpected scale. Conceptually, the dandelions pay homage to key aspects of Kirkland's character; nodding to the vitality of transformation, resilience, dispersal, growth and adaptation. Practically, they provide a recognizable, iconic and easily describable landmark and meet-up location for visitors to and residents of VTL and can be playfully integrated into celebrations and events in the community through modular lighting features which can transform their look and color. CenterCal is investing $79,000 in addition to the City's $100,000 contribution to commission this art.

In accordance with Section 4.1.1 of Article IV of the 2017 agreement, on September 4, 2019, the Design Review Board (DRB) reviewed project modifications proposed for the Public Plaza at The Village at Totem Lake that were submitted on August 8, 2019 (VTL Phase II Staff Report - PDF 9.8MB). The proposed minor improvements were supported by staff, as they were reflective of minor alterations typically seen as a development's design evolves with construction drawings. The changes were found to be consistent with the general design principles approved by the Board.

In accordance with Section 4.1.2 of Article IV of the 2017 agreement, on September 18, 2019, the Kirkland Cultural Arts Commission (KCAC) received a presentation from Elizabeth Clipp Martin on CenterCal's concept for public art in the public plaza at the Village at Totem Lake, following the DRB's September 4

approval of the proposed project modifications. The Commission's feedback included a strong recommendation to explore alternative locations for the sculpture within the Public Plaza, rather than in the water feature. Ms. Clipp Martin indicated support of the KCAC's feedback in exploring alternate locations for the piece, including places where people could find themselves among the dandelions. Ms. Clipp Martin indicated that she would endeavor to incorporate other comments such as addressing the nearby trees and landscaping to complement the piece in its new location, working with the artist to identify pricing for taller dandelions with curved stems, and looking into the mechanics of lighting for color-changing illumination.

In summary, staff recommends City Council approval for CenterCal to commission "Dandelions" by Mirek Struzik public art as soon as possible. This would mitigate potential delays with fabrication, shipping and installation.



Attachments: A. Resolution R-5285: Approving an Amended and Restated Redevelopment Agreement

RESOLUTION R-5285

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING AN AMENDED AND RESTATED REDEVELOPMENT AGREEMENT WITH VILLAGE AT TOTEM LAKE, LLC.

WHEREAS, pursuant to Ordinance O-4034 adopted January 17, 2006, the City of Kirkland ("City") and Coventry II DDR Totem Lake, LLC ("Coventry") entered into a Redevelopment Agreement for Totem Lake Mall ("Redevelopment Agreement"), with respect to certain real property in the City owned by Coventry and commonly known as the Totem Lake Mall ("Mall"); and

WHEREAS, Village at Totem Lake, LLC ("VTL") acquired the Mall from Coventry subject to the Redevelopment Agreement; and

WHEREAS, pursuant to Resolution R-5109 passed on March 3, 2015, the City consented to the assignment of Coventry's rights and obligations under the Redevelopment Agreement to VTL, and VTL and the City entered into an Agreement to Extend and Amend the Redevelopment Agreement for Totem Lake dated April 22, 2015, which extended the term of the Redevelopment Agreement pending submittal to the City by VTL of revised plans for redevelopment of the Mall; and

WHEREAS, the Design Board Approval of the Conceptual Master Plan was granted on December 5, 2005 and VTL obtained City approval of a minor modification to the Conceptual Master Plan on February 11, 2015; and

WHEREAS, VTL has revised plans for redevelopment of the Mall ("Plan") and the City has approved the Plan for redevelopment in two phases; and

WHEREAS, VTL obtained Design Board Approval of Phase I of the Plan (lower Mall) on April, 2016 and of Phase II of the Plan (upper Mall) on March 23, 2017; and

WHEREAS, pursuant to the State Environmental Policy Act, Chapter 43.21C RCW ("SEPA") and the Administrative Guidelines and the local ordinance adopted to implement it, environmental checklists were submitted to the City and reviewed by the City's responsible official, who issued a SEPA mitigated determination of non-significance for the Plan dated January 19, 2006, a SEPA Addendum dated February 26, 2015 in conjunction with the amended Plan, and a SEPA determination of non-significance dated March 7, 2017 for the current Plan as amended and approved by the Design Review Board; and

WHEREAS, said environmental checklists and determinations have been publicly available and have accompanied the application throughout the entire review process; and

WHEREAS, the City hereby confirms its prior findings that extensive demolition, reconfiguration and construction of buildings and improvements will provide significant benefit to the City and its residents; and

WHEREAS, building permits have been issued to VTL by the City; and

WHEREAS, under the Plan the completed Mall will be comprised of approximately 376,166 square feet of retail space and approximately 1,516,450 square feet of multi-family residential use consisting of approximately 850 to 1,050 residential units with completion of both phases within five years; and

WHEREAS, a portion of 120th Avenue NE, which generally runs north to south through the Mall, will be improved in coordination with redevelopment of the Mall; and

WHEREAS, public use and enjoyment will be enhanced by creation of a new east-west public plaza (the "Public Plaza") and improvements to 120th Avenue NE consistent with the Public Plaza, which improvements will create a regional public gathering place and will be the site of public events; and

WHEREAS, the Mall redevelopment is expected to increase tax revenues, thereby improving the financial stability and general economic vitality of the city of Kirkland; and

WHEREAS, the Mall redevelopment will create new employment opportunities and new housing adjacent to public transit and other public and private amenities, which will materially assist the City in carrying out the goals and objectives of the Comprehensive Plan and the Totem Lake Neighborhood Plan; and

WHEREAS, in consideration of the real property and perpetual, non-exclusive easements that the VTL will sell and/or dedicate to the City and VTL's construction of improvements in the City right of way and on or in the property it will sell and/or dedicate to the City and other valuable consideration, the City is willing to pay VTL up to $15,000,000 under the terms and conditions set forth in the Amended and Restated Redevelopment Agreement (the "Agreement") attached hereto as Exhibit A; and

WHEREAS, an appraisal by Kidder Mathews Valuation Advisory Services dated November 7, 2017 confirms that the property and perpetual, non-exclusive easements to be acquired by the City are valued at $6,795,266; and

WHEREAS, the City estimates that actual cost of the improvements to be constructed and installed on and within such property interests to be $8,699,190; and

WHEREAS, at no cost to the City, the additional public benefits associated with VTL's agreement to maintain, repair and replace the Public Plaza for the longer of twenty-five years or for so long as the Mall is used as a shopping center have been appraised to have a net present value of $6,730,000; and

WHEREAS, at no cost to the City, the additional public benefits associated with the pedestrian corridors to Evergreen Hospital and Madison are estimated to be $864,331; and

WHEREAS, at no cost to the City, the additional public benefits associated with the 120th Avenue NE right-of-way improvements and additional traffic improvements are estimated to be $3,966,864; and

WHEREAS, the total value of the public benefits associated with the redevelopment of the Mall are therefore estimated at $27,055,651; and

WHEREAS, in consideration of the property and improvements that the City will acquire from VTL and its promises to provide additional consideration in accordance with the Agreement, the City determines that it is receiving fair and adequate consideration in return for its up to $15,000,000 payment to VTL, payable upon the terms and conditions set forth in the Agreement; and

WHEREAS, the City has determined that the amount and timing of estimated tax revenues derived from the Mall and other resources will be adequate to meet debt service on any amounts borrowed to make its payment obligations to VTL; and

WHEREAS, the Agreement is authorized by RCW 36.70B.170 through 36.70B.210; and

WHEREAS, as required by RCW 36.70B.200, the City held a public hearing on the Redevelopment Agreement for the Mall on January 3, 2006 and January 17, 2006, and on November 21, 2017; and

WHEREAS, having considered the testimony, staff analysis and comments at the public hearing, the City desires to enter into the Agreement for redevelopment of the Mall.

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

Section 1. The City Manager is authorized and directed execute a development agreement with Village at Totem Lake, LLC, substantially in the form of the Amended and Restated Redevelopment Agreement attached to this resolution. The City Manager is further authorized to execute such minor amendments to the Agreement as may be necessary and agreed to by the parties thereto from time to time without further City Council approvals.

Passed by majority vote of the Kirkland City Council in open meeting this 21st day of November, 2017.

Signed in authentication thereof this 21st day of November, 2017.

Amy Walen, Mayor

Attest:

Kathi Anderson, City Clerk

Attachment A
R-5285
Exhibit A

AMENDED AND RESTATED REDEVELOPMENT AGREEMENT FOR THE TOTEM LAKE MALL

City of Kirkland, Washington
Village at Totem Lake, LLC

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AMENDED AND RESTATED REDEVELOPMENT AGREEMENT FOR THE TOTEM LAKE MALL

THIS AMENDED AND RESTATED REDEVELOPMENT AGREEMENT ("this Agreement") is made and entered into effective the ____ day of November, 2017 ("Effective Date"), by and between the **CITY OF KIRKLAND**, a municipal corporation duly organized under the laws of the State of Washington ("City"), and **VILLAGE AT TOTEM LAKE, LLC,** a Delaware limited liability company ("VTL" or "Developer"). Collectively, the City and VTL may be referred to herein as the "Parties" and individually as a "Party."

RECITALS

A. The Totem Lake Mall ("Mall") is located in the city of Kirkland on approximately 26 acres of land as legally described in **Exhibit A** ("Property"). The Mall is at the heart of the Totem Lake Business District, and is 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 mixed–use retail center and community gathering place. However, the City continues to recognize the Mall as an under-performing property in need of redevelopment and, accordingly, has identified redevelopment of the Mall as a top economic development priority.

B. The City and Coventry II DDR Totem Lake, LLC ("Coventry") entered into the original Agreement for redevelopment of the Totem Lake Mall on March 6, 2006, in accordance with RCW 36.70B.170-210. The original Agreement was approved by the City on January 17, 2006. In April 2006, after a SEPA mitigated determination of non-significance was issued by the City, the original Conceptual Master Plan ("CMP") for the Project was approved by the City Design Review Board, including all commercial development and 216 multi-family residential units.

C. The Project was delayed during an economic downturn. In 2015, Coventry sold the Property to VTL and, with the City's consent, assigned its rights under the Agreement to VTL. In conjunction therewith, VTL proposed a revised development plan that included all commercial development and 395 multi-family residential units. In April 2015, after a SEPA Addendum was issued, an amended CMP for the revised development plan was approved by the City Design Review Board. In addition, the City and VTL entered into an Extended and Amended Redevelopment Agreement for Totem Lake Mall, dated April 22, 2015.

D. Subsequently, VTL further modified the revised development plan to include all commercial development and up to 1,050 multi-family residential units. VTL has obtained City Design Review Board approval of the current development plan for the entire Mall. Both the City and VTL are satisfied and accept the Project Plans for Phase 1, approved on April 4, 2016 (File No. DRV 15-01765), and the Project Plans for Phase 2, approved on March 23, 2017 (File No. DRV16-00914).

E. The current development plan includes extensive demolition, reconfiguration and construction of buildings and improvements, with the completed Mall to be comprised of approximately 376,166 square feet of retail and approximately 1,516,450 square feet of multi-family residential use consisting of approximately 850 and up to 1,050 residential units.

F. The current development plan is anticipated to be completed in two phases. Phase 1, which is the Mall generally west of 120th Avenue NE, is anticipated for completion within three (3) years of the Effective Date of this Agreement. Phase 2, which is the Mall generally east of 120th Avenue NE, is anticipated for completion within five (5) years of the Effective Date of this Agreement. Improvements to 120th Avenue NE will be constructed in both Phase 1 and Phase 2 as described in Article VI. In addition to private development of commercial buildings and multi-family residential units, VTL will be constructing improvements throughout the Property intended for public use and benefit.

G. As part of its development of the Property, VTL will design, construct and maintain a new east-west public plaza and park as depicted on **Exhibit B**. The terms and conditions governing the public plaza and park are set forth in Article IV of this Agreement.

H. VTL will also design, construct and maintain, as applicable, Additional Improvements, including Bicycle/Pedestrian Lanes along Totem Lake Boulevard; Pedestrian Corridors to provide public access to and from Evergreen Hospital and the Madison House; and Traffic Improvements within 120th Avenue NE and Totem Lake Boulevard. The terms and conditions governing the Additional Improvements are set forth in Article V of this Agreement.

I. In addition, VTL will design, improve and contribute to maintenance of a segment of 120th Avenue NE running generally north/south through the Mall ("120th Avenue Improvements"), which will include (1) rebuilding portions of 120th Avenue NE and constructing sidewalks, curbs and gutters; (2) construction and installation of Traffic Improvements applicable to 120th Avenue NE; and (3) dedication to the City of land along 120th Avenue NE abutting the Property as shown on **Exhibit B**.

J. VTL agrees to maintain the land and improvements as shown on **Exhibit B** in accordance with the terms and conditions set forth in this Agreement; provided, however, that VTL shall have the right to delegate such maintenance responsibilities to a private master association to be formed whose members are private owners of land within the Project.

K. Use of the public spaces and reduction of traffic congestion will both be facilitated by VTL creating parking spaces along 120th Avenue NE in conjunction with the 120th Avenue NE Improvements and within the public plaza in Phase 1.

L. The Mall redevelopment is expected to increase City tax revenues, which will improve the financial stability and general economic vitality of the City. The Mall redevelopment will also create a public gathering place, new employment and housing opportunities at the Mall, which is adjacent to public transit and other public and private amenities, and also materially assist

the City in carrying out the goals and objectives of the Kirkland Comprehensive Plan and the Totem Lake Neighborhood Plan.

M. The City also expects to receive considerable public benefits, both tangible and intangible, from public use of the public plaza and park; the 120th Avenue NE Improvements; the Additional Improvements; and VTL's provision of maintenance in accordance with the terms of this Agreement.

N. VTL is willing to undertake significant responsibilities and risks associated with developing and constructing the improvements described in this Agreement for public use in both public right-of-way and the Property, and also in undertaking the ongoing maintenance responsibilities described in this Agreement.

O. VTL will develop and construct certain improvements and sell to the City certain property rights associated therewith described in Article IX of this Agreement that will provide significant public benefits ("Acquired Property"). As additional consideration, and as part of its Project, VTL, at its sole cost and expense, will also develop and construct certain improvements described in this Agreement that will further benefit the public by enhancing vehicular and pedestrian access to the Property and other land within the vicinity of the Property ("Vehicular/Pedestrian Access Improvements"). In addition, VTL will provide maintenance as set forth in this Agreement for the longer of twenty-five (25) years or so long as the Property is used as a Shopping Mall. An Appraisal Report obtained in conjunction with this Agreement estimates the value of the Acquired Property, Vehicular/Pedestrian Access Improvements and maintenance obligations of VTL to be approximately $27,055.651.00. A Cost-Sharing and Public Benefits Table showing the estimated value of the Acquired Property, Vehicular/Pedestrian Access Improvements and maintenance is attached hereto as **Exhibit H**.

P. The City agrees to accept without payment those Vehicular/Pedestrian Access Improvements located within 120th Avenue NE, Totem Lake Boulevard and Totem Lake Way rights-of-way upon completion. The City agrees to pay VTL an amount up to $15,000,000.00 as described in Article IX of this Agreement for the Acquired Property. The amount the City will pay for the Acquired Property will be based on the Actual Costs of such improvements and the appraised value of land dedicated or over which perpetual non-exclusive easements are conveyed to the City in accordance with Exhibit H and, thus, represents reasonable and adequate consideration in the City's judgment for the improvements and property rights it will acquire by payment. This finding of adequacy and reasonableness is made without taking into account the additional consideration the City will receive hereunder, including the Vehicular/Pedestrian Access Improvements and various promises made by VTL including its ongoing obligation to maintain various properties for public use and enjoyment. The City anticipates that tax and other revenue from the redeveloped Mall will be sufficient to pay the debt service of any City bonds that are issued to fund all, or a portion of, the City's anticipated payment of up to $15,000,000.00.

Q. This Agreement is authorized by RCW 36.70B.170-210. As required by RCW 36.70B.200, the City has held public hearings on this Agreement, and adopted requisite

Resolutions approving the Agreement, as amended, on January 17, 2006, March 3, 2015, and November 21, 2017.

R. The Parties desire to amend and restate the original Agreement to reflect the acquisition of the Property by VTL, the assignment of the Agreement to VTL, and the current development plan. The Parties also desire to affirm the vesting of certain development rights contained herein, all in accordance with the provisions of RCW 36.70B.170-210.

S. By this Agreement, the Parties intend to set forth their mutual agreement and understandings as they relate to VTL's redevelopment of the Mall and the City's potential acquisition of improvements and property rights as set forth in this Agreement. 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 "Additional Improvements" means the Bicycle/Pedestrian Lanes along Totem Lake Boulevard; Pedestrian Corridors; Traffic Improvements in existing rights-of-way and improvements on property to be dedicated to the City, or conveyed by perpetual non-exclusive easement for public use, in accordance with Article V of this Agreement.

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

1.4 "Acquisition Amount" means the respective amounts determined consistent with Section 7.4 of this Agreement.

1.5 "Acquisition Date" means the respective dates determined in accordance with Section 7.3 of this Agreement.

1.6 "Acquired Property" means the property rights and improvements constructed by VTL on the Property as set forth in Article IX for which the City will provide City Financial Participation.

1.7 "Bicycle/Pedestrian Lanes" means the Bicycle/Pedestrian Lanes to be constructed along Totem Lake Boulevard in accordance with Section 5.3 of this Agreement.

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

1.9 "City Financial Participation" means the City's commitment of up to $15,000,000.00 to acquire certain improvements, property rights and realize other public benefits pursuant to this Agreement.

1.10 "City Council" means the City Council of the City.

1.11 "Closing" means a transfer of property or property rights with respect to the Project and the attendant recording of documents in the property records of King County in accordance with this Agreement.

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

1.13 "Developer" means Village at Totem Lake, LLC, a Delaware limited liability company, and its permitted successors and assigns.

1.14 "Development Regulations" means those portions of the KMC and 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.

1.15 "Escrow Holder" means Chicago Title Insurance Company of Washington, 701 5th Avenue, Suite 2300, Seattle, WA 98104 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 for closing of all transactions contemplated by this Agreement and provide the title insurance policies to be delivered in connection with the transfer of improvements and property rights in accordance with this Agreement.

1.16 "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, rain, 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.

1.17 "Franchise Utilities" means electricity, natural gas, telecommunications, sewer, water and any other utilities not provided by the City.

1.18 "Intersections" means intersections of public streets where two or more streets or roadways join or cross, including the streets, roadways and roadside facilities for traffic movement within them.

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

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

1.21 "Pedestrian Corridors" means the pedestrian corridor to and from Evergreen Hospital as described in Section 5.1 and the pedestrian corridor to and from the Madison House as described in Section 5.2.

1.22 "Phase 1" means development on the Property west of 120th Avenue NE, and a portion of the 120th Avenue NE Improvements in accordance with Article VI of this Agreement.

1.23 "Phase 1 Public Plaza Improvements" means the Public Plaza Improvements located within Phase 1 of the Project.

1.24 "Phase 1 Transaction" means the Phase 1 Transaction described in Section 7.1 of this Agreement.

1.25 "Phase 2" means development on the Property east of 120th Avenue NE, and a portion of the 120th Avenue NE Improvements in accordance with Article VI of this Agreement.

1.26 "Phase 2 Public Plaza Improvements" means the Public Plaza Improvements located within Phase 2 of the Project.

1.27 "Phase 2 Transaction" means the Phase 2 Transaction described in Section 7.1 of this Agreement.

1.28 "Phase Plan" means a proposed design plan for Phase 1 or Phase 2 of the Project Plan submitted for review and approved by the City Design Review Board.

1.29 "Project" means the Developer's proposed redevelopment of the Mall and associated facilities, as may be amended from time to time, in accordance with this Agreement and applicable regulations.

1.30 "Project Plan" means the "Totem Lake Mall Conceptual Master Plan" which was approved by the City Design Review Board on November 7, 2005, and the "Amended Totem Lake Mall Conceptual Master Plan" which was approved by the City Design Review Board on February 11, 2015, as may be amended or revised from time-to-time, and which is incorporated by reference into this Agreement.

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

1.32 "Public Plaza" means the land and improvements, which are 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 Phase 1 Public Plaza Improvements and the Phase 2 Public Plaza Improvements, is described generally in the Project Plan and more specifically in Article IV of this Agreement.

1.33 "Public Plaza Improvements" means the improvements constructed pursuant to this Agreement and located within the Public Plaza, and includes the Phase 1 Public Plaza Improvements and the Phase 2 Public Plaza Improvements.

1.34 "Retail" uses means selling goods or providing services to customers and includes restaurants and taverns, retail stores, grocers, theatres and entertainment, banks and other financial services, offices, fitness centers and other similar uses approved for the City TL2 Zone.

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

1.36 "Shopping Mall" means the configuration of retail structures and related improvements as depicted on **Exhibit B**. The phrase "so long as the Property is used as a Shopping Mall" means so long as the structures comprising the Shopping Mall have not been replaced, converted or repurposed for another use.

1.37 "Substantial Completion" means (A) with regard to the improvements to be acquired by the City, Developer certification of Substantial Completion, subject to normal punch list items; and (B) with regard to construction of private buildings in Phase 1 and Phase 2, Developer certification of Substantial Completion of the shell and core ready for tenant improvements.

1.38 "Title Company" means Chicago Title Company or another nationally recognized title insurance company selected by VTL and not objected to by the City.

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

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

1.41 "Traffic Improvements" means the Traffic Improvements set forth in the Traffic Improvements Agreement between the Developer and the City dated January 10, 2017, a copy of which is attached as **Exhibit C**, and as further described in Section 5.4 herein.

1.42 "Transaction" shall have the meaning set forth in Section 7.1.

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 Mall.

1.44 "Vehicular/Pedestrian Access Improvements" means certain street and traffic improvements located within 120th Avenue NE, Totem Lake Boulevard and Totem Lake Way; and pedestrian access improvements within the Pedestrian Corridors to be developed and constructed by VTL at its sole cost and expense.

1.45 "120th Avenue NE" means that segment of the 120th Avenue NE right-of-way wherein the 120th Avenue NE Improvements will occur.

1.46 "120th Avenue NE Improvements" means the improvements within the 120th Avenue NE right-of-way, and work adjacent thereto on the Property, including hardscapes/sidewalks, on land to be dedicated to the City 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 payment of any portion of the City Financial Participation, 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 unilaterally terminate 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 and residential components of the Project during the term of this Agreement, as may be extended. Phase 1 of the Project generally consists of the partial demolition, reconstruction and new construction of commercial development and approximately 201 multi-family residential units west of 120th Avenue NE, and includes (1) the Phase 1 Public Plaza Improvements; (2) the Additional Improvements, as set forth in Article V, located within or west of 120th Avenue NE; (3) that portion of the 120th Avenue NE Improvements comprising the street improvements, signalization and sidewalks/hardscapes located on the west side of 120th Avenue NE; and (4) conveyance of real property interests to the City on land associated with the Phase 1 Public Plaza Improvements, Bicycle/Pedestrian Lanes, and land on the west side of 120th Avenue NE as shown on **Exhibit B**. Phase 2 of the Project generally consists of the demolition, reconstruction

and new construction of commercial development and approximately 650 and up to 850 multi-family residential units east of 120th Avenue NE, and includes (A) the Phase 2 Public Plaza Improvements; (B) the Additional Improvements, as set forth in Article V, located east of 120th Avenue NE; (C) that portion of the 120th Avenue NE Improvements comprising sidewalks/hardscapes and other improvements located east of 120th Avenue NE on land to be dedicated to the City; and (D) conveyance of real property interests to the City on land associated with the Phase 2 Public Plaza Improvements, the east side of 120th Avenue NE, and north side of Totem Lake Way as shown on **Exhibit B**.

ARTICLE III
DEVELOPMENT PLANNING

3.1 **SEPA.** The City has conducted extensive environmental review and prepared the following environmental documents: (1) An environmental impact statement (entitled "Environmental Impact Statement for Kirkland Comprehensive Plan 10 Year Update," dated October 15, 2004) in conjunction with adoption of its Comprehensive Plan and Development Regulations, which included within its scope the then anticipated level of redevelopment included within the Project; (2) a SEPA mitigated determination of non-significance for the Project, dated January 20, 2006; (3) a SEPA Addendum dated February 26, 2015, in conjunction with the amended Project Plan; and (4) a SEPA determination of non-significance dated March 17, 2017 in conjunction with Developer's Phase Plans.

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, the Project Plans and the Phase Plans. To the extent permitted by law, the City shall expedite and give priority status to the processing of City land use approvals, 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 Plans shall be made in accordance with conditions imposed by the City Design Review Board and set forth in the Project Plans.

3.4 **Phase Design Review.** Phase Design Review is required during the Project in accordance with the conditions imposed by the City Design Review Board and set forth in the Project Plan. As set forth in the Recitals, the City Design Review Board has approved the Phase Plans for both Phase 1 and Phase 2. Because the Project contemplates building construction over a portion of the retail components within Phase 1 and Phase 2, the Developer shall incorporate into the design elements for the ground floor retail structures that will include building construction over retail all of the necessary structural support, infrastructure, and related features that will be required to facilitate location of structures over the retail structures.

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 City Design Review Board and set forth in the approved Phase Plan.

3.6 **Binding Site Plan.** The Developer will require City approval of a binding site plan for Phase 1 and another for Phase 2. The City agrees that the Mall is eligible for binding site plan approval. Developer has submitted the Village at Totem Lake – Phase 1 and Phase 2 – Binding Site Plans to the City for approval. The City will approve the Binding Site Plans within the Mall as necessary to facilitate redevelopment of the Mall in accordance with the Project Plan, Phase Plans and this Agreement, subject to a determination by the City Planning Director that the Binding Site Plans satisfy 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. Also, 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.

ARTICLE IV
PUBLIC PLAZA

4.1 **Preparation of Public Plaza Plans and Specifications.**

4.1.1 Public Plaza Plans and Specifications. The Public Plaza will be constructed in two phases, including the Phase 1 Public Plaza Improvements and the Phase 2 Public Plaza Improvements. The Public Plaza shall be designed to standards for pedestrian and vehicular access and circulation, safety, ease of maintenance, and attractiveness. As set forth in **Recital D**, the Developer has obtained City Design Review Board approvals of the Phase 1 Project Plan and the Phase 2 Project Plan, including the Public Plaza. In the event of any modification, amendment or revision to the Public Plaza, which will result in a modification, amendment or revision of the approved Phase 1 and/or Phase 2 Project Plans, then any such modification, amendment or revision shall be in accordance with this Agreement and generally consistent with the Public Plaza and 120th Avenue NE Design Standards attached hereto as **Exhibit D** ("Public Plaza Plans and Specifications"). In addition, any modification, amendment or revision shall be subject to approval in accordance with Chapter 142 KZC.

4.1.2 Artwork Funding. The City agrees to pay up to $100,000.00 for artwork, murals, sculptures and similar improvements, such as free-standing objects or features incorporated into the Public Plaza Improvements within the Public Plaza ("Artwork") as part of the City Financial Participation. The Developer agrees to use reasonable efforts to coordinate the selection of this artwork with the City and the Kirkland Cultural Arts Commission and final selection of artwork for the Public Plaza and the payment amount shall be subject to the mutual agreement of the City and the Developer.

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 for each phase prior to formal submission for administrative approval. The Developer shall submit the proposed Public Plaza Plans and Specifications for each phase 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 applicable phase of 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 any 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 or her administrative decision on each phase 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 each phase of the Public Plaza Plans and Specifications and, in the event of a dispute the Dispute Resolution procedures set forth in Article XVII shall apply.

4.2 City Modifications to Public Plaza Plans and Specifications. Prior to administrative approval of either phase 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; provided, however, that such changes or additions requested shall not materially delay commencement of the work and the City agrees to pay for such requested changes or additions.

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 each phase of the Public Plaza at its sole cost and expense, including any loans that Developer may deem necessary to carry out construction. 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, and the appraisal value has taken into consideration the availability of all Utilities. The costs and expenses associated with any Utilities extensions to serve the adjacent private components of the Project 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 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, together with the other

improvements to be conveyed or dedicated to the City, 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 each phase 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 each phase of the Public Plaza, or the Developer, at the Developer's option, shall for one (1) year after Substantial Completion of a phase of the Public Plaza, correct and repair any material defects appearing or developing in the workmanship or materials furnished in respect to the applicable phase of the Public Plaza. If the Developer transfers a fee simple interest in a phase 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, then 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 shall 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. The Public Plaza land, over which the City will be granted a perpetual non-exclusive easement pursuant to this Agreement, and the Public Plaza Improvements located thereon, shall be inspected by a City inspector per applicable City Codes and Laws including Building Codes, Public Works Standards, Public Works Pre-approved Plans, and Public Works Specifications.

4.3.7 Substantial Completion of Public Plaza. The Developer shall provide written certification of Substantial Completion to the City. The City shall have thirty (30) days after receipt of the certification to notify the Developer that it accepts or rejects the applicable phase of the Public Plaza, and Public Plaza Improvements located thereon, completed by Developer or the applicable phase of the Public Plaza, and Public Plaza Improvements located thereon, 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 XVII. 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 a Party "substantially prevails" in the Dispute Resolution, then the Party shall be entitled to recover its reasonable attorneys' fees and costs. In the event that the Developer is the substantially prevailing party, then Developer shall also be entitled to recover its damages relating to any delay in acceptance by the City.

4.4 **Easement Over Public Plaza Land.** A perpetual non-exclusive easement over the land comprising that portion of the Public Plaza in Phase 1 or Phase 2 shall be granted by the Developer to the City in accordance with Article VII of this Agreement. VTL and the City shall diligently attempt to mutually agree upon the form of perpetual non-exclusive easement within ninety (90) days after this Agreement is approved by the City. The form of the easement will include, without limitation (1) a grant by VTL to the City of a perpetual non-exclusive easement over the Public Plaza; (2) a reservation of rights in favor of Developer, and covenants, conditions and restrictions generally in the form attached hereto as **Exhibit E**; (3) rules and regulations for the governance and management of the Public Plaza, including permitted and prohibited uses and activities consistent with this Agreement and taking into consideration relevant provisions of the City's Park Rules, Chapter 11.80 KMC; (4) use of the Public Plaza for events authorized by the City and Developer incorporating the provisions of Section 4.8; (5) restrictions on assignment of the easement, or transfer or conveyance of the Public Plaza incorporating the provisions of Section 4.9; (6) maintenance responsibilities of the Developer and the City relating to the Public Plaza incorporating the provisions of Section 4.5.1 and Section 4.5.2; (7) insurance requirements incorporating the provisions of Section 4.6; (8) maintenance dispute resolution arrangements incorporating Section 4.7 and the Dispute Resolution provisions of Article XVII; (9) identification of the location of private kiosks, pavilions, outdoor dining areas and similar activities within the Public Plaza; and (10) future cooperative arrangements in the event that the Property is no longer used as a Shopping Mall and repurposed for another use, including (a) an option or right of first refusal, as agreed upon, granted to the Developer to purchase back from the City or terminate the perpetual non-exclusive easement in consideration of payment of fair market value to the City; and (b) good faith commitment by the City that if the Developer requests changes, modifications and alterations to the Public Plaza to facilitate the repurposed use(s), that the City will exercise good faith, reasonably cooperate with the Developer, and approval or consent to the requested changes, modifications and alterations shall not be unreasonably delayed, denied or withheld.

4.5 **Maintenance of the Public Plaza.**

4.5.1 Maintenance by Developer. Except as otherwise set forth in this Section 4.5.1, for the longer of twenty-five (25) years or so long as the Property is used as a Shopping Mall, the Developer shall, at its sole cost and expense, be responsible for the maintenance, repair and replacement of the Public Plaza and its amenities at the standards observed by owners of first-class urban regional open-air shopping malls for plazas within such facilities in the Pacific Northwest. Notwithstanding the previous sentence, if major capital expenditures are required to maintain, repair or replace all or a portion of the Public Plaza or its amenities, VTL may request the consent of the City to substitute an alternative amenity or otherwise modify the Public Plaza Improvements, which consent will not be unreasonably withheld if the alternative

provides substantially the same public benefit. 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. Streets within the Public Plaza shall be maintained at least in accordance with the City's applicable standards for maintaining streets in retail and commercial areas of the city of Kirkland. Street lights within the Public Plaza 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. VTL and the City shall diligently attempt to mutually agree upon a maintenance responsibility matrix for the Public Plaza and other improvements within the Project that VTL will be maintaining pursuit to this Agreement within ninety (90) days after this Agreement is approved by the City.

4.5.2 Maintenance by City. In the event that the City conducts any public events on the Public Plaza pursuant to Section 4.8, then the City shall be responsible, at its sole cost and expense, for all maintenance and repairs directly related to such use, consistent with the requirements of Section 4.5.1.

4.6 **Insurance.** The Developer shall obtain a Comprehensive General Liability insurance policy with broad form liability and property damage endorsement providing coverage against claims for bodily injury, death, or property damage relating to the Public Plaza maintenance obligations of Developer under Section 4.5.1. Such insurance policy shall have combined single limits of no less than $5,000,000.00 per occurrence and aggregate and shall name the City as an additional insured to the extent of any claims arising out of, or relating to, maintenance obligations of Developer. In addition, Developer agrees to provide to the City a certificate of insurance with an endorsement to the insurance policy prohibiting cancellation or modification in coverage without the insurer first providing to the City thirty (30) days' prior written notice of such proposed action. The Developer may, at its sole discretion, obtain one Comprehensive General Liability Insurance Policy providing coverage for all land to be dedicated to the City, or conveyed by granting perpetual non-exclusive easements for public use, that is required to be maintained by Developer.

4.7 **Dispute Resolution.** In the event of any dispute between the Parties arising out of, or relating to, the provisions of this Article IV, then the matter shall be submitted for resolution consistent with the Dispute Resolution provisions of Article XVII.

4.8 **Use of Public Plaza/Events.**

4.8.1 Use of Public Plaza/Events. Consistent with use of the Public Plaza as a public space, the City and the general public shall have use of the Public Plaza, subject to the reserved rights of Developer, use covenants, conditions and restrictions set forth in **Exhibit E**; rules, regulations, policies and procedures for events adopted by the liaisons as set forth in Section

4.8.4 below; and any reserved rights, covenants, restrictions or limitations contained within the perpetual non-exclusive easement to be granted to the City over the Public Plaza. The Public Plaza will remain property available for public use for so long as the perpetual non-exclusive easement remains in effect. There shall only be one event on any given day on the Public Plaza; provided, however, that if an event will only be taking place on the Phase 1 or Phase 2 Public Plaza, then reasonable consideration will be given to allow an additional event to occur on the other Phase of the Public Plaza as long as the events will not conflict and reasonable accommodations can be made.

4.8.2 City Authorized Events. The City shall have the right to authorize up to twelve (12) events on the Public Plaza each year ("City authorized event(s)"). Unless mutually agreed between the City and Developer, each City authorized event shall be no longer than three (3) consecutive days in duration. City authorized events are limited to events that will not result in a breach under any of the Developer's leases with its tenants; provided, however, that in the event the City requests, or desires to authorize, an event that one or both of the liaisons reasonably believe in good faith may breach a tenant lease, then upon a City request the Developer shall reasonably and in good faith attempt to accommodate the City request by seeking to obtain consent from the conflicted tenant to conduct the event. City authorized events shall (1) require a permit under Chapter 19.24 or Chapter 19.04 KMC, as may be amended, replaced or modified from time-to-time ("Chapters 19.24 and 19.04 KMC"); and (2) each event for which a permit is authorized or issued by the City pursuant to Chapters 19.24 and/or 19.04 KMC for an event on the Public Plaza, except Developer sponsored events that require such a permit, shall be deemed one of the twelve (12) annual City authorized events. As a general policy, City authorized events on the Public Plaza should be scheduled at least one hundred twenty (120) days before the event. The City shall have priority for scheduling events during July and August.

4.8.3 Developer Authorized Events. Subject to the rights of the City set forth in Section 4.8.2, the Developer shall have the right to authorize as many additional privately sponsored events as deemed desirable by Developer ("Developer authorized events"). Developer authorized events shall be allowed without regard to Chapters 19.24 and 19.04 KMC; except that if the event will require use of a City street, excluding pedestrian crosswalks and established parking spaces along City streets associated with use of the Property, or closure of any City streets to facilitate the event, then Developer must obtain the applicable City permit. Notwithstanding anything to the contrary, sidewalk sales, outdoor dining areas, kiosks, pavilions or similar structures (of a permanent or temporary nature) vending food, beverages, goods or services, signage, displays and similar activities adjacent to retail spaces adjoining, or located on, the Public Plaza by the Developer, or its tenants, consistent with Developer's reserved rights set forth in **Exhibit E,** shall not constitute an event under this Section 4.8 and shall be authorized without regard to Chapters 19.24 and 19.04 KMC. The Developer shall have priority for scheduling events during November and December. Developer authorized events shall be available to the general public, subject to: available space; health and safety concerns; reasonable Developer conditions, such as charging entry or event ticket fees; maximum attendance limits; and age restrictions at appropriate events (such as no minors). Any private events on the Public Plaza by the Developer, meaning events sponsored by Developer that are not open to the general public, shall require the prior approval of the City, which approval shall not be unreasonably delayed, denied or withheld.

4.8.4 Appointment and Responsibilities of Liaisons. The City and the Developer shall each designate and appoint one (1) representative from time-to-time to serve as the Party's liaison with regard to matters involving the Public Plaza. Each Party shall appoint its liaison within ninety (90) days after City approval of this Agreement. The liaisons shall have the following duties and responsibilities:

4.8.4.1 Event Rules, Regulations, Guidelines, Policies and Procedures. The liaisons shall meet within thirty (30) days after the date that both liaisons are appointed to commence discussions and ultimately adopt mutually agreeable event rules, regulations, guidelines, policies and procedures ("Rules and Regulations") governing authorized events on the Public Plaza in order to protect the public and private property; businesses; tenants and health, safety and welfare interests of the City and the Developer. The liaisons shall reasonably endeavor to agree upon and adopt the Rules and Regulations within ninety (90) days after the date both liaisons are appointed. No events shall be approved or take place on the Public Plaza until adoption of the Rules and Regulations. The Rules and Regulations shall include, without limitation, provisions addressing the following: (1) the event boundaries within the Public Plaza, taking into consideration the reserved rights of Developer and tenants; (2) event hours of operation; (3) health, safety and security requirements, including provision of sanitation services/facilities, medical services and law enforcement or security personnel; (4) traffic controls, parking, vehicle staging areas, street closure and vehicle routing for events; (5) any special time, place and manner considerations governing expressive activity events, such as demonstrations, rallies and marches; (6) required meetings, site visits and supervision by an event sponsor; (7) conditions and restrictions on the sale or use of alcoholic beverages (such as beer and wine gardens) and for control or regulation of vendors related to sales at the event; (8) insurance requirements for an event; (9) accommodation of Developer and tenant rights on the Public Plaza, including outdoor dining, kiosks, pavilions or similar structures vending food, beverages, goods or services to avoid conflicts; (10) timelines for scheduling events; (11) application and processing procedures for events; (12) reasonable reasons for denying an event; (13) preconditions that must be met by the event sponsor prior to the event; and (14) process for amending the Rules and Regulations.

4.8.4.2 Scheduling Events. Upon adopting the Rules and Regulations, the 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 and ensure that the event will comply with the Rules and Regulations for the Public Plaza. The written concurrence of each Party's liaison shall be obtained prior to City issuance of any permits under Chapters 19.24 and 19.04 KMC. Prior to the end of a calendar year, the liaisons shall endeavor to prepare a preliminary schedule of events for the next calendar year.

4.8.5 Indemnification by the City. 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, the Developer's

Property or to the property of any person which shall be directly or indirectly caused by the intentional acts, omissions or negligence of the City, or its servants, employees, officials or agents in conjunction with a City authorized event. The City shall not be responsible for (and such indemnity shall not apply to) the intentional acts, omissions or negligence of the Developer or its respective officers, directors, servants, employees, agents or tenants.

4.8.6 Indemnification by the Developer. 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 be directly or indirectly caused by the intentional acts, omissions or negligence of the Developer, or its servants, employees, officers, directors or agents in conjunction with a Developer authorized event. The Developer shall not be responsible for (and such indemnity shall not apply to) the intentional acts, omissions or negligence of Developer's tenants or the City or its respective officials, servants, employees or agents.

4.9 **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 available for public use, both the City and the Developer have an interest in ensuring that future use is consistent with this Agreement for the duration of the perpetual non-exclusive easement granted to the City on the Public Plaza. The City shall not assign, convey, lease or otherwise transfer any of its perpetual non-exclusive easement rights on the Public Plaza land, in whole or in part, whether voluntary or involuntary to any person, entity or municipality other than (1) a governmental entity or municipality for public plaza purposes consistent with this Agreement and the perpetual non-exclusive easement to be granted to the City by the Developer; or (2) to any other person or entity, subject to the prior written consent of the Developer, which consent may be granted or withheld at the sole discretion on the Developer (collectively, the "City Permitted Transferee(s)"). The City shall ensure that any subsequent assignment, conveyance or other transfer of any of its perpetual non-exclusive easement rights on the Public Plaza land to any City Permitted Transferee will require the assumption by the City Permitted Transferee of all obligations of the City related to the Public Plaza under this Agreement and the perpetual non-exclusive easement to be granted to the City. The Developer shall not convey or otherwise transfer the Public Plaza, including Public Plaza Improvements and land therein, 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; (2) affiliates or subsidiaries of Developer for public plaza purposes consistent with this Agreement; (3) successors and assigns of Developer who obtain fee ownership of all, or any portion of, the Property, for purposes consistent with this Agreement; (4) a private master association to be formed whose members are private owners of land within the Project, for purposes consistent with this Agreement; or (5) to any other person or entity, subject to the prior written consent of the City, which consent may be granted or withheld at the sole discretion of the City, or its successors or assigns (collectively, the "Developer Permitted Transferee(s)"); provided, however, that Developer shall have and retain the right to lease portions of the Public Plaza, from time to time, to tenants for purposes of outdoor dining, kiosks, pavilions and similar

structures and uses within the Public Plaza, without regard to the Developer Permitted Transferee provisions in this Section 4.9, as long as the lease does not unreasonably interfere with public use of the remaining Public Plaza. Except as expressly permitted in this Section 4.9, the Developer shall ensure that any subsequent conveyance or other transfer of the Public Plaza, including Public Plaza Improvements and land therein, in whole or in part, will require the assumption by the Developer Permitted Transferee of all obligations of the Developer related to the Public Plaza under this Agreement and the perpetual non-exclusive easement to be granted to the City. The perpetual non-exclusive easement to be granted to the City shall include the provisions set forth in this Section 4.9.

ARTICLE V
ADDITIONAL IMPROVEMENTS

5.1 **Pedestrian Corridor to Evergreen Hospital.** The Developer shall design and construct a pedestrian corridor, and improvements thereon, to the common boundary of the Property and the adjoining Evergreen Hospital property as depicted on **Exhibit B** ("Evergreen Hospital Pedestrian Corridor") and permit public access and use of the Evergreen Hospital Pedestrian Corridor for so long as the Property is used as a Shopping Mall. The plans and specifications for the improvements shall be subject to the review and approval of the City's Public Works Director and, in the event of a dispute, the Dispute Resolution procedures set forth in Article XVII shall apply.

5.2 **Pedestrian Corridor to Madison House.** The Developer shall design and construct a pedestrian corridor, and improvements thereon, to the common boundary of the Property and the adjoining Madison House property as depicted on **Exhibit B** ("Madison House Pedestrian Corridor") and permit public access and use of the Madison House Pedestrian Corridor for so long as the Property is used as a Shopping Mall. The plans and specifications for the improvements shall be subject to the review and approval of the City's Public Works Director and, in the event of a dispute, the Dispute Resolution procedures set forth in Article XVII shall apply.

5.3 **Totem Lake Boulevard Bicycle/Pedestrian Lanes.** The Developer shall design and construct bicycle/pedestrian lanes, ten feet (10') in width, along the Property abutting the east side of Totem Lake Boulevard ("Bicycle/Pedestrian Lanes"). In addition, Developer shall install pedestrian lighting spaced at seventy feet (70') on-center adjacent to the Bicycle/Pedestrian Lanes along the Totem Lake Boulevard. The land over which the Bicycle/Pedestrian Lanes will be constructed is shown on **Exhibit B**. The Bicycle/Pedestrian Lanes, pedestrian lighting, and associated land, are Acquired Property and will be dedicated to the City in consideration of payment of the Actual Cost of improvements and the appraised value of the land along Totem Lake Boulevard. The appraised value of the land has been projected to the time of payment by an appraisal approved by the City and the Developer immediately prior to execution of this Agreement. The plans and specifications for the improvements shall be subject to the review and approval of the City's Public Works Director and, in the event of a dispute, the Dispute Resolution procedures set forth in Article XVII shall apply.

5.4 **Traffic Improvements.** The Developer and the City entered into a Traffic Improvements Agreement on January 10, 2017 ("Traffic Improvements Agreement"), a copy of which is attached hereto as **Exhibit C**, pursuant to which the Developer will construct, install, relocate or provide, as applicable, the following additional traffic improvements: (1) a traffic signal at the intersection of 120th Avenue NE/Totem Lake Way; (2) a traffic signal at the intersection of Totem Lake Boulevard/NE Village Plaza; (3) a Rectangular Rapid Flashing Beacon ("RRFB") at the intersection of 120th Avenue NE/NE Village Plaza; (4) C-curbing (restricted right-in/right-out) within 120th Avenue NE in front of the O'Reilly Auto Parts/Bank of America driveway; (5) a relocated driveway (to the extent located within the 120th Avenue NE right-of-way) for the property adjacent to the northern boundary in Phase 1, which will be relocated further north along the west side of 120th Avenue NE to align with the DeYoung Pavilion's driveway; (6) conduit, foundation(s) and junction boxes to accommodate a potential future traffic signal at the northerly driveway of Phase 1 along 120th Avenue NE; and (7) evaluation of the level of service at the 120th Avenue NE/NE 128th Street intersection when the entire residential portion of the Project has at least 85% occupancy and, if warranted, signal improvement will be implemented in accordance with the provisions of the Traffic Improvements Agreement (collectively, the "Traffic Improvements"). The plans and specifications for the Traffic Improvements shall be subject to the review and approval of the City's Public Works Director, and in the event of a dispute, the Dispute Resolution procedures set forth in Article XVII shall apply. The City will accept ownership, at no cost to the City, of all the Traffic Improvements located within City rights-of-way, or on private land over which easements have been granted for placement of the Traffic Improvements, upon completion of construction and/or installation (including any signal improvement at the 120th Avenue NE/NE 128th Street intersection if subsequently deemed warranted).

5.5 **Totem Lake Way Dedication.** The Developer will improve and dedicate to the City land adjacent to Totem Lake Way as shown on **Exhibit B** attached hereto. The land will be Acquired Property and conveyed to the City in consideration of payment of Actual Costs of improvements and the appraised value of the land in accordance with Exhibit H. The appraised value of the land has been projected to the time of payment by an appraisal approved by the City and the Developer immediately prior to execution of this Agreement.

5.6 **Maintenance of Pedestrian Corridors and Bicycle/Pedestrian Lanes.** For the longer of twenty-five (25) years or so long as the Property is used as a Shopping Mall, the Developer shall, at its sole cost and expense, maintain the Evergreen Hospital Pedestrian Corridor described in Section 5.1 and the Madison House Pedestrian Corridor described in Section 5.2 (collectively, the "Pedestrian Corridors") and the Totem Lake Boulevard Bicycle/Pedestrian Lanes described in Section 5.3; provided, however, that the City will maintain the pedestrian lighting along Totem Lake Boulevard right-of-way. 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. Lights within the Pedestrian Corridors, if any, shall be promptly replaced when necessary. Routine maintenance and replacement shall be provided to all furnishings including stairways, trails, benches, garbage receptacles and landscaping containers. Grass, if any, 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, if any, shall be kept in good repair; and plantings shall be maintained. The maintenance responsibility of the Developer is limited to routine maintenance. In accordance with Section 4.5.1, VTL and the City shall diligently attempt to mutually agree upon a maintenance matrix within ninety (90) days after this Agreement is approved by the City. In the event that the City concludes that the Developer has failed to maintain, repair, replace or improve the Pedestrian Corridors or the Bicycle/Pedestrian Lanes in accordance with this Agreement, then the matter shall be submitted for resolution consistent with the Dispute Resolution provisions of Article XVII.

5.7 **Insurance.** The Developer shall obtain a Comprehensive General Liability insurance policy with broad form liability and property damage endorsement, providing coverage against claims for bodily injury, death, or property damage relating to the maintenance obligations of Developer under Section 5.6. Such insurance to have combined single limits of no less than $5,000,000.00 per occurrence and aggregate and shall name the City as an additional insured to the extent of any claims arising out of, or relating to, maintenance obligations of Developer. In addition, Developer agrees to provide to the City a certificate of insurance with an endorsement to the insurance policy prohibiting cancellation or modification in coverage without the insurer first providing to the City thirty (30) days' prior written notice of such proposed action. The Developer may, at its sole discretion, obtain one Comprehensive General Liability Insurance Policy providing coverage for all land to be dedicated to the City, or conveyed by granting a perpetual non-exclusive easement to the City, that is required to be maintained by Developer.

5.8 **Work Standards Applicable to Traffic Improvements within 120th Avenue NE and Totem Lake Boulevard Rights-of-Way.** Any work associated with the Traffic Improvements that will be undertaken within the 120th Avenue NE or Totem Lake Boulevard rights-of-way shall comply with the applicable work standards set forth in Article VI, Section 6.4 relating to (1) compliance with laws; (2) permits; (3) construction warranty; (4) non-liability of the City; (5) construction observation and inspections; and (6) prevailing wages.

5.9 **Work Standards Applicable to Other Additional Improvements.** All remaining work associated with the Additional Improvements that will be undertaken on the Property shall comply with the applicable Public Plaza work standards set forth in Article IV, Sections 4.3.2 through Section 4.3.6 relating to (1) compliance with laws; (2) permits; (3) construction warranty; (4) non-liability of the City; and (5) construction observations and inspections.

5.10 **Transfer of Additional Improvements and Related Land.** Transfer of the (1) Bicycle/Pedestrian Lanes, including improvements and associated land and (2) the land, including improvements, along Totem Lake Way to be dedicated to the City will occur in either Phase 1 or Phase 2 of the Project, as applicable, and will be subject to Closing in accordance with Article VII of this Agreement. The Traffic Improvements, to the extent any conveyance is required, will be conveyed to the City upon Substantial Completion and acceptance by the City.

ARTICLE VI
120th AVENUE NE IMPROVEMENTS

6.1 Preparation and Approval of Plans and Specifications.

6.1.1 Preparation of 120th Avenue NE Plans and Specifications. The 120th Avenue NE Improvements include the improvements within the 120th Avenue NE right-of-way, and work adjacent thereto on the Property, including hardscapes/sidewalks and other improvements, on land to be dedicated to the City. The Developer shall prepare plans and specifications for the 120th Avenue NE Improvements for City approval, which plans and specifications shall be in accordance with this Agreement and generally consistent with the 120th Avenue NE Design Standards set forth in **Exhibit D** ("120th Avenue NE Plans and Specifications"). The 120th Avenue NE Improvements shall include rebuilding 120th Avenue NE; sidewalks, curbs, gutters, street lighting and other improvements; utilities work; the Traffic Improvements set forth in the Traffic Improvement Agreement applicable to 120th Avenue NE; and the dedication of land along 120th Avenue NE to the City a shown on **Exhibit B**.

6.1.2 Street and Utility Improvement Permit Approval. VTL has applied for a Land Surface Modification ("LSM") permit to install the required 120th Avenue NE street and utility improvements. Prior to construction of the required street and utility improvements, VTL shall have an issued LSM permit as required by Kirkland Municipal Code Chapter 29. Subsequent VTL or City requested revisions to the street and utility improvement shall be reviewed and approved as a revision to an existing issued LSM, issued under a new LSM, or issued under a Public Works Right-of-Way Permit per Chapter 19 of the Kirkland Zoning Code.

6.2 Modifications to 120th Avenue NE Plans and Specifications. Prior to issuance of any LSM permit to install street and utility improvements in 120th Avenue NE or during construction of said improvements, if mutually agreed in writing by the City and VTL, the City may request changes or additions to the proposed 120th Avenue NE Improvements; provided, however, that such changes or additions requested shall not materially delay commencement of the work and the City agrees to pay for such requested changes or additions.

6.3 Construction; Schedule. The 120th Avenue NE Improvements shall be constructed generally in conjunction with Phase 1 of the Project; provided, however, that the hardscapes/sidewalks and other improvements on the east side of 120th Avenue NE shall be constructed in conjunction with Phase 2 to avoid damage to these improvements during building construction in Phase 2 along the east side of 120th Avenue NE. The City shall cooperate with the Developer with regard to scheduling and construction of the 120th Avenue NE Improvements.

6.4 Work Standards. The Work standards set forth in this Section 6.4 shall only apply to the 120th Avenue NE Improvements, which includes sidewalks on both sides of 120th Avenue NE, and the Traffic Improvements within the 120th Avenue NE and Totem Lake Boulevard rights-of-way.

6.4.1 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/or payment bond associated with the 120th Avenue NE Improvements. The City shall not be liable for any work performed or to be performed in conjunction with the 120th Avenue NE Improvements 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 120th Avenue NE Improvements shall ever become an obligation of the City. The Developer shall 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 120th Avenue NE Improvements.

6.4.2 Insurance and Indemnification.

6.4.2.1 Insurance. The Developer shall provide the insurance policies and coverages set forth in Section 13.1.

6.4.2.2 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 intentional or negligent acts, errors, or omissions of the Developer or its servants, employees, officers, agents 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.

6.4.2.3 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 intentional or negligent 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 servants, employees, officers, agents or contractors.

6.4.2.4 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 and the Developer, or their respective agents, officials, servants, employees, officers or contractors, to the extent of the indemnitee's negligence, and the Parties specifically waive immunity under Title 51 RCW, and application of the Public Duty Doctrine, to this extent.

6.4.3 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.

6.4.4 Prevailing Wages. Even though the 120th Avenue NE Improvements are a private project related to the redevelopment of the Mall, the Parties have agreed that Developer will pay or cause to be paid prevailing wages on the following: All 120th Avenue NE Improvements, which includes sidewalks on both sides of 120th Avenue NE and the Traffic Improvements within the 120th Avenue NE and Totem Lake Boulevard rights-of-way ("Prevailing Wages Work"). Developer shall not be required to pay prevailing wages for any of the other development or construction work that will occur on the Property. Accordingly, the Developer shall pay or cause to be paid to all workers, laborers and mechanics employed to perform the construction, alteration, improvement or repair of the Prevailing Wages Work 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. Upon Substantial Completion of the Prevailing Wages Work, Developer shall cause its general contractor to provide written certification to the City Finance and Administration Director that prevailing wages were actually paid.

6.4.5 Construction Observation and Inspections. All improvements associated with the 120th Avenue NE Improvements shall be inspected by a City inspector per applicable City Codes and Laws including applicable Building Codes, Public Works Standards, Public Works Pre-approved Plans, and Public Works Specifications.

6.4.6 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 Substantial Completion of each segment of the 120th Avenue NE Improvements, correct and repair any material defects appearing or developing in the workmanship or materials furnished in respect to the applicable segment of 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 applicable phase of 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 XVII.

6.5 **Substantial Completion of 120th Avenue NE Improvements.** The Developer shall provide written certification to the City of Substantial Completion for each phase of the 120th Avenue NE Improvements. The City shall have fourteen (14) days after receipt of the certification to notify the Developer in writing that it accepts or rejects the applicable phase of the 120th Avenue NE Improvements or the applicable phase of 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 XVII. 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 a Party "substantially prevails" in the Dispute Resolution, that Party shall be entitled to recover its reasonable attorneys' fees and costs. In the event that the Developer is the substantially prevailing party, then Developer shall also be entitled to recover its damages relating to any delay in acceptance by the City.

6.6 **Maintenance of 120th Avenue NE.** The City shall, at its sole cost and expense, maintain, repair and replace the vehicular portions of the 120th Avenue NE right-of-way (curb to curb), all traffic and pedestrian signalization and signage, including the RRFB, and street lighting along 120th Avenue NE, including street lighting to be selected and installed by Developer, in accordance with its applicable standards for maintaining and repairing City streets and roadways in retail and commercial areas in the city of Kirkland; providing, however, that for the longer of twenty-five (25) years or so long as the Property is used as a Shopping Mall, Developer will provide the City with one spare light standard that matches the light standards installed along 120th Avenue NE. When it is necessary for the City to use a spare light standard, it will contact Developer and request a replacement and Developer shall provide the replacement promptly. For the longer of twenty-five (25) years or as long as the Property is used as a Shopping Mall, and except as otherwise provided in this Section 6.6 associated with City maintenance, the Developer shall maintain the remaining components of the 120th Avenue NE Improvements from curb to the face of buildings, which is composed primarily of sidewalks, bicycle lanes, and pedestrian areas in accordance with the same maintenance standards as are applicable to the Public Plaza in Section 4.5.1. In accordance with Section 4.5.1, VTL and the City shall diligently attempt to mutually agree upon a maintenance responsibility matrix within ninety (90) days after this Agreement is approved by the City. In the event that either Party concludes that the other Party has failed to maintain, repair, replace or improve the 120th Avenue NE Improvements in accordance with this Agreement, then the matter shall be submitted for resolution consistent with the Dispute Resolution provisions of Article XVII. 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 a Party "substantially prevails" in the dispute, that Party shall be entitled to recover its reasonable attorneys' fees and costs associated therewith.

6.7 **Insurance.** The Developer shall obtain a Comprehensive General Liability insurance policy with broad form liability and property damage endorsement, providing coverage against claims for bodily injury, death, or property damage relating to the maintenance obligations of Developer under Section 6.6 on land dedicated to the City along 120th Avenue NE. Such insurance to have combined single limits of no less than $5,000,000.00 per occurrence and

aggregate, and the Developer shall name the City as an "additional insured" to the extent of any claims arising out of, or relating to, maintenance obligations of Developer. In addition, Developer agrees to provide to the City a certificate of insurance with an endorsement to the insurance policy prohibiting cancellation or modification in coverage without the insurer first providing to the City thirty (30) days' prior written notice of such proposed action. The Developer may, at its sole discretion, obtain one Comprehensive General Liability Insurance Policy providing coverage for all land to be dedicated to the City, or conveyed by granting perpetual non-exclusive easements for public use, that is required to be maintained by Developer.

6.8 **Relocation of Utilities in 120th Avenue NE.** The 120th Avenue NE Improvements will include the relocation of Utilities including, without limitation, 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.

6.9 **Payment of Acquisition Amount Associated with a Portion of the 120th Avenue NE Improvements.** That portion of the 120th Avenue NE Improvements, and land, located on the Property to the west and east of the 120th Avenue NE right-of-way as shown on **Exhibit B** will be Acquired Property and will be dedicated to the City in consideration of payment of the Actual Cost of improvements and the appraised value of the land. Transfer of the land and improvements to the City, and payment of the Acquisition Amount therefor, shall occur partially in the Phase 1 Transaction and partially in the Phase 2 Transaction, as applicable, and will be Closed in accordance with Article VII of this Agreement.

6.10 **Signage.** VTL shall be allowed to erect private signage within the City rights-of-way adjacent to the Project in a manner consistent with this Agreement and consistent with an approved Master Sign Plan, which approval shall not be unreasonably delayed, denied or withheld.

ARTICLE VII
PHASING AND TRANSACTIONS ASSOCIATED WITH CITY FINANCIAL PARTICIPATION

7.1 **Phasing.** The Project will be developed in two (2) phases. Phase 1 will include the following Acquired Property and Vehicular/Pedestrian Access Improvements: (1) Phase 1 Public Plaza Improvements; (2) the Additional Improvements set forth and described in Article V that are located west of, or within, 120th Avenue NE; (3) that portion of the 120th Avenue NE Improvements comprising the street improvements, signalization, sidewalks/hardscapes and other improvements located on the west side of 120th Avenue NE; and (4) grant of a perpetual non-exclusive easement to the City over land associated with the Phase 1 Public Plaza, and dedication of land to the City associated with the Bicycle/Pedestrian Lanes and west side of 120th Avenue NE as shown on **Exhibit B**. Phase 2 will include the following Acquired Property and Vehicular/Pedestrian Access Improvements: (1) Phase 2 Public Plaza Improvements; (2) the Additional Improvements set forth and described in Article V that are located east of the 120th Avenue NE; (3) that portion of the 120th Avenue NE Improvements comprising

hardscapes/sidewalks and other improvements east of the 120th Avenue NE right-of-way on land to be dedicated to the City; and (4) grant of a perpetual non-exclusive easement to the City over land associated with the Phase 2 Public Plaza, and dedication of the land on the east side of the 120th Avenue NE right-of-way and along the north side of Totem Lake Way as shown on **Exhibit B**. With regard to the Acquired Property, Phase 1 and Phase 2 will each have a separate transaction for closing the conveyance of improvements and land to the City and payment of the Acquisition Amounts to Developer. These will be referred to in this Article VII as the "Phase 1 Transaction" and the "Phase 2 Transaction," and individually may be referred to as a "Transaction" or collectively as the "Transactions."

7.2 **Conveyance of Acquired Property.** On the Acquisition Dates described in Section 7.3 below and upon (1) payment by the City of the applicable Acquisition Amounts, defined in Section 7.4 below; and (2) the delivery of all items to be delivered by the City pursuant to Section 7.8 below the Developer agrees to transfer to the City all of Developer's right, title and interest in and to the Acquired Property associated with Phase 1 or Phase 2, except for the Public Plaza Improvements, which will remain in Developer's ownership but subject to the right of public use for so long as the Property is used as a Shopping Mall, as follows:

7.2.1 Improvements. Any improvements comprising Acquired Property in the Transactions that are not fixtures shall be conveyed by Bill of Sale from the Developer to the City.

7.2.2 Dedication. Prior to Closing of each Transaction, the Developer shall cause a survey to be performed of all land in Phase 1 or Phase 2, as applicable, to be conveyed to the City by dedication or grant of perpetual non-exclusive easement, which survey shall calculate the total square footage of land to be conveyed to the City. Confirmation of the square footage of land conveyed to the City shall be mutually agreed upon by the City and Developer. Developer shall convey title to all land dedicated to the City in the Transactions by executing and delivering a special warranty deed which meets the requirements of this Agreement subject to (1) utility and other easements not inconsistent with the use of the land for its intended purposes; (2) all agreements, reservations, covenants, conditions and restrictions of record or which may be imposed on the land 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; (3) any zoning, building, development, land use, health, or other governmental regulations or restrictions contained within statutes, ordinances, laws or regulations applicable to the land or general to the area; (4) the Reservation of Developer Rights, Covenants, Conditions and Restrictions Relating to the Public Plaza and the 120th Avenue NE Right-of-Way set forth in **Exhibit E**; (5) 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 land being transferred; (6) this Agreement; and (7) 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 land being conveyed as of the Acquisition 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 Acquisition Amount attributed to the land dedication, insuring that upon the Acquisition Date the land dedicated will be vested in the City, 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. The City shall pay real estate excise tax, if any, associated with dedication of land in the Transactions.

7.2.3 Easements. Developer shall grant a perpetual non-exclusive easement for public use associated with the Public Plaza in both Phase 1 and Phase 2. The perpetual non-exclusive easement shall be in a form mutually acceptable to the City and Developer in accordance with the provisions of Section 4.4 and **Exhibit E**. Any disputes between the Parties with regard to the form or content of the perpetual non-exclusive easement shall be submitted for resolution in accordance with the provisions of Section 4.7.

7.3 **Acquisition Dates.** Subject to the Conditions of Payment, described in Section 7.7.1, the Closings of the Phase 1 Transaction and the Phase 2 Transaction 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 improvements comprising the Acquired Property and Vehicular/Pedestrian Access Improvements associated with each of the Transactions; provided, however, that the subsequent evaluation of the intersection of 120th Avenue NE/128th Street NE, which is a Vehicular/Pedestrian Access Improvement scheduled for completion in the future and shall not be required to be completed by the Acquisition Date(s). The business day chosen by the Developer shall be known as the Acquisition 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 sixty (60) days' prior written notice of the anticipated date of Substantial Completion of the improvements comprising the Acquired Property and the Vehicular/Pedestrian Access Improvements associated with each of the Transactions and the proposed Acquisition Date in order to allow the City sufficient time to arrange financing for the Acquisition Amount.

7.4 **Acquisition Amounts.** The consideration to be paid by the City associated with each of the Transactions is referred to in this Agreement as the "Acquisition Amount." The Acquisition Amount shall be based on the Actual Costs of the improvements to be constructed and installed on land to be dedicated to the City, or over which the City will be granted a perpetual non-exclusive easement (improvements on land to be dedicated will be owned by the City, and improvements on land over which the City will be granted a perpetual non-exclusive easement will be owned by the Developer, but subject to the public use thereof for so long as the City's easement associated with the Public Plaza remains in effect), and the appraisal value of the underlying land being conveyed (as projected and established by an appraisal approved by City and Developer made immediately prior to execution of this Agreement); provided, however, that except as set forth in Section 4.2 and Section 6.2 relating to changes or additions requested by the City, the combined total of the Phase 1 and Phase 2 Acquisition Amounts shall not exceed $15,000,000.00 in accordance with Article IX. The Acquisition Amount for the Phase 1 Transaction and the Acquisition Amount for the Phase 2 Transaction shall be paid on the respective Acquisition Dates designated by the Developer in accordance with Section 7.3; provided, that except as set forth in Section 4.2 and 6.2 relating to changes or additions requested by the City,

the aggregate Acquisition Amount to be paid for the Phase 1 Transaction shall not exceed $7,500,000.00 and any amount not paid but owing shall be remitted as part of the Phase 2 Acquisition Amount, which aggregate amount shall not exceed $15,000,000.00 for the entire Project.

7.5 **Verification of Actual Costs.** Upon completion of the improvements to be installed or constructed within the Public Plaza for public use and other improvements to be dedicated to the City associated with each of the Transactions, the Developer shall provide the City an accounting of the Actual Costs associated with the 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, 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 improvements shall be conclusively deemed accepted and approved. In the event the City refuses to accept the 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 XVII; provided, however, that a dispute involving accounting verification shall not delay payment or reimbursement to the Developer for the improvements. In the event that on the Acquisition Date 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 improvements, plus the appraised value of any land dedicated, 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 XVII; 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 a party "substantially prevails" in the accounting dispute, that party shall be entitled to recover its reasonable attorneys' fees and costs associated therewith. In the event that Developer is the substantially prevailing party, then Developer shall also be entitled to immediate disbursement of the escrow set aside, including interest accrued thereon. Upon acceptance by the City, and reimbursement to Developer of the Actual Costs associated with the improvements in accordance with Exhibit H, the Developer shall deliver to the City, if applicable, one complete set of "as built" drawings per City Pre-approved Plans and Policies.

7.6 **Transaction Escrows.** The closings of the Transactions ("Closing"), and delivery of all items to be delivered on the respective Acquisition Dates under the terms of this Agreement shall be made at the offices of Escrow Holder, which shall act as the escrow agent and issue the title insurance policies to be delivered in connection with the Closing.

7.7 **Payment and Financing of Acquisition Amount.**

7.7.1 Conditions of Payment. The City's obligation to pay the Acquisition Amount on the Acquisition Date for the Phase 1 Transaction is subject to the Developer, and third party owners and developers, having obtained Substantial Completion of the Mall such that the private portion of the Project, including the buildings not demolished, but

excluding parking garages, total at least 400,000 square feet, of which at least 250,000 square feet will be retail. The City's obligation to pay the Acquisition Amount on the Acquisition Date for the Phase 2 Transaction is subject to the Developer, and third party owners and developers, having obtained Substantial Completion of the Mall such that the private portion of the Project, including the buildings not demolished, but excluding parking garages, total at least 600,000 square feet, of which at least 250,000 square feet will be retail. In the event that on the Acquisition Date for the Phase 1 Transaction or the Phase 2 Transaction, the respective conditions set forth in this Section 7.7.1, as applicable to the transaction, have not been satisfied, then the Acquisition Date with respect thereto shall be extended to a date which is seven (7) days after the satisfaction of this condition to payment. In addition, the City's obligation to pay the Acquisition Amount on the Acquisition Date for both Transactions is subject to (1) finalization of a mutually agreed upon perpetual non-exclusive easement for land to be conveyed to the City by easement; and (2) finalization of a mutually agreed upon maintenance responsibility matrix associated with land and improvements to be maintained by Developer pursuant to this Agreement.

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

7.7.3 Tax Exempt Obligations. Not later than the Acquisition Dates, the City may finance some or all of its acquisition of the improvements and land comprising the Acquired Property by causing the execution and delivery of tax exempt obligations or taxable obligations in an amount sufficient to cause the payment to the Developer of the full Acquisition 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 finance the Acquisition Amounts. The City agrees that it will not incur any indebtedness from and after the date of this Agreement which would cause it not to have sufficient Debt Capacity under Washington law to finance the Acquisition Amounts and the Developer has relied on this representation in entering into this Agreement. In the event the City is unable to cause the issuance of obligations to finance the acquisition of the improvements and land comprising the Acquired Property, the City shall nevertheless be obligated to pay the Acquisition Amount on the Acquisition Dates as provided in Section 7.7.2 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 obligations.

7.7.4 Conveyance. The Developer shall convey the land and improvements dedicated to the City pursuant to a special warranty deed which meets the requirements of this Agreement on the applicable Acquisition Dates. The Developer shall grant and convey to the City a perpetual non-exclusive easement over the Public Plaza land, which also provides for public use of the improvements located on the Public Plaza land, on the applicable Acquisition Dates. The City shall pay the Developer the respective Acquisition Amounts in cash or other immediately available funds on the applicable Acquisition Dates.

7.8 **Closing.** On or before the Acquisition Dates, the Parties shall deposit with the Escrow Holder the following:

7.8.1 Delivery by the Developer. The Developer shall deliver, on each of the Acquisition Dates, and as applicable to the Transaction, the following documents:

(a) A special warranty deed to the land and fixture improvements being dedicated to the City and/or a perpetual non-exclusive easement over the applicable phase of the Public Plaza, which meets the requirements of this Agreement, executed in recordable form and ready for recording on the Acquisition Date, together with an executed real estate excise tax affidavit prepared by the Escrow Holder.

(b) The Reservation of Developer Rights, Covenants, Conditions and Restrictions Relating to the Public Plaza and the 120th Avenue NE Right-of-Way, in the form attached hereto as **Exhibit E,** executed in recordable form and ready for recording on the Acquisition Date.

(c) Evidence reasonably satisfactory to the City that the land being dedicated to the City 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 phase 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 the City that the applicable conditions precedent set forth in Section 7.7.1 have been satisfied prior to Closing the applicable Transaction.

(f) Evidence that all applicable original warranties which the Developer has received in connection with the construction of the improvements built by the Developer and being dedicated to the City (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) As applicable, a copy of "as built" plans and specifications for improvements being dedicated to the City.

(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 land being dedicated vested in the City, 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 in form and substance satisfactory 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 in compliance and accordance with the provisions of Section 15.1.

(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 improvements and land being transferred.

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

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

(a) The applicable Acquisition Amount, in cash or other immediately available funds, for the property interests being transferred.

(b) Such ordinances, authorizations, certificates or other documents or agreements relating to the City as shall be reasonably required by the Escrow Holder in connection with Closing the City's acquisition of the improvements and land being transferred.

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

7.8.3 Other Instruments. The Developer and the City shall each deposit such other instruments as may be reasonably required by Escrow Holder or as may be otherwise required to Close the escrows in accordance with the terms hereof.

7.8.4 Pro-rations. All ownership, use, operation and maintenance expenses associated with land being dedicated to the City, 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 Acquisition Date so that the Developer bears all expenses of the land being dedicated to the City prior to the Acquisition Date and the City bears all expenses of

the land being dedicated to the City on and after the Acquisition 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 Acquisition Date, the City shall not be responsible for payment of the same on and after the Acquisition 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 Acquisition 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 Acquisition 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 pro-rations after the Acquisition 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.

7.8.5 Closing Costs and Expenses. The City shall pay all costs and expenses associated with (1) any real estate excise tax associated with dedication of land to the City or granting the perpetual non-exclusive easements over the Public Plaza; (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 City obligations incurred to finance the acquisition or transfer of improvements and land comprising the Acquired Property pursuant to the City's financial arrangements. The Developer shall pay the cost and expense associated with the City 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.

7.8.6 Close of Escrow: Recording. On the Acquisition Dates, the Escrow Holder shall disburse the Acquisition Amounts to the Developer and shall record the documents described in Sections 7.8.1 (a), (b), (g) and (j), in the real property records of King County, Washington, and deliver the other documents described in Section 7.8. 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), and the City, together with closing statements in form customarily prepared by Escrow Holder within five (5) days following the Acquisition Date.

ARTICLE VIII
INFRASTRUCTURE TO SUPPORT REDEVELOPMENT

8.1 Transportation.

8.1.1 The City has issued a Concurrency Test Notice for roads (traffic) for the entire Project and a Certificate of Concurrency for the entire Project, which Concurrency Test Notice and 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 Project, the revised Project shall be retested for road (traffic) concurrency.

8.1.2 Except as otherwise included in the SEPA documents identified in Section 3.1, the 120th Avenue NE Improvements, and the Traffic Improvements Agreement, 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.

8.1.3 Except as specifically set forth in this Agreement, 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 additional 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.

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

8.3 **Stormwater.**

8.3.1 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.

8.3.2 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 IX
CITY FINANCIAL PARTICIPATION

Notwithstanding anything herein to the contrary, except as set forth in Sections 4.2 and 6.2 with respect to City changes to the Project, the City shall pay for or provide public financial participation in the Project in an amount not to exceed $15,000,000.00 ("City Financial Participation"). Such amount shall be the sum of payments associated with the following Acquired

Property in accordance with Exhibit H: (i) the Actual Cost of the Public Plaza Improvements set forth and described in Article IV, which will remain owned by Developer subject to public use for so long as the City's perpetual non-exclusive easement associated with the Public Plaza remains in effect; (ii) the Actual Cost of the Bicycle/Pedestrian lanes, landscaping and other improvements set forth and described in Article V; (iii) the Actual Cost of the hardscape/sidewalks and other improvements along the west and east side of the 120th Avenue NE right-of-way on land to be dedicated to the City; (iv) the Actual Cost of hardscapes, landscaping and other improvements on land to be dedicated to the City along Totem Lake Way; (v) dedication of the land associated with the Bicycle/Pedestrian lanes along Totem Lake Boulevard as shown on **Exhibit B**; (vi) dedication of the land along the west and east side of the 120th Avenue NE right-of-way as shown on **Exhibit B**; (vi) dedication of land along the north side of Totem Lake Way as shown on **Exhibit B**; (vii) conveyance of a perpetual non-exclusive easement to the City over the Public Plaza located in Phase 1 and Phase 2 as shown on **Exhibit B**; (viii) all of the real estate excise taxes, if any, associated with transfer to the City of the land described in this Article IX as shown on **Exhibit B** whether by dedication or conveyance of perpetual non-exclusive easements; and (ix) the Artwork pursuant to Section 4.1.2. The Parties understand and agree that the entire amount is expected to be expended by the City on the Acquired Property. If the total of Actual Costs for improvements and appraised value for dedication (or conveyance by easements) of the land shown on **Exhibit B** attributable to the Acquired Property in accordance with Exhibit H and this Agreement does not equal or exceed $15,000,000.00, the City shall only be obligated to pay the sum of such amounts. Except as otherwise provided in Section 4.2 and Section 6.2, any cost overruns that result in Developer's aggregate Actual Costs in accordance with Exhibit H for improvements and real property interests associated with the Acquired Property to exceed $15,000,000.00 shall be the sole responsibility of the Developer. Based on appraisals received and accepted by the City and the estimated costs of the various improvements set forth in the City Cost-Sharing Public Benefits Table attached hereto as **Exhibit H**, the City Financial Participation will not exceed $15,000,000.00, though the value of the consideration received by the City pursuant to this Agreement will exceed that amount.

ARTICLE X
VESTING

10.1 **General Vesting.** The Project shall continue to be vested to the federal, state and local laws, regulations and resolutions existing on March 6, 2006, the effective date of the original 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.

10.2 **Impact Fees.** The Developer's current development plan shall not be subject to any impact fees, other contributions of land, or cash in lieu thereof, whether or not

provided by Statute or Ordinance, except as specifically set forth in this Section 10.2 relating to transportation, park and school impact fees.

10.2.1 Transportation and Park Impact Fees. In February, 2017, the City and Developer entered into a Transportation and Park Impact Fee Agreement, a copy of which is attached hereto as **Exhibit F**. The Transportation and Park Impact Fee Agreement shall govern payment of transportation and park impact fees associated with the Project.

10.2.2 School Impact Fees. In February, 2017, the Lake Washington School District and Developer entered into a School Impact Fee Agreement, a copy of which is attached hereto as **Exhibit G**. The School Impact Fee Agreement shall govern payment of school impact fees associated with the Project.

10.3 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.

10.4 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 a serious threat to public health and safety.

ARTICLE XI
PARTIES' REPRESENTATIVES

11.1 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.

11.2 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 XII
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 XIII
INSURANCE

13.1 **Insurance Requirements.** Until the completion of the 120th Avenue NE Improvements and Traffic Improvements, the Developer shall maintain insurance covering work to be performed in the City right-of-ways, including but not limited to the following requirements:

13.1.1 Builders All Risk Comprehensive Coverage. With regard to 120th Avenue NE Improvements and Traffic 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 and the Traffic Improvements.

13.1.2 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.

13.2 **Insurance Policies.** Insurance policies required herein:

13.2.1 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) 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.

13.2.2 Attachments. Each such policy or certificate of insurance mentioned and required in this Article XIII 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. In lieu of this endorsement, Developer may provide annual evidence of compliance with the provisions of this Article 13.

(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.

13.2.3 Certificates of Insurance. The certificates of insurance and insurance policies shall be furnished to the Parties prior to commencing construction of the 120th Avenue NE Improvements and/or the Traffic Improvements under this Agreement. The certificate(s) shall clearly indicate the insurance and the type, amount, and classification required.

13.2.4 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.

13.3 **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 XIV
ENVIRONMENTAL INDEMNIFICATION

14.1 **Indemnification.** Subject to the limitations of Sections 14.2 and 14.3, the Developer shall indemnify and hold the City harmless from and against any and 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 preexisting environmental contaminants on or beneath the land to be dedicated (or conveyed by easements) to the City as shown on **Exhibit B**, including any such liability, loss, damage, costs, or expenses resulting from the past or future

migration of such environmental contaminants from the land to any other property. "Environmental contaminants" shall include without limitation:

14.1.1 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;

14.1.2 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);

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

14.1.4 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 70.105.010 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;

14.1.5 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

14.1.6 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.

14.2 **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 pre-existing 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.

14.3 **Pre-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 March 6, 2006, the effective date 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 right-of-ways, including, but not limited to public streets and roadways, or resulting from the actions of the City, its officers, agents, or employees.

ARTICLE XV
RIGHT TO ASSIGN, DELEGATE OR OTHERWISE TRANSFER

15.1 **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:

15.1.1 Prior to conveyance of the Acquired Property, the Developer must obtain the prior written consent of the City to any proposed Transferee, which consent shall not be unreasonably withheld assuming the Transferee accepts the responsibilities of the Developer hereunder in writing and demonstrates to the reasonable satisfaction of the City that it has the financial capacity to fulfill its obligations hereunder; provided, however, that after Developer conveys to the City the Acquired Property, prior consent of the City shall not be required;

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

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

15.1.4 The City will deliver to Transferee a fully executed Estoppel Certificate in a form reasonably acceptable to both Parties; and

15.1.5 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.

15.2 **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 Section 15.1, 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, without the written consent and release of the City.

15.3 **Right to Delegate Maintenance and Related Insurance Responsibilities.** Developer shall have the right, but not the obligation, to delegate all maintenance responsibilities, and related insurance requirements, under this Agreement to a private master association to be formed whose members are private owners of land within the Project.

15.4 **Intended Third Party Beneficiaries.** The Parties acknowledge and agree that FF Realty III LLC, a Delaware limited liability company, and its affiliates, successors and assigns, and any other third party acquiring an ownership interest in the Project, will be an "intended third party beneficiary" under this Agreement and that the intended third party beneficiary shall inure to the benefits under this Agreement including, without limitation, the provisions of Articles III, VIII, X, XV, XVI, XVII, XVIII, and Exhibits E, F and G; but shall not have (a) responsibility with regard to the obligations of Developer, including any indemnification, defense and/or hold harmless obligations, nor (b) the obligations or benefits (including reimbursement rights) associated with City Financial Participation, unless the Agreement is assigned to the intended third party beneficiary and such obligations are expressly assumed by such party and consent to assignment is approved by the City in accordance with Section 15.1.

15.5 **Mortgagee Protection.**

15.5.1 Mortgagee Not Obligated; Mortgagee as Transferee. No mortgagee shall have any obligation or duty under this Agreement whatsoever, including, but not limited to, any obligation to construct the Project or any portion thereof, except that nothing contained in this Agreement shall be deemed to permit or authorize any mortgagee to undertake any new construction or improvements on the Property, or to otherwise have the benefit of any rights of Developer, or to enforce any obligation of the City under this Agreement, unless and until such mortgagee obtains City consent to assignment of this Agreement to mortgagee as provided in Section 15.1 of this Agreement. Any mortgagee that affirmatively elects to obtain City consent to assignment of this Agreement to mortgagee shall be later released from all obligations and liabilities under this Agreement upon the subsequent transfer by the mortgagee of its interest as a transferee to a third party who obtains the City's consent to assignment of this Agreement to the third party.

15.5.2 Notice of Default to Mortgagee; Right of Mortgagee to Cure. If the City receives notice from a mortgagee requesting that a copy of any future Notice of Default that may be given to Developer hereunder and specifying the address for service thereof ("Notice Request"), then the City shall deliver to such mortgagee, concurrently with service thereon to Developer, any Notice of Default thereafter given to Developer. Such mortgagee shall have the right (but not the obligation) to cure or remedy, or to commence to cure or remedy, the Event of Default claimed within the applicable time periods for cure specified in the Agreement. If, however, the Event of Default or such noncompliance is of a nature which can only be remedied or cured by such mortgagee obtaining possession of the Property, or portion thereof, such mortgagee shall seek to obtain possession with diligence and continuity (but in no event later than ninety (90) days after a copy of the Notice of Default is given to Mortgagee) through a receiver or otherwise, and shall thereafter remedy or cure such Event of Default or noncompliance promptly and with diligence and dispatch after obtaining possession. Other than a Notice of Default (i) for

failure to pay money or (ii) that is reasonably susceptible of remedy or cure prior to a mortgagee obtaining possession, so long as mortgagee is pursuing cure of the Event of Default in conformance with the requirements of this Section 15.5.2, the City shall not exercise any right or remedy under this Agreement on account of such Event of Default. When and if a mortgagee acquires the interest of Developer encumbered by mortgagee's mortgage and such mortgagee elects to obtain City consent for assignment of this Agreement in accordance with Section 15.1, then such mortgagee shall promptly cure all monetary or other Events of Default then reasonably susceptible of being cured by such mortgagee to the extent such that such Events of Default are not cured prior to such mortgagee's becoming a transferee.

15.5.3 Priority of Mortgages. For purposes of exercising any remedy of a mortgagee pursuant to this Section 15.5, the applicable Laws of the State of Washington shall govern the rights, remedies and priorities of each mortgagee absent a written agreement among mortgagees otherwise providing.

15.5.4 Collateral Assignment. As additional security to a mortgagee under a mortgage on the Property, or any portion thereof, Developer shall have the right to execute a collateral assignment agreement of Developer's rights, benefits and remedies under this Agreement in favor of the mortgagee ("Collateral Assignment"), and the City shall execute a commercially reasonable consent to such Collateral Assignment ("Consent to Assignment") with the lender(s). A commercially reasonable Consent to Collateral Assignment may require the City to grant certain rights to the lenders, including the right of lenders (either directly or through an agent, nominee, or receiver) to "step-in" and assume the rights and benefits of the Developer under the development agreement; the right to further assign this Agreement upon realization and enforcement of its security interest; limitations on amending, modifying or terminating the Agreement without the consent of lenders; and other matters to preserve the value of the Agreement for the lenders.

ARTICLE XVI
DEFAULT

16.1 **Events of Default.** The following shall constitute events of default under this Agreement ("Event(s) of Default"):

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

16.1.2 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;

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

16.1.4 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.

16.2 **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 XVII; 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 XVII
DISPUTE RESOLUTION

17.1 **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 XVII shall apply. Either Party shall have the right to commence a dispute 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 17.6, which shall not require a Dispute Notice.

17.2 **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 17.4 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 17.3 and 17.4, which shall be deemed entirely voluntary and discretionary.

17.3 **Mediation.** If the Parties are unable to resolve a Dispute in accordance with the provisions of Section 17.2, 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.

17.4 **Arbitration.** If the Parties are unable to resolve a Dispute in accordance with the provisions of Section 17.2, 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 17.2, 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.

17.5 **Litigation.** If the Parties are not required, or do not mutually agree, to submit a Dispute to mediation under Section 17.3, or arbitration under Section 17.4, then after the time period set forth in Section 17.2 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.

17.6 **Equitable Proceedings.**

17.6.1 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 XVII shall be construed to suspend or terminate the obligation of the Parties to comply with the provisions of Sections 17.2 with respect to the Dispute that is the subject of such Equitable Proceeding while such Equitable Proceeding is pending, including any appeal or review.

17.6.2 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 any 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 XVIII
MISCELLANEOUS

18.1 **No Additional Third Party Rights.** Except for specific intended third party beneficiaries described in Section 15.4 and Mortgagees in Section 15.5 of this Agreement, the provisions of this Agreement are for the exclusive benefit of the City, Developer and their respective permitted successors and assigns and not for the benefit of any third person, and this Agreement shall not be deemed to have conferred any rights upon any third person.

18.2 **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.

18.3 **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.

18.4 **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.

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

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

18.7 **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 lands dedicated (or conveyed by easements) to the City, or other matters involving rights or obligations extending beyond the expiration of the term of this Agreement.

18.8 **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.

18.9 **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.

18.10 **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: City Manager
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: Village at Totem Lake, LLC
Attn: General Counsel
1600 East Franklin Avenue
El Segundo, CA 90245
Facsimile (310) 563-6905

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.

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

18.12 **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.

18.13 **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.

18.14 **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.

18.15 **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.

18.16 **Recording.** This Agreement shall be recorded by the Developer or the City with the Real Property Records Division of the King County Records and Elections Department.

18.17 **Binding Effect.** The terms herein contained shall bind and inure to the benefit of the City, its successors and assigns, and the Developer, its successors and assigns, except

as may be otherwise provided herein. In addition, the rights contained herein shall inure to any intended third party beneficiary pursuant to the terms of Section 15.4 of this Agreement.

18.18 **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 or electronic transmission shall be deemed an original signed copy of this Agreement; provided, however, that one original or counterpart of this Agreement must be executed by each Party to facilitate recording.

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

18.20 **Term and Termination.** Pursuant to the Extended and Amended Redevelopment Agreement, dated April 22, 2015, the term of the Agreement was extended to April 23, 2020. However, Developer had the right to extend the term for an additional (2) years if, prior to termination, the Developer (a) obtained City DRB Design Approval associated with a private portion of the Project such that the combined square footage, including the buildings not demolished, but excluding the parking garage(s), totals at least 600,000 square feet, of which at least 250,000 square feet will be retail; and (b) obtained a building permit for construction of at least one building of the private portion of the Project. The Developer has requested extension and the City agrees that the preconditions have been satisfied. Accordingly, subject to the survival provisions set forth in Section 18.7, the term of this Agreement shall expire on April 23, 2022.

IN WITNESS WHEREOF, Developer and City have executed this Agreement on the dates set forth below.

[Remaining Page Intentionally Blank – Signature Page Follows]

CITY OF KIRKLAND

By: _____
Kurt Triplett
Its: City Manager

Date: November __, 2017

VILLAGE AT TOTEM LAKE, LLC

By: _____
Jean Paul Wardy
Its: President

Date: November __, 2017

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

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

DATED: November __, 2017

_____
(Signature of Notary)

_____
(Legibly Print or Stamp Name of Notary)

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

STATE OF _____)
) ss
COUNTY OF _____)

I certify that I know or have satisfactory evidence that **Jean Paul Wardy** 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 of Village at Totem Lake, LLC, a Delaware limited liability company, pursuant to the provisions of the Limited Liability Company Agreement of said company, and acknowledged it to be the free and voluntary act of said company for the uses and purposes mentioned in the instrument.

DATED: November __, 2017

_____
(Signature of Notary)

_____
(Legibly Print or Stamp Name of Notary)

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

EXHIBITS TO REDEVELOPMENT AGREEMENT

EXHIBIT A	Legal Description of Property
EXHIBIT B	Project Site Plan
EXHIBIT C	Traffic Improvements Agreement
EXHIBIT D	Public Plaza and 120th Avenue NE Design Standards
EXHIBIT E	Reservation of Developer Rights, Covenants, Conditions and Restrictions Relating to the Public Plaza and the 120th Avenue NE Right-of-Way
EXHIBIT F	Transportation and Park Impact Fee Agreement
EXHIBIT G	School Impact Fee Agreement
EXHIBIT H	City Cost-Sharing and Public Benefits Table

EXHIBIT A

Legal Description of Property

[THIS WILL CHANGE AS THE BINDING SITE PLAN FOR PHASE 2 WILL BE RECORDED PRIOR TO FINAL APPROVAL OF THIS AGREEMENT. THE CORRECT LEGAL DESCRIPTION WILL BE ATTACHED PRIOR TO RECORDING]

PARCEL A:

LOTS 1 AND 2 OF THE VILLAGE AT TOTEM LAKE – PHASE 1 – BINDING SITE PLAN SUB17-00080, RECORDED JULY 13, 2017 UNDER RECORDING NO. 20170713000057, IN KING COUNTY, 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

Project Site Plan

EXHIBIT C

Traffic Improvements Agreement

EXHIBIT D

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 City 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 a combination of gray and 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 Feature: Within the Phase 2 Public Plaza shall be a water feature with moving water integrated into the overall design. The water 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 may 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 agrees to use reasonable efforts to coordinate the selection of this artwork with the City and the Kirkland Cultural Arts Commission and final selection of artwork for the Public Plaza and the payment amount shall be subject to the mutual agreement of the City and the Developer.

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 E

Reservation of Developer Rights, Covenants, Conditions and Restrictions Relating to the Public Plaza and the 120th Avenue NE Right-of-Way

The reservation of Developer rights, 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 Chapters19.46, and 19.04 KMC, as may be subsequently amended, modified, changed or replaced, except as otherwise specifically provided in Section I(3), and shall be deemed to also accrue to the benefit of the Developer's tenants, licensees, invitees, intended third party beneficiaries, and 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 DEVELOPER RIGHTS.

1. The Developer reserves unto itself for its own benefit and the benefit of its private Master Association, tenants, occupants, licensees, invitees, intended third party beneficiaries, and successors and assigns, over, under through and across the Public Plaza, a perpetual right, 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 unto itself for its own benefit and the benefit of its private Master Association, tenants, occupants licensees, invitees, intended third party beneficiaries, and successors and assigns, over, under through and across the Public Plaza, sidewalks along the 120th Avenue NE right-of-way, the Totem Lake Boulevard right-of-way, including the Bicycle/Pedestrian Lanes located adjacent to the Property a perpetual right for ingress, egress, use, and placement, maintenance, repair, replacement, relocation and/or removal of any utilities or drainage facilities that serve the Property or are required to be maintained by Developer as set forth in the Amended and Restated Redevelopment Agreement ("Agreement").

3. The Developer reserves unto itself, for the benefit of itself, and the benefit of its private Master Association, tenants, occupants, licensees, invitees, intended third party beneficiaries, and successors and assigns, over, under, through and across the Public Plaza and sidewalks along 120th Avenue NE right-of-way that are adjacent to retail storefronts on the Property, a perpetual right of ingress, egress and use for the purpose of sidewalk and outdoor sales (including eating, drinking and entertainment purposes), 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; provided, however, on sidewalks along 120th Avenue NE right-of-way (i) the continuous width of unobstructed general public pedestrian corridor between the edge of the bicycle lane and edge of such uses is at least five feet (5') in width; and (ii) restaurants along 120th Avenue NE right-of-way that serve alcohol and desire outdoor seating areas shall obtain a sidewalk café street use permit from the City and comply with applicable provisions of

Chapter 19.04 KMC. The City agrees that sidewalk café street use permits for restaurants serving alcohol in a sidewalk café are appropriate along 120th Avenue NE right-of-way adjacent to the Property and agrees to issue such use permits upon compliance with the criteria set forth in Sections 19.04.060 through 19.04.065, inclusive, and Section 19.04.067; provided, however, that notwithstanding Section 19.04.062(A), the unobstructed general public pedestrian corridor shall only be required to meet the criteria set forth in this Section I(3).

4. The Developer reserves unto itself, for the benefit of itself, and for the benefit of its private Master Association, tenants, occupants, licensees, invitees, intended third party beneficiaries, and successors and assigns, over, under, through and across those portions of the Public Plaza, the 120th Avenue NE right-of-way, and the Totem Lake Boulevard right-of-way within ten feet (10') of any buildings or structures on the Property a perpetual right 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, the 120th Avenue NE right-of-way, and the Totem Lake Boulevard right-of-way and other fixtures associated with the buildings on the Property, so long as pedestrian passage is not unreasonably obstructed.

5. The Developer reserves unto itself, for the benefit of itself, and for the benefit of its Master Association, tenants, occupants, licensees, invitees, intended third party beneficiaries, and successors and assigns, over, under through and across the Public Plaza, the sidewalks along 120th Avenue NE right-of-way, and the Totem Lake Boulevard right-of-way, including Bicycle/Pedestrian Lanes, the continuous right of access for ingress, egress, repair, replacement and maintenance of the Public Plaza, the sidewalks along 120th Avenue NE right-of-way, and the Totem Lake Boulevard right-of-way, including Bicycle/Pedestrian Lanes, consistent with the obligations and maintenance duties of the Developer set forth in the Agreement.

6. In an effort to enhance the activity level in the Public Plaza, Developer shall be permitted (and shall reserve the right unto itself, for the benefit of itself, its tenants, licensees, invitees, intended third party beneficiaries, and successors and assigns, over, under, through and across the Public Plaza) to place certain kiosks, pavilions or similar structures (of a permanent or temporary nature) vending food, beverages, goods or services, and to place outdoor dining areas associated with tenant retail establishments located adjacent to the Public Plaza, within the Public Plaza at initial location(s) which shall be memorialized in the perpetual non-exclusive easement granted to the City in accordance with the Agreement. The foregoing placement and usage of the aforementioned structures and outdoor dining areas shall be subject to the further condition that pedestrian passage to public use shall not be unreasonably obstructed.

II. COVENANTS, CONDITIONS AND RESTRICTIONS.

1. Except as incident to the Developer's reservation of rights herein: (A) the Public Plaza shall be used 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; provided, however, private events of the Developer may be authorized by the City from time-to-time in accordance with Section 4.8.3 of the Agreement; and (B) no business, retail, office or other

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; pavilions, 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. Types of events that are anticipated by the City on the Public Plaza include craft market/art fairs; run/walk/bike athletic events; music festivals and or summer concerts; food/drink festivals; and cultural events, which are acceptable as long as the event will not result in breach of a tenant lease on the Property.

2. Except as incident to the Developer's or intended third party beneficiaries' 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 and the public. 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 Agreement, 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 (a) manhole and manhole covers, which shall be flush with the adjacent grade, and (b) any utilities servicing the Developer uses, which shall only be above-ground to the extent necessary to be employed by the user.

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. No changes or alterations and no buildings or structures, shall be made or constructed in the Public Plaza by the City without the advance written consent of the Developer, which consent may be withheld at the Developer's sole discretion.

EXHIBIT F

Transportation and Park Impact Fee Agreement

EXHIBIT G

School Impact Fee Agreement

EXHIBIT H

City Cost-Sharing and Public Benefits Table